

Magnitude and Importance of Legal Science

David Dudley Field

The following remarks were delivered at the dedication ceremonies of what was eventually to become Northwestern University Law School very near the time Langdell took over as dean at Harvard. In his speech, Field not only indicates his general agreement with Langdell on the "science" of law but also explains in eloquent terms why law, viewed as a science, is critical to any society. Field was both a lawyer and legal reformer. He is best known for his authorship of the "Field Code" and his leadership of the movement to codify the common law by setting forth its principles in clear, coherent, and concise language.

There are undoubtedly several topics, which might properly be considered, in connection with the establishment of this school—as, for example, its relations to the public, to the university and to its own pupils, or the most advisable course of study; but I shall only ask you to consider with me now the magnitude and importance of legal science. And though all knowledge has value, and all the arts their uses, yet, as there are differences in value as in use, I hope to

show you that, of all the sciences and all the arts, not one can be named greater in magnitude or importance than . . . the science of the law.

Law is a rule of property and of conduct prescribed by the sovereign power of a state. The science of the law embraces, therefore, all the rules recognized and enforced by the state, of all the property and of all the conduct of men in all their relations, public and private. . . . No engagement can be entered

into, no work undertaken, no journey made, but with the law in view. . . . This science, therefore, is equal in duration with history, in extent with all the affairs of men.

We can measure it best by tracing its progress. When men dwelt in tents and led a pastoral life, their laws might have been compressed in a few pages. They had, of course, some part of our law of personal rights, the law of succession, and of boundaries between the occupiers of adjoining pastures. This was the condition of the race in the primitive ages, and is even yet the condition of some parts of it. . . .

The next stage in the civilization of the race was the fixed habitation and the cultivation of the soil; and this brought with it the next stage in the development of the legal system—the law of land and of permanent structures—a department which, though it teaches of the most permanent of earthly things, has not partaken of their permanence, but has fluctuated with political condition. The distribution of the land has determined the policy and the fate of governments, and these in their turn have encouraged the aggregation or subdivision of estates, as they inclined to aristocratic or democratic institutions.

. . . To possess land, to own an estate, to found a family, and to make for it an ancestral home, are objects of ambition almost universal. We seem to ourselves to be more firmly fixed when we are anchored in the soil. . . . And, notwithstanding the enormous increase of personal property in our modern society, the larger portion of man's wealth is still in the land. . . .

For these reasons, the law, which regulates the possession, enjoyment, and transfer of real property, has always been the subject of special attention. It has oscillated, as governments have swayed back and forth; at one time allodial, at another fuedal, sometimes comparatively simple; then excessively complex; in one country natural, in another artificial. But in all countries . . . the law of real property has ever been and must be large and difficult. The acquisition and use of land, the different kinds of ownership, the

exclusive and perpetual, or the joint or temporary title, the conflicting interests of adjoining owners, the relative rights of landlord and tenant, and a thousand other conditions and incidents, can only be regulated upon a careful and minute analysis, by a series of rules adjusted with nice discrimination. . . .

In the next stage of civilization, the products of the soil were wrought into new forms, and manufactured fabrics added to the wealth and comfort of man. Manufactures required the purchase and collection of materials, the employment of workmen, and the sale of the fabric. Commerce led to navigation. Each of these operations added a new chapter to the law.

Of these three stages in civilization and in law, the ancient world was witness, but not in their highest development, though in forms of which the records will last for ever. The accumulation of lawbooks became so burdensome that, thirteen hundred years ago, it was found necessary to reduce them by substituting digests and codes. . . . Since then, however, materials have accumulated, greater by far than those out of which the Roman Codes were constructed.

. . . Who that has studied the government of a country, though occupying but a single department in its laws, but wonders at the magnitude of the subject? A lifetime seems scarcely sufficient for its mastery. Political philosophy and history are its adjuncts. Take our political code, survey it generally, enter into its details, study its history, consider how many good and wise men have participated in its framing, how cautiously it has been contrived, amended, added to, debated, at every step in its progress, and then stand reverently before it as the grandest monument of human genius. Time would fail me if I were to attempt recounting even the principal epochs in its history; the long and hardy training of our forefathers beyond the sea, where their institutions were purified by blood and fire, the transplanting of those institutions hither, their curtailment of the monarchical portions, the amelioration which time and experience have

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wrought, the principle of federation, its origin and development, and the final completion of the vast structure of our Government, Federal and State, through all its parts. . . . Large must be the book which shall even describe adequately this double Government of ours—larger still that which shall contain all the laws by which it moves and all the functions which it performs; its various departments, legislative, executive, and judicial, the powers and duties of all its public officers, its revenues, and of the different branches of the public service. . . .

. . . Let us select for example a single department and follow out its subdivisions. Take if you will the contract of sale, and see into how many branches it divides itself. Whether the contract be written or unwritten, whether there be an actual transfer, or only an agreement to transfer, whether the thing agreed upon be already made or only to be made, whether it be sound or defective or deficient in quantity, whether there be fair dealing, concealment, or misrepresentation as to quality, existence, or value, whether the thing has been delivered or paid for in whole or in part, whether the seller or the purchaser ever, and if so when and upon what terms, may rescind the contract and be reinstated—all these, and many more, are considerations affecting the transaction, which the law has carefully provided for, by an appropriate rule.

The law may be compared to a majestic tree that is ever growing. It has a trunk heavy with centuries, great branches equal themselves to other trees, with their roots in the parent trunk; lesser-branches, and from those lesser branches still, till you arrive at the delicate bud, which in a few years will be itself a branch, with a multitude of leaves and buds. . . . [T]he law appears infinite in its manifestations; the shelves of law libraries groan under the accumulation of their volumes. The curious in such matters have computed that the number of cases in the English Courts relating to practice alone equals twenty-five thousand, and that the common law has two million rules!

Compare this science with any of the

other sciences; with those which are esteemed the greatest in extent, and the most exalted in subject. Take even astronomy, that noble science which . . . weighs the sun and the planets, measures their distances, traces their orbits, and penetrates the secrets of that great law which governs their motions. Sublime as this science is, it is but the science of inanimate matter, and a few natural laws; while the science which is the subject of our discourse governs the actions of human beings, intelligent and immortal, penetrates into the secrets of their souls, subdues their wills, and adapts itself to the endless variety of their wants, motives, and conditions.

Will you compare it with one of the exact sciences—as, for example, with mathematics? . . . Clear, precise, simple in its elements, far-reaching and sublime in its results, [mathematics] has disciplined and exalted some of the greatest minds of our race, and been the nursery of other sciences, and of the mechanic arts. . . . But the science of calculation is occupied with a single principle. This it may go on to develop more and more, till the mind is almost lost in its immensity; yet the development of that one principle can never reach in extent, comprehensiveness, and variety the development of all the principles by which the actions of men toward each other are governed in all their relations. The law, it will be remembered, is the rule of all property and all conduct. . . .

This rapid survey may serve to give us some idea, imperfect, indeed, of the magnitude of legal science. Though it may be the most familiar of all things, it is also the most profound and immense. It surrounds us everywhere like the light of this autumnal day, or the breath of this all-comprehending air. It sits with us, sleeps beside us, walks with us abroad, studies with the inventor, writes with the scholar, and marches by the side of every new branch of industry and every new mode of travel. The infant of an hour old, the old man of threescore and ten, the feeble woman, the strong and hardy

youth, are all under its equal care, and by it alike protected and restrained. . . .

We have considered thus far the magnitude of legal science. Its importance is more than commensurate with its magnitude. Without it there could be no civilization and no order. Where there is no law, there can be no order, since order is but another name for regularity, or conformity to rule. Without order, society would relapse into barbarism. The very magnitude of the law is a proof of its necessity. It is great, because it is essential. There is a necessity, not only for law, but for a system, with arrangement and a due relation of parts; for, without this system, the administration of government, both in its judicial and its administrative departments, would fall into irretrievable confusion. . . .

The science of the law is our great security against the maladministration of justice. If the decision of litigated questions were to depend upon the will of the Judge or upon his notions of what was just, our property

and our lives would be at the mercy of a fluctuating judgment, or of caprice. The existence of a system of rules and conformity to them are the essential conditions of all free government, and of republican government above all others. The law is our only sovereign. We have enthroned it. In other governments, loyalty to a personal sovereign is a bond for the State. . . . We have substituted loyalty to the State and the law for what with others is loyalty to the person. In place of a government of opposing interests, we have a double government of written Constitutions. The just interpretation of these Constitutions and the working of the double machinery, so that there may be no break and no jar, are committed in a great degree, how great few ever reflect, to the legal profession, and are dependent upon their knowledge of the science of law in all its departments, political, civil, penal, and remedial. Precisely, therefore, as free government and republican institutions are valuable, in the same proportion is the science of the law valuable as a means of preserving them.

REVIEW AND DISCUSSION QUESTIONS

1. Field titled his speech the "Magnitude and Importance of Legal Science." What does he think its magnitude consists in?

2. Why is law so important, according to Field?

3. Field argues that the better the civilization, the more complete will be its law. What does he mean by that?

4. Field says law is our sovereign. What does he mean by that?

5. Some have suggested that, contrary to

Field, the more just the society the *less* law there will be: In heaven there would be no law, and in hell there would be nothing but law, as Grant Gilmore wrote in his book *The Ages of American Law* (1977). Who is right?

6. Does Field assume history progresses, in a way that Gilmore or others in the late twentieth century might find difficult to accept? In what ways have both history and the law progressed or not progressed?