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Robert A. Pascal

Olivier Moreteau  
*Louisiana State University Law Center*

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# A Summary Reflection on Legal Education

Robert A. Pascal\*

FOREWORD BY OLIVIER MORÉTEAU<sup>1</sup>

*A Summary Reflection on Legal Education* is the fruit of decades of reflection by a very unique scholar whose life covered most of the twentieth century and who is still active in the twenty-first. Professor Emeritus Robert A. Pascal started his academic career at the time of Roscoe Pound, whom he witnessed inaugurating the LSU Law Building in 1938.<sup>2</sup> He then was a law student at the Loyola Law School in New Orleans and served during the summer as a Research Assistant at LSU. He published his first article in the first issue of the Louisiana Law Review, also seventy years ago.<sup>3</sup> Robert Pascal conversed with some of the great pioneers of comparative legal studies, such as Ernst Rabel, John P. Dawson, and Hessel Yntema in Ann Arbor, Max Rheinstein in Chicago, Gino Gorla in Rome, and René David in Paris. He is far too modest to accept being portrayed as a living legend but may accept being referred to as a living memory: few law schools having reached their centennial, like LSU in 2006, can claim to have within their walls a faculty member who has been on Earth nearly as long as the law school. In addition, he started working with the Louisiana State Law Institute during the first year of its creation, working on the Compiled Edition of the Louisiana Civil Codes. He later became a consultant on trust law revision, an area of jurisprudence where his thoughts are at the forefront.<sup>4</sup> He also taught and produced

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\* Professor of Law Emeritus, Louisiana State University. The author thanks all those who read and offered suggestions on parts or all of this essay, particularly Michael McAuley and William T. Tête, former LSU law faculty colleagues, Professor Etienne Viator of Loyola University (New Orleans) College of Law, and H. Mark Levy, former student. The essay was written from experience and memory, without reference to any publications.

1. Professor of Law, Russell B. Long Eminent Scholars Academic Chair, Director of the Center of Civil Law Studies, Paul M. Hebert Law Center, Louisiana State University; Directeur honoraire de l'Institut de Droit Comparé Edouard Lambert, Université Jean Moulin, Lyon, France. The author thanks Agustín Parise for his research and editing.

2. Roscoe Pound, *The Influence of the Civil Law in America*, 1 LA. L. REV. 1 (1938).

3. Robert A. Pascal, Comment, *Duration and Revocability of an Offer*, 1 LA. L. REV. 182 (1938).

4. Everyone interested in trusts should read Robert A. Pascal, *Of Trusts, Human Dignity, Legal Science, and Taxes: Suggested Principles for a Louisiana*

significant work on conflict of laws,<sup>5</sup> family law,<sup>6</sup> matrimonial regimes,<sup>7</sup> civil and Anglo-American legal science,<sup>8</sup> and philosophy of law.<sup>9</sup>

In 1940, he was the first person ever to be awarded a Master's degree in Civil Law at LSU. He practiced law in New Orleans for one year, and in 1942, added an LL.M. from the University of Michigan Law School. During World War II, he was commissioned in the United States Coast Guard Reserve for anti-submarine warfare, but most of his service was as Coast Guard District Legal Officer for the 10th Naval District (the Caribbean). At the end of the war, he joined the LSU law faculty. In spring 1951, he taught trusts law at the University of Chicago. In 1951–1952 and in 1963–1964, he was a Fulbright lecturer and taught U.S. private law and comparative law at the University of Rome, in Italian.<sup>10</sup> In 1955, he

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*Trust Estates Law*, 23 LA. L. REV. 639 (1963). See also Robert A. Pascal, *The Trust Concept and Substitution*, 19 LA. L. REV. 273 (1959); Robert A. Pascal, *Some ABC's About Trust and Us*, 13 LA. L. REV. 555 (1953).

5. See, among others, Robert A. Pascal, Comment, *Characterization As an Approach to the Conflict of Laws*, 2 LA. L. REV. 715 (1940); Robert A. Pascal, *Harold Marsh, Jr.'s Marital Property in the Conflict of Laws*, 7 LOY. L. REV. 71 (1953) (book review); Robert A. Pascal, *Fowler V. Harper, Charles W. Taintor II, Charles Wendell Carnahan & Ralph S. Brown Jr.'s Conflict of Laws: Cases and Materials*, 19 U. CHI. L. REV. 161 (1951) (book review); Robert A. Pascal, *Ernst Rabel's The Conflict of Laws: A Comparative Study*, 6 LA. L. REV. 735 (1946) (book review). See also Professor Pascal's annual reports entitled *Conflicts of Laws*, published at 36 LA. L. REV. 485 (1976); 35 LA. L. REV. 377 (1975); 34 LA. L. REV. 319 (1974); 33 LA. L. REV. 276 (1973); 32 LA. L. REV. 295 (1972); 31 LA. L. REV. 312 (1971); 30 LA. L. REV. 271 (1970).

6. ROBERT A. PASCAL, *LOUISIANA FAMILY LAW COURSE* (1973).

7. See Robert A. Pascal, *Updating Louisiana's Community of Gains*, 49 TUL. L. REV. 555 (1975). See also Professor Pascal's annual reports entitled *Matrimonial Regimes*, published at 40 LA. L. REV. 571 (1980); 39 LA. L. REV. 697 (1979); 38 LA. L. REV. 355 (1978); 36 LA. L. REV. 409 (1976); 35 LA. L. REV. 303 (1975); 34 LA. L. REV. 255 (1974); 33 LA. L. REV. 219 (1973); 32 LA. L. REV. 219 (1972); 31 LA. L. REV. 252 (1971); 30 LA. L. REV. 219 (1970); 28 LA. L. REV. 327 (1968); 27 LA. L. REV. 455 (1967).

8. This was the substance of his course *Institutions of Law*, given to first-year students in 1954–1957. See, e.g., Robert A. Pascal, *Changes in the Roles of Common Law, Equity, and Statute in the Stuart Century*, in 46 RICE INSTITUTE PAMPHLET 98 (1960).

9. See Robert A. Pascal, *Of the Civil Code and Us*, 59 LA. L. REV. 301 (1998); Robert A. Pascal, *The Sources of Civil Order According to the Louisiana Civil Code*, 54 TUL. L. REV. 916 (1980); Robert A. Pascal, *Natural Law and Respect for Law*, 15 AM. J. COMP. L. 500 (1967).

10. Regarding his Italian lectures, see Robert A. Pascal, *Diritto Continentale e Common Law nel Loro Sviluppo Storico*, 23 LE CORTI DI BARI, LECCE, E POTENZA 878 (1964) (also published in LA MAGISTRATURA (Rome),

was made full professor at LSU and never left the Law School even after his retirement in 1980, keeping offices as a Professor Emeritus. In this year of the Bicentennial of the Louisiana Civil Code, many remember his tournament<sup>11</sup> with a professor from Tulane, Professor Pascal rightly insisting that the Digest of 1808<sup>12</sup> was Spanish in substance and French in form—a “Spanish girl in French dress,” as he later commented in his Tucker Lecture at LSU.<sup>13</sup>

The author of this Foreword has the privilege of meeting and exchanging views with Professor Pascal on a daily basis. He read this *Summary Reflection* more than two years before publication, as it was still in the making. He quickly decided to offer it to his first year law students at LSU as an opening to the Legal Traditions class. In his *Summary Reflection*, Professor Pascal makes his vision of the law very clear. He sees the law as legal order, mankind as a community of men under God, with the ontological (moral) obligation to respect and cooperate with one another. His comment on the secularization of law and science in the past five hundred years is connected to the evolution of religious thought, and while this may be found disturbing by some, it reflects the findings of philosophers, theologians, and historians of western societies.<sup>14</sup>

His strong preference for the civil law and its codification comes from the fact that it gives a comprehensive vision of what the law is and makes it accessible and predictable to lawyers, judges, and laymen. The writer of this Foreword, also a civilian by training, certainly agrees, yet remains a great admirer of the basic tenet of the English common law—“law is right reason”—and its ability to discover the law in a constant search of consistency through the facts of cases, always accepting, though reluctantly, that what was wrongly declared may later be overruled. The traditional approach of the common law, often to be distinguished from modern American and sometimes English practice, does not question

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July & Aug. 1964, at 5); ROBERT A. PASCAL, CORSO DI DIRITTO PRIVATO STATUNITENSE: APPUNTI TRATTI DALLE LEZIONI (Citta di Castello (Italy) 1953).

11. See Robert A. Pascal, *A Report on the Reprint of Moreau-Lislet's Copy of a Digest of the Civil Laws*, in 1 LOUISIANA HISTORICAL SOCIETY 43 (2d series 1973); Robert A. Pascal, *Sources of the Digest of 1808: A Reply to Professor Batiza*, 46 TUL. L. REV. 603 (1972).

12. A DIGEST OF THE CIVIL LAWS NOW IN FORCE IN THE TERRITORY OF ORLEANS (enacted Mar. 31, 1808), available at [www.law.lsu.edu/digest](http://www.law.lsu.edu/digest).

13. Robert A. Pascal, *Of the Civil Code and Us*, 59 LA. L. REV 301, 303 (1998).

14. Robert A. Pascal had a close relation with Eric Voegelin. See Interview of Robert A. Pascal on Eric Voegelin, in BARRY COOPER, VOEGELIN RECOLLECTED 165–66 (2008); ERIC VOEGELIN, THE NATURE OF THE LAW AND OTHER LEGAL WRITINGS (Robert A. Pascal, James Lee Babin & John William Corrington eds., 1991).

Professor Pascal's recognition of fundamental principles, nor his belief that the law cannot be limited to what is termed positive law.

Some students who have read and discussed this *Summary Reflection* in the fall semesters of 2006 and 2007 reacted to the negative outlook that Professor Pascal projects on the present state of the legal profession. It comes as a salutary shock to prospective students at both ends of the spectrum, whether they view legal practice as a good money maker or come to law school with the ideal of serving the community and their fellow citizens.

With clear and precise strokes, Robert Pascal depicts the huge, often neglected impact legal education has on the shaping of a legal system and the way it operates showing how the case method, if made the exclusive tool of legal education, drifts the thoughts away from principles and prevents students from developing an overall view of what the law is or ought to be. Robert Pascal believes that one should not be allowed to become a lawyer without a solid liberal education.<sup>15</sup> A study of what the purpose of the law is and its moral foundations, whether one calls it legal theory, philosophy, or jurisprudence, ought to have its place before or at the beginning of the legal curriculum, so that future practitioners are made aware that the law is much more than an artifact serving sometimes purely materialistic interests. Rights may not be considered without a careful analysis of corresponding obligations. Throughout his teaching career, Professor Pascal reminded his students, citing Ulpian and Justinian, that legal professionals are "priests of right order."

Whether one agrees or not to this basic tenet and to other points made in the *Summary Reflection*, it triggers discussion and reflection and, most importantly, invites one to put the essential (by nature the less visible) at the front door of legal studies, hoping it will inspire legal practice and law making.<sup>16</sup> It comes at a time when the topic of legal education moves to the forefront of legal scholarship, at a moment when the law school that has led America into the case method revises its curriculum. May this publication prove that what some describe as voices of the past are most useful beacons of human progress: this is a future oriented reflection.

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15. Some of his ideas on the curriculum were expressed early in Memorandum to the Dean and Faculty of the LSU Law School (Nov. 15, 1966), in ALAN WATSON, *THE SHAME OF AMERICAN LEGAL EDUCATION* 205 (2d ed. 2007).

16. See Olivier Moréteau, *Bilan de santé de l'enseignement du droit*, in MELANGES JACQUES VANDERLINDEN 273-301 (2006).

## THE ESSAY BY ROBERT A. PASCAL

Disrespect for the legal order has become endemic. In general, both its professionals and the public at large manifest it. Lawyers often seek to manipulate the law to serve clients' purposes, whether or not the result is consistent with the order it projects, regarding their practice more as a power service for those who can pay their exorbitant fees than as a profession at the service of good order. Indeed, for many in the public at large and for many professionals, the very notion of law as a plan of order to be respected, honored, and obeyed is considered an infringement on individual freedom (and, recently, privacy). Clients demand lawyer delinquency for selfish reasons and, at the same time, knowing their champions to be willing delinquents, distrust them. Elected judges are suspected of being inclined to favor persons represented by attorneys who have contributed to their campaigns for election. Appointed judges are expected to interpret and apply the law in terms of the political, economic, religious, and philosophical views of those who control their appointments. Legislators are believed to be influenced unduly by the generous offerings of lobbyists and to vote their benefactors' or constituents' wishes even if they know them to be contrary to the common good. Practicing lawyers serving as members of law reform groups have been known to sponsor their clients' selfish interests rather than the general good.

For most persons, lawyers, judges, legislators, and the public, law is the instrument of power *par excellence*. Justice, equality, fairness, and the common good often are ignored, though the rhetoric in use pretends they are of concern. The degree of selfishness dominating the practice of law can be judged by the enormity of the fees charged, the relatively little attention given those unable to pay them, and the manner in which established law firms mistreat their young associates, requiring so many hours of effort from them that often they must leave home before their children awake and return home after they have fallen asleep.

Shamefully, legal education in the United States has contributed, and continues to contribute, to this societal disaster. Law schools have not demanded that the would-be law student have an education in which he has been asked to ponder what it means to be human, or what relation he has to others by reason of his nature, or whether there is anything like a moral obligation. A college degree of any kind suffices for enrollment, though it may evidence no more than intense vocational training in engineering, natural science, mathematics, business, or canoe paddling. Nor do law schools attempt to supply the deficiency during law studies. Once in law school the student may have the opportunity to elect a

course in “legal philosophy”, “legal theory”, or “jurisprudence”, but very often such courses are sketchy surveys without demand for critical appraisal. Most students (and many faculty members) regard them as perhaps interesting, but nevertheless irrelevant to the “practical” world of law.

Indeed, learning what history has taught us about man’s awareness of his nature and his relation to others need not be a prerequisite for legal studies as usually conceived in the United States today. If law itself is regarded as nothing more than the record of previous battles for power in courts and legislatures, a record of humanly created “facts” not qualifiable as good or bad, if the notion of law as an order for men in society projected for their common good is rejected and there is substituted in its place a concept of “problem solving” when the posited aims of individuals clash, then training in rhetoric will suffice.

In essence, this thought predominates in legal education in the United States today. Its inadequacy was addressed brilliantly by Robert Maynard Hutchins, once dean of the Yale Law School and the president of the University of Chicago when, in 1933, he addressed the Annual Meeting of the Association of American Law Schools. His message was very clear. Law schools could remain as they were—and yet are—if every university would establish in its college of liberal arts a “Department of Jurisprudence” so that would-be law students could receive adequate exposure to the liberal arts and to the art, science, purpose, and obligatory moral force of law before entering law school for their professional training. Unfortunately, his plea was not heard.

It is not difficult to trace in bold outline the change in thought leading to the current cultural crisis. Until the 1500’s, in the era of Christendom, the prevailing thought in Western culture was that metaphysics as well as revelation permitted the affirmance of the following propositions: (1) the existence of all persons as an ontological community under God; (2) the existence, therefore, of the ontological (moral) obligation of each person, as part of the whole, to respect and cooperate with every other for the spiritual and material good of each and all—an obligation in justice at least for the metaphysician, but in charity and mercy as well for the believer in revelation; and (3) the moral certainty of one’s conscious existence after death in a state of beatitude commensurate with one’s degree of holiness in life, that is to say, one’s conscientious endeavor during life to discover one’s relation to God and other persons and, with God’s grace, to live accordingly. Under this understanding of the human condition, just political societies, their just laws, and lawful private agreements,

could be recognized as institutions through which the general, unspecified, ontologically founded moral obligation to respect and cooperate with all persons is made specific for persons in particular societies of particular cultures in particular circumstances of time and place, as such morally obligatory, entitled to respect, honor, and obedience, and justly sanctioned by one's conscience, political force, and fear of social opprobrium.

In the last five hundred years, however, as Eric Voegelin summarized in his *The New Science of Politics* (1951), a gradual change in thought has come to dominate in the public sphere. It discredits and ignores both revelation and metaphysics as valid sources of morally obligatory norms of human action, and does so on the basis of a gratuitous assertion that only the empirically demonstrable may be taken to be true. If this is so, then neither God, nor the ontological community of persons, nor life after death, need to be taken into account in human affairs, for none is subject to empirical verification. Persons, accordingly, are to be considered simply as individual beings, unrelated to each other in the ontological order, without moral obligations to each other, living a life without discoverable meaning and without hope of conscious existence after death. Under this misunderstanding of the ontological condition of man, each person becomes his own god. Individualism is born. Exercise of power over others to attain one's posited, criteria-less objectives can become one's way of life. Concern for others can be subordinated without guilt to the attainment of one's personal wishes. Conventional morals and laws and associations and contracts of all kinds then may have *prudential* force, but, being without *ontologically based* moral force, cannot bind in conscience.

Protestantism, perhaps unwittingly, added to the spread of individualism. The followers of Luther and Calvin, perhaps adhering too literally to St. Paul's admonition to rely on the word of God rather than human wisdom, limit themselves to revelation, limit that to the Bible, and then interpret the Bible in ways that eliminate personal holiness as a condition for salvation. For Luther, one's salvation depends entirely on one's justification through faith (trust) in Christ as savior, itself a free gift of God that can not be earned. For Calvin, God predestines some persons to salvation and others to damnation, without regard to their actions during life.

In each case, individuals are unable to contribute to their own salvation. Ontologically based morality and concern for others logically become irrelevant to salvation. Even the Biblical morality taught so zealously by Protestants logically can have relevance only as a calculus for the individual's earthly happiness. Then, too,

the Protestant tenet of individual interpretation of Scripture renders morality purely subjective, reinforcing the spirit of individualism.

Whatever the explanation, the observable fact is that high individualism, and its logical corollary, selfishness, pervade the American mind and that their source and *raison d'être* must lie ultimately, at least in large measure, in the secular and religious influences that have no room for the community of man under God and its corollary, the ontological moral obligation to respect and cooperate with everyone for the spiritual and temporal good of all. It is a spirit that makes competition normal and thus gives pseudo-legitimacy to a life in which taking advantage of another is not regarded as morally wrong.

In this truly anti-intellectual and normless milieu, individualist and self-centered, combative rather than cooperative, it is no wonder that legislation and judicial opinion have come to be regarded as no more than records of previous competitions among men in legislatures and courts, non-normative human acts—mere facts—that might be manipulated for selfish purposes in later “legal” conflicts with others. Europe and the Americas all have suffered from this development, but Anglo-American jurisdictions, particularly those in the United States, have felt it more than the modern Romanist jurisdictions. It is suggested that the difference can be accounted for by the manner in which law is perceived, evidenced, organized, promulgated, studied, and taught in the two legal cultures.

Since the French Revolution most modern Romanist jurisdictions tend to limit law to legislation enacted by the elected representatives of the people in legislative assembly. Nothing else may be considered law. Once enacted it stands as a closed frame of reference. There is no recognition of the relevance of a former historically developed background law, or of philosophical or theological principles against which it may be construed, interpreted, or appraised. The will of the legislature is its only norm. John Henry Merryman once said that modern Romanist law is culturally agnostic. Perhaps it would be more correct to say that in most modern Romanist jurisdictions what constitutes right order (*jus* in Latin), and therefore justice, is exclusively the province of the legislature, and that both the judiciary and the executive are limited to rectitude in the application and enforcement of the legislation.

This legislative positivism does place enormous moral responsibility on the legislature, but it does offer definite advantages. One is that all judicial decisions must be based on the legislation. Another is that decisions may not be regarded as binding precedents, though everywhere a long line of decisions

interpreting or applying the legislation in a certain way can be persuasive. A third is that the legislature must aim at a complete statement of the legal order. Perfection being impossible, almost all Romanist jurisdictions permit the judiciary to decide the case for which there is no legislative rule by specifying a rule based on principles explicit or implicit in the legislation as a whole. In this fashion the legislation remains the ultimate reference. The fourth and greatest advantage of legislative positivism, however, is that the law, being limited to legislation, may be promulgated in its fullness.

The fullness of promulgation in modern Romanist jurisdictions usually is enhanced many times over by the fact that the main legislation on private law, the civil and the commercial, is to be found in civil and commercial codes that tend to be splendidly organized, conceptual and abstract in their provisions, carefully integrated and internally consistent, and written in simple, non-technical vocabulary. Thus organized and written, the codes make possible a reasonable understanding of the basic law by anyone who can read. The same organization and usual clarity of expression have facilitated the development of treatises and manuals of different levels that provide further promulgation for laymen and professionals and facilitate instruction in (and study of) the law with economy of effort. The result is a popular and professional awareness of the law that makes it difficult for both laymen and professionals to avoid its provisions by deliberate falsification or obfuscation. Differences in construction, interpretation, and methods of application can and do exist, but seldom is there a question as to what rule of law applies or what is its basic import.

Those subject to Anglo-American private law have not been so fortunate. The limitation of law to a simply stated, complete, and conceptually consistent plan of order promulgated for all to know is foreign, seemingly repugnant, to English and American legal minds. There are statutes, increasing in number in modern times, but always on particular matters, and usually regarded as modifications of the basic law, the unwritten, un-enacted, and unpromulgated Common Law. Never have statutes achieved the status of legislation detailing the whole of the private law. Efforts to have lawyers and judges construe and apply comprehensive statutes, such as the Uniform Commercial Code, as complete frames of reference, replacing all other law for their subject matters, in the manner of Romanist codes, have failed. So great is the tendency to apply statutes against the background Common Law that one usually cannot say he understands a statute's effect until the judges have construed it.

To inform oneself of what presently is to be considered the unwritten Common Law is a rather difficult task, even for trained attorneys, judges, and professors. It is an impossible task for the untrained. The best evidence of what had been considered authoritatively to be the Common Law is in the decisions rendered in particular suits, not founded on statutes, between particular persons and under specific fact situations. They are applicable retroactively and theoretically are without prospective operation. In practice, nevertheless, previous decisions are regarded as precedents to be followed as long as differentiating facts do not exist or the judge determines that the precedent no longer satisfies current notions of right order or justice, which notions have always been the actual basic substance of the Common Law in every period of its history. Thus, Common Law jurists often pride themselves on their ability to actualize justice according to current standards in every case and on not being limited by legislated rules; but they suffer from a lack of the predictability available through carefully prepared legislation, underestimate the flexibility of abstractly worded rules, and ignore the retroactive character of their decisions.

The decisions are published, but their great number, their factual particularity and orientation, and, in our time, the diversity of thought on the notions of good order or justice reflected in them, make it difficult to determine what really had been declared to be the Common Law or what is likely to be declared in the next case. Here the English have had advantage over the Americans. Having one hierarchy of courts, and barristers and judges devoted to consistency in decisions and opposed to attempts to manipulate the law to please clients or particular political parties, professionals can give probably sound predictable opinions in consultations and in rendering judgments. In the United States, however, the judiciaries of fifty states each render decisions that may not be consistent with those in other states, attorneys have no compunction against arguing that out-of-state decisions provide better solutions than those reached in their own states, and the judges themselves may even render new solutions according to their own peculiar notions of good order or justice. Indeed, the attorney in the United States not only must inform himself of multiple versions of the Common Law, but also must inform himself of the notions of good order or justice held by the judge or judges before whom he must plead his case.

How does one teach such a law? Perhaps by stressing its methodology rather than its substance. In 1870, Dean Langdell of the Harvard Law School declared that inasmuch as decisions were the only authoritative evidence of what had been declared to be the

Common Law (or the meaning of statutes), law students should learn by studying the decisions. The “case method” became the usual and favored way of training law students. Typically professors select decisions in their fields of assumed competence, order the reading of them in some fashion, quiz the students on their opinions of the premises and reasoning of the judges, ask them to compare the decision with others, and elicit from them alternative reasoned solutions. Perhaps no attempt will be made to give the students an overall account of the law on the subject. The emphasis is on rhetoric in solving competing contentions on what had been or might be declared to be the law in a particular case. It is always hoped that in time the student will learn to “think as a lawyer”, the ultimate goal of the method. The branches of the law studied are considered of lesser importance than rhetorical exercises, and so students are permitted wide discretion in choosing courses.

The case method quickly convinces the future professional that Justice Cardozo must have been right when he wrote “the law never is; it always is about to be”. It is always uncertain until the judge declares what it is in the particular circumstances. This means the non-professional cannot avoid seeking legal advice in important matters, even though the legal counselor himself must share much of that uncertainty. Differences of opinion on the law often must be settled by suit, or by compromise or negotiation, much of which could be avoided by clear legislation. The lack of certainty also contributes greatly to the length of legal documents, for the parties must specify in great detail provisions that would be totally unnecessary with Romanist type “suppletive” legislation, legislation that supplies details of law applicable unless contradicted by express agreement. And the uncertainty facilitates dishonest claims and dishonest legal arguments.

The tide must be turned. It could be turned if law academics were to give serious attention to two objectives. The first must be to bring to Anglo-American private law the development and style reached by the Roman legal culture with the confection and promulgation of the French *Code Civil* in 1804. The whole of the Anglo-American private law must be stated in legislation that all can read and understand and that will be used in fact as the exclusive basis of all professional advice and all judicial pronouncements in the realm of private law. The reasons are clear. Every person is entitled to a succinct statement of the legal order under which he is to live. Lawyers should be able to provide sound advice with minimal doubt. Judges should not have to wonder what is the legal rule they are to construe or apply. Law students should be able to study the substance of the law and not merely

legal methodology. The extensive copying or imitation of the French *Code Civil* style throughout the Roman legal world is proof of the human hunger for its advantages.

Admittedly this cannot be accomplished quickly or easily. It might not have been accomplished at all in France without the persuasion of Napoleon Bonaparte. It could not have been accomplished at all without the works of French jurists of the seventeenth and eighteenth centuries who analyzed, synthesized, and evaluated the diverse laws that prevailed in France at the time. The effort in the United States can succeed only if its law faculties will begin in earnest and complete a similar doctrinal study that can provide a basis for codification. It is a project that should not be delayed. Law faculties in the United States already know that legal education cannot be limited to the Anglo-American law and have begun to foster "polyjural" or "transsystemic" studies. Perhaps students who manage to obtain sufficient knowledge of codified law in action will begin to clamor for codification here. If so, the American project could become a reality. It would be a mistake, however, to ignore that uncertainty and lack of clarity in law are fee-generative. Thus the work of codification must not be allowed to become dominated by the practicing profession.

The second object is even more important than the first. It is to make every effort to make certain that the legal professionals-to-be approach their studies with absolute integrity, recognizing that people are not mere individuals, but members of a community of mankind, morally obliged to respect and cooperate with each other for the common good, and morally obliged to respect the legal order as the specification of the manner in which these obligations are defined and executed in their society.

To that end, liberal education should be a minimum requirement for all legal professionals, and that liberal education must be better than that of the secularist educators, who have ignored metaphysics and revelation.

What purported revelation is true, if any, is a matter of faith. But legal professionals, being, in the words of Ulpian and Justinian, "priests of right order" in the societal lives of men, must be acquainted with the impact various religions based on alleged revelations, whether true or false, have had on the lives of people. It must be part of their liberal education.

Metaphysical philosophy is another matter. It must not be ignored in any man's education. It is the exercise of a faculty that all men possess, the only faculty through which they might fulfill their yearning for knowledge of who they are, what relations they have to the rest of being, and what obligations to others result therefrom.

Secularists deny the validity of metaphysical conclusions, and therefore their relevance to men, because they can not be demonstrated. They can not prove this negative to be true, but have succeeded in having their thought prevail simply by ignoring metaphysics in all their endeavors, especially in education, as Cardinal John Henry Newman predicted they would in 1854. There is no justification for this. The speculative thought process is the same for the natural scientist and the metaphysical philosopher. Only the objects of their inquiries are different. The natural scientist will seek the implications of observed phenomena for as yet unobserved, but potentially observable, phenomena. The metaphysical philosopher will seek the implications of observed phenomena for unobservable phenomena. The natural scientist will want to confirm his conclusions with demonstrations, but often will be certain enough to act upon them before he has demonstrated their truth. The metaphysical philosopher must rely either on logical necessity or on the consistency, coherence, and compatibility of his inferences from observed phenomena.

The metaphysician, for example, logically can be certain a creating and sustaining God exists, for otherwise there is no explanation why anything exists. For his proof of other aspects of the unobservable, however, the metaphysician must rely on the accuracy of his inferences from the observable. Thus the ontological community of mankind can be inferred from their observably unavoidable interdependency, and the ontological moral obligation of each person to respect and cooperate with every other, as occasions arise and permit, logically follows from the fact of the ontological community. Thereafter, the manner in which the unspecified general obligation to respect and cooperate with others in a particular society is a matter of practical reason, of fitting moral means to moral ends. It is the vocation of legal professionals.

To summarize this all too summary reflection, legal education can improve the competence and character of future legal professionals, and indirectly their service to people, by making certain, in pre-legal studies, or at least in preliminary studies in law school, that they understand the nature and purpose of law, its moral foundations, and their own moral obligations in its articulation and application; and, furthermore, legal academicians could improve and simplify the effective promulgation of the law, thereby increasing laymen's knowledge of it and facilitating law study, law practice, and the judicial process, by moving rapidly toward codification in modern Romanist style.

Probably, Robert Maynard Hutchins would have agreed.

*Works Related to the Substance of this Essay:*

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Myres S. McDougal, *The Law School of the Future: From Legal Realism to Policy Science in the World Community*, 56 YALE L.J. 1345 (1947) (probably the article most influential on present day legal education).

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