

DEAN RICHARDS AND THE ASSOCIATION OF AMERICAN LAW SCHOOLS

Dean Richards began his law teaching at the University of Iowa in the fall of 1898. Two years later the Association of American Law Schools was organized and in 1901 the first annual meeting of this Association was held. This first meeting Dean Richards attended and from that time until his death no one has had a more active part in the growth and development of this Association and the accomplishment of its one object, "The improvement of legal education in America, especially in the law schools." It is fitting, therefore, that some statement should be made with reference to Dean Richards' activities in connection with this organization.

In the early years of the Association, Dean Richards was a member of its Executive Committee and later its President, and again on the Executive Committee. It would require a detailing of the entire history of this Association year by year if Dean Richards' influence were to be properly presented, for there was hardly a meeting but that he was called upon for some service in the constructive work of the organization, either in planning or outlining the work of law schools through committee study and recommendation, or in participation in the development of the law in various Round Table Conferences, or in the presentation of papers or addresses. Dean Richards' attitude, and the basis of his influence in the development of legal education through the Association of American Law Schools can best be shown by quoting from his address as President and his discussion of papers at recent meetings.

In setting forth his ideas he used a directness of approach with an unstudied cleverness of expression that carried conviction. He had a way of turning an article upside down to note its price mark and the place of its manufacture. He was an expert at scraping off the gilding to determine the honesty of the sustaining metal. He could detect pretense or self-deception with unerring accuracy, and he had a remarkable ability to discover the inner workings of men's minds. These qualities made his statements in debate or in presentation of

his own views most effective. A sharpness of wit and a use of homely illustration made the expression of his opinion a delight to those who heard him, particularly to those who did not disagree with him.

In his address as President of the Association of American Law Schools he made a comparison of the progress made in medical and in legal education, and showed the manner in which the medical profession had cleaned out the schools operated for pecuniary profit. Through their experience he pointed the way which the bar should follow. Nothing tells more clearly the accuracy of his aim than the fact that commercialized law schools have, ever since his address, felt impelled to combat his arguments and to recount the terrible injuries which they allege have resulted from cleaning up, what were in reality, the quack hatcheries of the medical profession.

We are today striving hard to make the public and the profession realize what he then pointed out, that the certain result of preparation for the bar in schools of low standards is "a host of shrewd young men, imperfectly educated, crammed so they can pass the bar examinations, all deeply impressed with the philosophy of getting on, but viewing the Code of Ethics with uncomprehending eyes."

Dean Richards' peculiar ability to bring to earth for examination any new plan of approach to the study of law sometimes brought upon him the charge of being a conservative, particularly by those who were seeking to pilot the new planes. But his conservatism was most constructive and was only that of one who insists that a cross country flight should not be attempted until the plane has been thoroughly tried out on the home proving grounds.

Three years ago at the meeting of the Association of American Law Schools Dean Richards discussed the emphasis being placed on legal philosophy in law teaching:

"The law professor has become a philosopher. We hear a great deal about philosophy nowadays in the law schools. We hear about 'sociological jurisprudence' and 'analytical jurisprudence' and the 'factual

approach' and the 'functional approach' and several other approaches I can't think of just now. Now, this epidemic is spreading all over the country, and the peculiar thing about it is that the symptoms are not the same in any two institutions. There seems to be a common tendency to spread, but pathological conditions are different. If one school breaks out with 'functional approach,' no other school ever has it. It may break out with something else, but never with the 'functional approach.' That is sacred to the school that first had it.

"One of the first symptoms that seems to be common to all outbreaks of this disease is a sort of glossarial rash that precedes the philosophical outbreak.

"The disquieting thing about it is that it seems to be catching. Time was when if a man philosophized about law, or anything else, we could tiptoe out of the room when we got tired of it, but now it is thrust upon us."

These statements are typically Richardsesque:

"When you look through the catalogs, you don't find much said about practice any more, but a great deal about legal philosophy. Even in the pictorial section the picture of 'Our Courtroom' is no longer featured in the center of the group. There has been a very great change. We have become philosophers, or are on the way to becoming philosophers, and we ought to have in the process of time at least sixty-four different schools of philosophy in the Law School Association." (Sixty-four being the number of law schools belonging to the Association at that time.)

He was a master of the use of clever irony. Note his suggestion as to the manner in which the law professor may impress the practitioner:

"The only way to get along with the bar is the way we are getting along with them. Don't meet them on their ground, but make them meet us on our ground,

and when you get them in a philosophical atmosphere they are lost. To hold that advantage we must continue to philosophise, and never say anything more about the practice courses."

Dean Richards' courage and directness in expressing his views was well illustrated in the same address in his sharp criticism of the attitude of the bar of that time with reference to higher standards:

"The bar is always talking about the law being a learned profession. I am tired of that phrase 'learned profession.' The bar as a whole does little or nothing to make it real. If there is any attempt to make the bar learned or near-learned, there is always opposition from them. Who make up the faculties of all the poor law schools we have in the United States? Members of the bar, and of the courts. They will denounce chicanery and the low tone of the bar, and then run and deliver their lecture in some school that is inducing young men with insufficient preparation and improper training to aspire to a career at the bar."

At the meeting of the Association of American Law Schools last December a symposium was held under the title "Modern Movements in Legal Education," in which papers were read by representatives from several leading law schools describing or proposing certain new schemes for the teaching of law, some of them departing rather radically from present methods. Dean Richards in his inimitable way thus brought the various planes of thought to safe landings for careful inspection:

"As I sat here listening to the very able papers, I recalled the story of a Western railroad attorney. He was a lawyer of the old school, who appreciated good whisky, and played poker with skill. He knew all the big shippers by their first names, and was a very useful man for his company. In his later years he was called into a conference with the representatives of other roads to consider the question of freight rates. The modern bespectacled expert was there, with his

statistical tables and graphs, holding forth at great length. After our friend had listened for an hour or so to this discussion, most of which was unintelligible to him, he was asked for his opinion. He replied: 'Well, I'll tell you; I think it's time we all went out and had a drink!' "

If he suspected an attitude of superiority he could deal with it most delightfully:

"An Eastern friend of mine, who has read a great deal of history, remarked to me, rather unkindly, I thought, that his study of history had led him to the conclusion that the highest type of civilization never spreads very far from the sea coast... If my friend's observations are sound, I suppose those of us who live west of the Alleghanies need not worry, since, if the projects presented to us today are the outpourings of the highest type of civilization, they will never get to us. But one can never be sure. Perhaps we should take precautions. Sporadic cases of factual and functional approach, rights, powers, privileges, and immunities, jural relations, etc., have been noted or proclaimed in schools west of the Alleghanies, but so far the Corn Belt and the Pacific Coast are untouched."

Some of Dean Richards' friends liked to twit him about his early practice experience in the State of Missouri, claiming that it had left a permanent impress upon his character with reference to the ease with which he might be convinced as to new and unusual proposals.

His attitude was well illustrated in the suggestion that those proposing the new plans demonstrate their efficiency before general adoption by law schools would seem desirable:

"We are glad to see these schools, with high reputations and strong financial backing, willing to put these ideas to the test of practical application. We shall watch the experiment with interest, not expecting anything very decisive in the way of results. If these schools have great teachers and intelligent

'poison squads,' the results will be favorable, no doubt, for an intelligent subject can stand a great deal of intellectual punishment without appreciable impairment."

His ability to take a birds-eye view of any new movement or proposal was shown in this further comment:

"The philosophical stirrings which these projects indicate can be detected in any full-time faculty today. They are the to-be-expected results, when full-time teachers, caught early, were substituted in our faculties in place of the hard-bitten lawyers and judges of a generation ago. We are now definitely headed back toward the continental ideal of legal education. We have created a situation out of which philosophers are born, or in process of being born."

He was never misled either by old labels or new ones. His advice as to the manner of securing consideration and adoption by the profession of modern ideas as to the content of the law courses, shows both his keen insight and his practicality:

"Every intelligent student of our English law recognizes the strength and importance of the social forces back of the law which cause changes in its scope and direction. The law makes articulate this social pressure. We want our students to know and appreciate these forces, and feel that they must know and appreciate them, if they are to become sound lawyers. The question, then, is not the desirability of this knowledge; that, I think, is conceded; but what is the most effective method of getting it? It seems to me that the methods presented in these papers are open to the objection that they are calculated unduly to alarm the patient. All the familiar stage settings of the accepted order are changed. Old familiar labels are removed, and strange new ones substituted. There is a challenge in the whole proceeding that begets opposition. Men do not object to new ideas, if they are not so labeled; but they are very stubborn about their labels, and their habitual procedure, and you

cannot hustle them. President Lowell, in his book on *Public Opinion*, said very wisely that history shows that no great reforms have been won by frontal attacks, but always by flank movements. We must bore from within. The radicals in the labor unions have the right idea. They don't stay outside and fight the unions, but join the unions and attempt to instill their ideas into labor union precepts. That is not fraud, I suppose, but psychology, even admitting there is a twilight zone between fraud and psychology that is hard to define."

His saneness and sense of proportion permitted him to keep an even balance with his eye on the main purpose of legal education. This was his comment on the place of the social sciences in law teaching:

"It is now said that the law is not self-sufficient; that to understand it we must go back and in our classrooms discuss the great 'energizing forces' that lie back of our law. To that we all agree, in part. It is said the law but gives sanctions to economic and social forces; if that is true, then by all means turn our law schools into schools of economics and sociology, and treat our law as procedure only. To accept this idea is to close your eyes to the fact that, while the law does give its sanctions, it has very profoundly contributed to the determination and scope of these social forces. Law cannot be ignored as a factor in economic theory, any more than economics can be ignored in legal theory.

"The economists and sociologists loom large in the world today. . . They are working in the same general fields as ourselves, trying to plat the probable course of that very uncertain and contrary creature, man. The law, while necessarily more empirical, has submitted its theories rather successfully to the acid test of practical application. We need the aid of economists, and they need ours. We should work with them, but not surrender to them."

In considering the content of one of the courses which had been described, wherein some of the readings suggested included Keyser's *Mathematical Philosophy*; Karl Pearson's *Grammar of Science*; Gilbert Lewis' *Anatomy of Science*; A. D. Ritchie's *Scientific Method*; Bertrand Russell's *A.B.C. of Atoms*; John Dewey's *Experimental Logic*; the same author's *Human Nature and Conduct*; Mill's *Logic*; F. C. S. Schiller's *Formal Logic*; H. E. Cunningham's *Text-Book of Logic*; P. W. Bridgman's *Logic of Modern Physics*; Frederick Barry's *Scientific Habit of Thought*, Dean Richards remarked:

"I have no doubt, after reading [the instructor's] description of his course, that he got a great deal of good out of it; but I am rather skeptical of the benefits which his students derived from it, if they were the usual type of students with which we are familiar. I suspect there is not a great deal of difference between a Yale student and the students of other schools. . . . The list of readings suggested seems a greater burden than their immature shoulders can bear. I would feel very sorry for them, if I did not know their resiliency, and the ease with which they take on a protective coloration."

Reference to certain proposed law courses brought forth this discriminating observation concerning research:

"We have failed to appreciate that not every man is capable of doing research work in a productive way. We have apparently assumed that all we need to make a research man is time and money. We give our candidate time and money, and say to him, 'Now, research.' He may, and he may not; probably not. What he will always do is to collect materials, read and digest what everyone has said on the subject, compile mountains of cases, and card indexes galore. The results will be embalmed in a long, dull dissertation, rehashing other men's ideas. His thesis is printed, bound, and filed away. He receives a degree perhaps, and is thenceforth known as 'Doctor.' But

the end is not yet. The next generation of prospective Doctors must read this contribution and combine it in a new rehash, and so on and on—a mounting pile of words and a diminishing stock of ideas. . . . The lawyer and the judge look to the law teacher to blaze a path through the myriad of special instances; do not disappoint him with colossal compilations, that block the way, rather than clear it. Do not bewilder him with new terminology and philosophical hair-splitting.”

Dean Richards' connection with the Association of American Law Schools has been responsible in large measure for the sound progress made in legal education during the time of its most rapid development. In addition to his many affirmative contributions he rendered during this constructive period an invaluable service in a capacity that might be compared to that of a careful building inspector.

The substantial progress of professional and learned societies would be materially advanced if each organization might have one Dean Richards to cause them to recheck their proposals and build only on foundations that are both suitable and substantial, rather than to proceed to an elaborate superstructure where materials of great value may be wasted or discarded because the whole has been erected too rapidly under the influence of the high enthusiasm which tends to accompany a building boom.

Unfortunately for education and for civilization there is no mould in which are cast such men as Dean Richards. They come but on rare occasions, leaving the world saner and happier for their sojourn.

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