Hampshire College

PLANNING BULLETIN

Bulletin #7
NOTES ON LAW STUDY
by
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Assistant to the President
and Assistant Professor of Law
The Planning Bulletin series is intended to convey to the public a sense of the steps Hampshire College is taking toward its opening in September 1970. The Bulletins represent present thinking on programs planned in specific areas of concern. They do not attempt final portraits, but the intended direction of such steps is clear: the creation of a high quality college, using the most promising ideas to redefine the nature of liberal arts education. The ideas contained in these Bulletins reflect the thinking not only of the author indicated, but also of the Hampshire planning staff.

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Amherst, Massachusetts
Hampshire College is a new, independent, experimenting liberal arts college which will open for students in 1970; it is intended specifically as a national pilot enterprise for innovations in American higher education. Hampshire was brought into being through the initiative of faculty and administrative leaders of four institutions in the Connecticut Valley of Massachusetts: Amherst, Mount Holyoke, and Smith Colleges, and the University of Massachusetts. It is the result of planning begun in 1958, and its establishment was approved by the Trustees of its four neighboring institutions. In 1965, the new college received a pledge of $6 million from Harold F. Johnson, an Amherst alumnus, and was incorporated under a charter granted by the Commonwealth of Massachusetts. Exemption from federal income taxes as a charitable institution was granted in December 1965, and eligibility to borrow or receive grants-in-aid from the federal government was established in January 1967. In addition to Mr. Johnson's original gift, the most significant support has come from the Ford Foundation, which has given Hampshire a $3 million grant on a two-for-one matching basis, the largest Ford Foundation grant ever given to a college, and the only one given to a college not yet accepting students.

The College now owns 500 acres of land in the towns of Amherst and Hadley, and is in the process of planning a campus and buildings.
Construction of the first academic building, the first residential and dining unit, and the Hampshire College Library has begun. The architects, master planners, and architectural consultants are Hugh Stubbins and Associates; Sasaki, Dawson, DeMay Associates, Inc.; and Pietro Belluschi.

Hampshire plans to have a student body of approximately 1500 by the middle of the 1970's, and may expand in time to 3600 students. The history and character of the early planning for Hampshire College are detailed in Working Paper Number One, The Making of a College, by Franklin Patterson and Charles R. Longsworth (Cambridge: The M.I.T. Press, 1966). This volume, which elaborates the intentions of Hampshire College, is not considered a static blueprint, but a thorough approximation of all aspects of the College's planning.

The Hampshire College program, as presently planned, introduces a number of departures from conventional academic procedures; among them a three-School academic structure instead of the more fragmented departmental arrangement, a flexible time schedule of three sequential Divisions in lieu of the usual four-year rule, and replacement of fixed graduation requirements based on prescribed course credits by a system of comprehensive examinations and independent research or creative projects. Time off campus will be encouraged for travel, work periods, independent research, and community service.

Hampshire College will undertake an innovative role in several broad interrelated realms of higher education. The College will seek, through continuing experiment, consultation and review, to redesign liberal education so that it
better serves the growth in every human dimension--intellectual, emotional, intuitive, sensuous--of those who comprise its community, and thus offers a more substantial ground for continuing self-education and self-expression;

becomes a more effective intellectual and moral instrument of responsibility for the quality of life in America.

Hampshire will seek new ways of securing the economic viability of the private liberal arts college in an era in which the demand for quality education is confronted with rapidly rising costs. And Hampshire intends to spur the further development of interinstitutional cooperation in education in the Connecticut River Valley of Western Massachusetts--thereby serving the interests both of educational vitality and sound economy. Hampshire hopes to demonstrate nationally the advantages of a regional complex of closely cooperating public and private institutions.

Hampshire College is explicitly designed to serve as a source of innovation and demonstration for American undergraduate education. The implications of this fact are threefold. First, while determined to avoid the kind of "laboratory school" role which so often compromises the institution's primary responsibility for its own students, Hampshire intends to develop and conduct its programs with a careful eye to their transferability: many of the lessons learned should be applicable to other settings. Second, the College will develop new techniques for institutional self-evaluation, so that its experimenting character does not devolve into just one more narrow, rigid "experimental" orthodoxy.
Third, through a continuing series of conferences, consultations, and publications, Hampshire will solicit other relevant experience and make widely known the results and review of its own efforts. The subtitle of The Making of a College--Working Paper Number One--implies a series of monographs dealing with different and successive aspects of the College's life as it unfolds.

To develop these plans, Hampshire College is assembling a small academic and administrative staff. Its most recent additions include the Dean of the College, Richard C. Lyon, formerly the Chairman of the Program of American Studies at the University of North Carolina at Chapel Hill; Francis D. Smith, newly appointed Dean of the School of Humanities and Arts, formerly the Community Relations Director of the Massachusetts anti-poverty program, after an extensive career as a novelist, playwright and teacher; the Dean of the School of Social Science, Robert C. Birney, who was Chairman of the Department of Psychology at Amherst College; and the Dean of the School of Natural Science, Everett M. Hafner, formerly Professor of Physics at the University of Rochester.
NOTES ON LAW STUDY

The subject of these notes is the justification for including law in the undergraduate liberal arts curriculum, and the method of doing so.

The first justification generally offered for inclusion is that law is important, almost essential. "A competent knowledge of the laws... is an highly useful, I had almost said essential, part of liberal and polite education," said Blackstone, in 1758, and he has been quoted by most who have considered the question since. This argument has tended to focus on landmarks of the legal landscape. "It is... a reproach to the colleges that we find among their products cultivated men... who can imagine no reason for a Statute of Limitations other than a vicious desire to pander to deadbeats," said a former law school dean, and he too has been frequently quoted. This form of the argument based on importance is inadequate to justify including law study in the liberal arts program, primarily because it fails to answer the question, "Important for what?".

The goal of this argument is education for the solution of certain more or less specifiable problems. The trouble with such a goal is that we cannot know what will be the problems of students living out much of their lives in the 21st Century. Whether we teach about a student’s encounter with the Statute of Limitations or about the Supreme Court and
coddled criminals, we deal with questions that may or may not affect a student's life. As James M. Redfield put it, "Ten yards from a lifeboat in mid-Atlantic we may find ourselves saying, 'If only I had learned to swim.' But such possibilities do not give swimming a necessary place in education."

Are we, then, concerned with using presently important questions, like the role of the Supreme Court in the administration of criminal justice, to probe the legal system so that a student may learn how it works? Even if this were a worthy goal for an undergraduate, it is futile to aim for it. Any recent graduate of law school (and his employer) will testify that having engaged in three years of intense study, he really knows little about how the system works. It seems to take an apprentice-like experience in a courtroom or law office to do this job, and college is not the place for it. It follows from this, moreover, that undergraduate law study has nothing to do with direct preparation for law school, with providing a taste of what law practice might be like, or with the problems of being a client. Each of these involves too many specific circumstances that cannot be anticipated, and a range of experience that can be only most imperfectly simulated.

Can we say, then, that we teach law for the same reason we teach political science, as a developed group of concepts providing one significant set of tools for explaining and coping with the world's experience? That law is, in two words, a discipline? This tangled question is full of definitional problems such as whether the word "concept" means the same thing when used to describe the legal notion of, say, "standing to sue", as it does when used to describe the psychological notion of "selective per-
ception. " One line of thought could conclude that, since legal concepts have been formed not usually by scholars but rather by judges and lawyers seeking resolution for conflicts, and since concepts of academic disciplines derive from scholarly activity aimed at explaining and predicting behavior, the ideas lawyers call concepts probably do not perform the same function that concepts perform in academic disciplines.

Despite the foregoing, one may still conclude that law should be studied in a liberal arts college, particularly in view of the impressive statement of Archibald MacLeish: "Insofar as I have any degree of liberal education, I owe it to the Harvard Law School." He had in mind several things. One part of it is the requirement of rigorous thought and its constant demonstration. Professional legal education for close to a century has been based on the case method. To the extent legal education has been successful, this method probably deserves much credit, which should not be too surprising. It does, indeed, combine some of the most promising features of modern educational thought. First, it emphasizes intellectual role-playing: in class, the student is consistently asked to "suppose you are counsel for the defendant," or for some other participant. Second, it uses drama and conflict, thus tending to reveal dimensions of personality in what may otherwise seem to be rather dry materials. Third, the goals sought in the study of cases are definable with some clarity (if much complexity) so that often there are demonstrably right and wrong answers. Thus, with a reward system made

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up of a fairly unambiguous measure of mastery and supported by the esteem of colleagues and the image of professionalism, the case method supplies several of the pieces required for an operant conditioner's workshop. And fourth, of course, the case method has lent itself well to the Socratic approach.

There are serious limitations to the case method (e.g., a preoccupation with the techniques of persuasiveness and a resistance to non-legal materials), but its strengths should not be overlooked. Moreover, the nature of the available materials used in the case method, and the conflict-created concepts of the law, are well suited to an approach of rigorous analysis. The case method is not, certainly, adequate to justify including law study in the curriculum, but it is a definite asset.

The essence of a further and more fundamental attraction that MacLeish found in the law lies in his statement:

What law tries to do is to impose on the disorder of experience, the kind of order which enables us to live with the disorder of experience.²

From this one may infer a most powerful justification for including law in undergraduate study, a justification that grows directly from Hampshire's most fundamental commitment: to study man's efforts to be more fully human. A proper study of the field of law would find many of man's efforts in this direction nowhere more clearly or comprehensively charted. By focusing both explicitly and implicitly on the enduring themes that appear in the legal process, Hampshire can provide the

²Ibid., p. 19
kind of emphasis that is most appropriate to an undergraduate curricu-

lum. Clearly, as will be seen below, this approach cannot eliminate

concern for "how the system works", but instead frames that concern

so that the basic issues are ones of value, conflict, and resolution. More

specifically, law should be included in the curriculum for three related

reasons:

• Particularly in this country, law has been the battleground for

some of man's longest-playing tensions: between stability and

change, between freedom and security, between history and log-
ic, between justice as man conceives it ideally and justice as

man is able to effectuate it. It is the place where man has most

publicly tried to define in practice his sense of fairness, his sense

of responsibility, his sense of enterprise.

• Law is certainly not the only place these themes appear in the

culture, and many of them are treated only partially in the legal

materials. But nowhere are they treated as concretely, as im-
mediately, as decisively, as they are in the law. The impor-
tance of this derives not only from the accessibility of the issues

for study, but also from the intellectual craftsmanship displayed

by practitioners working on hard problems that must be solved.

In addition, there is the advantage noted by Harvard Law Profes-
sor Lon Fuller:

The attempt to teach principles in abstraction

from the ways in which they are made effec-
tive in society contains, I think, not only intel-
lectual but moral dangers. In any actual pro-
cess of decision, one has to take into account
not simply those considerations that should control if one were 'starting from scratch', but the factor of the vested interest or the going concern. Stated negatively, one has to ask whether the disruptions of upsetting an existing and familiar pattern of relations would not outweigh any theoretical gain from a reorganization of these relations. Though the man of maturity will see in this question profound moral implications, he will not consider that any compromise of principle is involved in raising the question or in weighing frankly into the balance what may be called the value of the going concern. But to do this without falling victim to cynicism requires some direct or vicarious experience with the process by which decisions are actually reached in human affairs.\(^3\)

\(^3\)Ibid., pp. 38-39

The third advantage to the study of law is that the problems faced are so voluminously and articulately documented. Opinions, briefs, court transcripts, statutes, legislative history: all are primary source material available on the public record. The main point, however, is that the law has dealt not only with decisions, but with the reasons for them. Fundamental aspects of the judicial process, including the appellate machinery and the adversary system, work toward a full explication of the grounds for decision. Although full explication can never be achieved, no judge or lawyer can hide from a careful investigator of a full case record the values, biases, and limitations of the people involved.
If one accepts these justifications for inclusion as adequate, the next question deals with the method of teaching law in college. Indicated above is the tentative conclusion that lawyers and law scholars have not formed and used concepts in quite the way practitioners of academic disciplines do. One inference from this might be that the proper approach would emphasize the use of academic disciplines to study legal phenomena, with lawyers called on as primary source material, to report what happens in the legal system. Certainly many academic scholars use the law this way, but this may well be a serious error for an undergraduate college. The way lawyers and judges think in their profession may not fall under the heading of "conceptual inquiry" as Franklin Patterson uses that term in *The Making of a College* but it has been a powerful and effective mode of thought, and—more relevantly—it is integrally bound to the way law operates and therefore to an understanding of law. Thus, one or more legal scholars with experience as counsellors and/or judges should play a major role in the design and effectuation of a law program.

It is important to respond to the argument that law is a perfect subject for interdisciplinary study. The literature is strewn with arguments in support of this position, and equally strewn with admissions and explanations of failure. The pattern of this strewing suggests that an interdisciplinary approach does not result automatically from the use of law as a curricular focus. Instead of interdisciplinary, most efforts have turned out to be multi-disciplinary.

Law may not be more resistant to interpenetration than are other disciplines, and adding a legal voice to the discussion of a number of problems has doubtless been very helpful. But law has run into the stan-

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dard problems of interdisciplinary work, including the tension between the depth of one discipline and the breadth of many. Accordingly, it is useful to caution against any optimism which assumes that law is peculiarly susceptible to an interdisciplinary approach.

In spite of the foregoing paragraph, it follows from the justifications for law study indicated above that it would be an error (indeed, impossible) to proceed with the development of law courses in any way other than through the collaboration of several disciplines. Certainly one or two legal scholars are necessary, but from the beginning they should be joined by representatives of several disciplines, each of whom has an interest in law. Also, although the effort would not formally be designated a Five College one, a Hampshire law program must be planned with attention paid to relevant offerings at the other Valley colleges and to how it might complement them.

It is premature to suggest specific course offerings in law, but it might be helpful to indicate a few lines of possible development. It should be noted that the intention at Hampshire will be not only to create courses explicitly devoted to law topics, but also to introduce law material into a wide range of college concerns.

A. The Psychological Bases of Law

This might focus on the satisfactions people demand of a legal system, the ways in which these demands shape the system, and the way the system shapes the demands. There is much room here for a comparative law approach, using particularly the excellent literature on tribal law. This may also be an unusual but perhaps highly productive way of intro-
ducing the question "What is law?" Perhaps no more exciting or illuminating introduction to law exists than one derived from a book like The Cheyenne Way, by Karl N. Llewellyn, a lawyer, and E. Adamson Hoebel, an anthropologist. This study of the law-ways of a tribe at a time of great stress is a deeply moving picture of a people using law to cope, skillfully and artistically, with the tensions of the group. Issues suggested by this work include: The occasions requiring extraordinary legal procedures; the response of ordinary procedures to extraordinary people; the role of drama and ritual in the judicial process; the significance of the feelings of aggrieved persons in a dispute.

B. The Legal Method

This elusive topic might focus explicitly on those principles and techniques which render the legal approach distinctive from other approaches. It might include a study of the use of precedent, the scope of judicial competence, the judicial tools available for resolving conflict, the nature and variety of legal remedies, the different roles that law plays (rule maker, educator, security provider, conflict resolver), and might deal with the relationship between justice and truth as seen in the adversary system and the law of evidence.

C. The Administration of Justice

This might focus on the gap between the principles of law and the effectiveness of the people who are supposed to carry them out. It could emphasize field work, studying the discretionary leeway of district attorneys, magistrates, and police. It might also look at the link between

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politics and law, focusing for example on the selection of judges, or the class and economic status of law personnel. The need for bureaucracy, and its impact on the legislation it administers, calls attention to the relationship between legislative or judicial words and their application to the complexities of a large internally contentious society.

D. Law and Social Change

The case study of a significant social phenomenon and how the law reacts or does not react is one way to treat this question. The history of labor relations in this country presents a reasonably complete historical package, and race relations presents a matter still in progress. The law as a social planning device might well be illuminated by speculation about the legal response to space travel, organ transplant, or genetic manipulation. All of these topics would raise questions of the value system implicit in the legal institutions, and the ways in which legal institutions can change themselves. One reason to study social change is to learn something of how to bring it about. Experience working at law reform projects involving, perhaps, questions of civil disobedience or open housing legislation, can dramatically focus on the pliability of the law, the limits of the law, and the relationship of law to force.

It is important to note that although the major thrust of this kind of a law program would be in the social sciences, properly construed it should relate to the other two Schools (Natural Science and Humanities and Arts) and most definitely to the Hampshire emphasis on the study of language and communication. The potential, the requirement, for this scope is made clear in the statement about order by Archibald
MacLeish quoted previously. Since the themes touched on in the justifications listed above, stability and change, freedom and order, are not peculiar to law or social science, there will be no shortage of ways to involve the other Schools in deliberations about law.

Notes on Law Study might appropriately close with a caveat: the approach suggested in this paper is intended to be a contribution to general education, not a special preparation for law school. Though the references to the case method and the quote from MacLeish show points of overlap between these categories, their purposes are ultimately different. Hampshire will respect those differences.