

A HISTORY OF LAW COURSE:  
THE MERGER OF CAREER-ORIENTED AND  
VALUE-ORIENTED HISTORICAL STUDY

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Adversities seem to plague the history profession of late, not the least of which is declining enrollments in history classes. Due to the tight job market, history has ceased to be an attractive major to the career-oriented college students of the 1970s and 1980s. Many are opting for more practical fields of study as they fail to see the relevance of history to their future plans. To exacerbate a bad situation, many history professors educated in the humanistic tradition which stresses knowledge for knowledge's sake find it difficult to relate to the utilitarian outlook of the job-motivated students. To some, injecting the concern for later employment into their courses might dilute the humanistic thrust and intent of the study of history.

This description points out a dilemma, but it also suggests a solution. Somehow, an effort must be made to relate the humanistic outlook and the historical method to the career-motivated goals of the student if history is once again going to be a viable field of study. One area where this might easily be accomplished is in the pre-law program.<sup>1</sup> History has traditionally been one of the avenues for those seeking the law as a career, yet little has been done on the undergraduate level to directly relate, in a scholarly fashion, the historical method and viewpoint with the interests of pre-law students. Few history courses have consciously aimed at showing students the relationship between history and law. And if history courses do not do this, where will the student get this exposure? Law students I have spoken to have commented that the great majority of courses in the law school curriculum, of necessity, stress the technical and mechanical aspects of law to the detriment of the historical and philosophical underpinnings. Therefore, with the pragmatic goal of attracting pre-law students into history courses and showing them that history is relevant to their future plans, and with the desire to relate the study of humanities--particularly history--to these career goals, the history department at Saint Louis University obtained a grant for a two-semester course in the history of law.<sup>2</sup>

The course was entitled "A History of Law," the first semester being subtitled "The Origins of Modern Law," the second semester "Law and the National Cultures." Its scope was so wide-ranging that it would have been nearly impossible to find one scholar versed in all the areas it dealt with. So from the beginning, I structured the course on the assumption that it would have to be team-taught. While most of the lecturers were from the history department, professors from other disciplines were invited to participate when their area of expertise fit the course topics. Help was elicited from the departments of philosophy, theology, and classics within the arts college, and one professor from the law school participated.

I approached potential speakers and asked them to prepare from two to four lectures and assign a group of readings to supplement the topics they would cover. I consciously left the guidelines broad so that each professor could convey his own personal understanding of the law, and so that the students would get a sampling of the widely divergent interpretations of legal history. I asked only that the lectures be interpretive in nature, stressing the origins of the legal systems and their unique biases. The technical aspects of the law are clearly the realm of law school training, so I encouraged speakers to view the law in relation to the culture in which it existed. This would lead to identifying and clarifying values inherent in the formulation and administration of law throughout the world and throughout the centuries. Beyond this, each lecturer chose his own approach, the particular values he wanted to stress, and so forth.

Each presentation turned out to be a novel experience. The method of presentation varied from lecture to discussion to a combination of both. Readings ranged from analyses of primary sources to articles and secondary works presenting historical interpretations of the law. [See the appendix for a list of assigned readings.]

While the first course was not a prerequisite for the second, ideally the two composed a coherent unit. The first semester laid the foundations for the modern national systems. Included was a discussion of Mosaic law as an example of ancient law codes, Greek law, Roman law, canon law, and the early development of English common law.<sup>3</sup> The uniqueness of each of these systems, along with the discipline the speaker was trained in, often dictated the thrust of the presentation. For example, a theologian versed in the study of the Old Testament presented the unit on Mosaic law. Besides comparing Mosaic law with other ancient codes like Hammurabi's, he raised a more universal question--the role played by religion and the religious-oriented moral systems in developing law codes. Another lecturer versed in philosophy and classical studies examined Greek law. After laying the historical and cultural foundation by discussing the politics of ancient Greece, he proceeded to pursue the Greek quest, as personified by Socrates and Plato, to understand the nature of justice and its relationship to law. He stressed the queries the Greeks made about the nature of law more than Greek laws per se.

While the first semester laid an evolutionary pattern with Roman law borrowing from Greek thought and canon law drawing its essence from Roman law, the second semester proved to be much more comparative. Topics included English common law (especially its relationship to modern legal development), civil law as reflected in the Napoleonic code, the Soviet Union as an example of socialist law, German, Hispanic-American, Chinese, and United States law.<sup>4</sup> Taken as a whole, these topics portrayed the patchwork of legal thought in the world today. Comparisons abounded. For instance, the Chinese with their concern for moral suasion more than force, which resulted from their Confucian background, had a system far different from the values and assumptions underlying most of the western systems. While most of the systems stressed respect for the law, a phenomenon American students could certainly relate to, the lecturer on Soviet law argued that Russian society was based neither on law nor a sense of respect for law, but rather on the needs of the state and the party.

This latter remark about the interrelationship between the state and the law raises another point that these lectures broached. Some of the speakers chose to discuss primarily the development of private law and the evolution of legal and judicial institutions in each society, while others saw fit to include a consideration of constitutional development, a factor which is certainly an influence on every legal system. Consequently, constitutional history was analyzed in varying degrees. Soviet law, on the one hand, being state and party-oriented, called for an extensive discussion of the political and constitutional thought which prevailed throughout Russian history. Even cases which would be considered in other societies areas of private law were measured against the needs of the state. On the other hand, the important concern of the French civil code lay in the realm of private law. The speaker on the French code argued that, being based on Roman law, it tried to provide legal certainty for society. The French code guaranteed some equality before the law and protection against the inequities which had permeated preceding legal systems prevalent during the medieval period. To this speaker, it was particularly evident in the area of property rights, which the French viewed as one of the natural rights.

Contrary to these two approaches, in my discussion of United States law, I found it necessary to survey both areas. Just as the American Constitution

was rooted in certain Enlightenment principles and in the thinking of men like John Locke, so this influence affected the American view of law. But at the same time, the growth of private law and much of the judicial system owed a lot to the growing and expanding capitalist society. Adapting to the needs of capitalism, the growth of industry, and the radical shift to a modern society in the twentieth century affected judicial decisions, law-making, and also the interpretation of the Constitution.

Not only did many of these lectures point out the historical source of the differences and similarities of each of these legal systems, but they forced the students to examine their own culture and laws from a new perspective. The students were compelled to remove themselves from their own cultural restraints and look at other legal systems from a more objective and, most of the time, more sympathetic perspective. They not only recognized the weaknesses of the legal systems, but they acknowledged their strengths as well.

In organizing a course such as this, I had to solve two major problems. First of all, I realized that many lecturers and the absence of strict guidelines for presentation, while being a strength in many ways, meant also a weakness. When I asked the students to evaluate the course at the end of the first semester, most criticized the lack of some means to tie the whole course together.

One suggested solution to this problem was the use of a textbook, which would insure continuity and supplement the readings assigned by each speaker. It was difficult, however, to find a suitable text which contained all the pertinent topics. The closest possibility was Rene A. Wormser, The Study of Law.<sup>5</sup> I personally found this book too sketchy and too basic for an upper-division course.<sup>6</sup> Yet the alternative was books which either failed to include enough of the course topics or were too interpretive or narrow in viewpoint to work satisfactorily in a course with such a variety of perspectives.

Since a satisfactory text was not immediately available, I tried an alternative approach. I began the second semester with an introductory lecture during which I attempted to get the students to think in a way befitting the goals of the course. I traced the social, intellectual, and political development of Europe starting around the beginning of modern times (roughly 1500) and tried to establish an overall historical context for the legal systems we were going to study. To further facilitate this effort, I assigned each student an eight to ten-page paper to be completed prior to the end of the semester. And I suggested potential topics which would highlight the historical and cultural influence on legal concepts and serve as a comparison or contrast between two or more of the legal systems. For example, I raised the question of the relationship and potential conflict between the philosophical underpinnings of a legal system and the practical necessity a set of laws serves in maintaining order. Such an examination might raise the question of what was more essential in American legal development, the Enlightenment ideas of John Locke as expressed by Thomas Jefferson, or the practical needs of a growing industrial and commercial society. Or in the case of Soviet law, it might call into question just how much the Soviet system faithfully adhered to the principles of Marx and Lenin. Other questions I suggested were an examination of the individual's importance versus the interests of the state in several of the systems and the role of tradition and precedent in the evolutionary development of legal systems. Using these and other suggested topics, I hoped that stressing comparisons and getting the students to think along these lines would provide a certain degree of cohesion.

The second problem I faced was the practical consideration of grades. As an American historian, how could I adequately evaluate students in such an

eclectic course? In confronting this difficulty, I made an assumption: requirements for the course were sufficiently stringent to encourage the better students to work simply because they were engaged in a new and stimulating learning experience, and to discourage the less motivated students from remaining in the course. So the students in this course overall were better and more motivated than in many other history courses.

Then I proceeded to establish a set of criteria for assigning grades. Each semester I gave two objective exams based on what I considered important in each set of lectures. I then combined these test results with one other assignment. In the first semester, each speaker gave a group of study questions to accompany the readings. I asked the students to answer these questions as fully as possible in a notebook they were to keep throughout the semester. They were then graded on their answers. This proved beneficial in that it encouraged each student to keep up with the readings and prepare for class. But it failed to solve the problem of needed continuity.

So in the second semester I abandoned the notebook as a requirement and used the aforementioned research paper as a criteria for grading. I retained the study questions, but they were solely for the student's benefit. The paper was the important assignment, and I hoped that it, combined with the introductory lecture, would provide a continuous strand for each student as an individual to pursue as one topic followed upon another.

Judging from the preceding discussion, it is clear that a course such as this has its weaknesses which may never be satisfactorily solved. I see it as an on-going experiment--each time the course is offered is another opportunity to try something different to improve it. However, conscientious students clearly derive the desired goal of the course. History no longer stands alone as an undesirable and irrelevant discipline as far as career-oriented students are concerned. Students realize what can be learned from an historical analysis of an important aspect of societies. Law became more meaningful to them.

At the same time, students see that the value-oriented approach of the humanities does have something to commend itself and does present a useful perspective for their future careers. In this particular case, pre-law students came to realize that there was more to understanding law than just memorizing cases and statutes. This course was aimed particularly at those interested in the legal profession. But certainly such value and career-oriented courses could be devised for other areas where history is relevant if only one uses a bit of ingenuity.

#### APPENDIX

##### MOSAIC LAW

The Bible.

Hammurabi's Code.

Berman, Harold T., The Interaction of Law and Religion (Nashville, 1974).

Bohannon, Paul (ed.), Law and Warfare (Austin, Texas, 1976).

The Interpreter's Dictionary of the Bible (New York, 1962).

Köhler, Ludwig, Hebrew Man (London, 1956).

McFadden, Thomas M. (ed.), Liberation, Revolution, and Freedom: Theological Perspectives (Somers, Connecticut, 1975).

GREEK LAW

Aristotle, Politics.  
Plato, Apology. Republic. Statesman.  
Sophocles, Antigone.

ROMAN LAW

Jolowicz, Herbert F., Historical Introduction to Roman Law (Cambridge, 1967).

CANON LAW

Haskins, Charles H., The Renaissance of the Twelfth Century (New York, 1957).  
Gwadkin, H.M. (ed.), Cambridge Medieval History (New York, 1911-36).  
Kuttner, Stephen, Harmony from Dissonance: An Interpretation of Medieval Canon Law (Latrobe, Pennsylvania, 1966).  
Selections from The Jurist and Louvain Studies.

ENGLISH COMMON LAW

Stephenson, Carl and Frederick G. Marchan (eds.), Sources of English Constitutional History, I (New York, 1937).

FRENCH CIVIL LAW

Von Menren, Arthur Taylor, The Civil Law System: Cases and Materials for the Comparative Study of Law (Boston, 1956).  
De Vries, Henry, Foreign Law and the American Lawyer: An Introduction to Civil Law Method and Language (New York, 1969).  
Excerpts from the French Civil Code.

GERMAN LAW

Bracher, Karl Dietrich, The German Dictatorship: The Origins, Structure, and Effects of National Socialism (New York, 1970).  
Kohn, Hans, The Mind of Germany (New York, 1960).

SOVIET LAW

Barry, Donald D., William E. Butler, and George Ginsburg (eds.), Contemporary Soviet Law (The Hague, 1974).  
Berman, Harold T., Justice in the USSR (Cambridge, Massachusetts, 1966).  
Constitution of the Union of Soviet Socialist Republics (1977).

CHINESE LAW

Li, Victor, Law Without Lawyers: A Comparative View of Law in China and the United States (Boulder, Colorado, 1978).

HISPANIC LAW

Selections in the Encyclopedia Britannica on Spain and Spanish America.

UNITED STATES LAW

Boorstin, Daniel, The Americans: The National Experience (New York, 1965).  
Friedman, Lawrence M., A History of American Law (New York, 1973).  
Hobbes, Thomas, The Leviathan.  
Horwitz, Martin J., The Transformation of American Law (Cambridge, Massachusetts, 1977).

Locke, John, The Second Treatise on Government.

White, G. Edward, The American Judicial Tradition (New York, 1976).

NOTES

<sup>1</sup>The history department at Saint Louis University conducted a survey of history majors from 1930 through 1975. Some noteworthy statistics resulted. Overall, 85% of those responding listed personal interest as an important influence in choosing a history major. As far as professions, 37% of the graduates entered academics either as teachers or administrators; 20% entered business; 18% entered the law. Law was, therefore, the third most prevalent profession of history majors. Actually the law was even more important because 7% of those in business had a law degree.

<sup>2</sup>The grant for this course was provided by Saint Louis University's Project COVE (Career Oriented Value Education). This project, funded by the Lilly Endowment, supports programs at the university which combine the dual goals of career preparation and value formation, which are an important aspect of higher education today.

<sup>3</sup>When this course is offered in the future, it has been suggested that an additional set of lectures be devoted to the Germanic legal tradition on the continent (perhaps in France) to serve as a counterpoint to the development of English common law.

<sup>4</sup>I believe that in the future the second semester of the course will further benefit from a discussion of international law along with these national systems.

<sup>5</sup> (New York, 1962).

<sup>6</sup>When I asked students who had both semesters of the course to evaluate the Wormser text, I got mixed reactions. Some agreed with me, but others felt that even though the book was simple and basic, it was better than nothing and at least provided some needed cohesion.