

city, to help him to work on his own, to direct his mental development through study in a limited field, and to provide a general approach and environment tending to enhance the culture and civilization of everyone coming into contact with him."<sup>19</sup> These are some of the objectives that could be achieved through a systematic and well-organized programme of moots. In moots the student learns to draft pleadings and prepare his own brief and to search for authorities. In moots the student learns that he must be prepared to work independently and to think on his own legs. He also learns that Counsel appearing for the other side is not an enemy to be shunned and despised but a colleague whose friendship must be cultivated. In moots the student also learns that it is not the 'winning' of the case that matters, but that he is an officer of the Court whose primary duty is to assist the Court in arriving at a fair and just decision.

In fine, training given in the moots instill into the minds of the student a spirit of camaraderie, a desire for truth and justice and a sense of responsibility—qualities that are essential on the part of those who are going to play an important part in the building of this new nation.

<sup>19</sup> *Id.* at 491.

## THE ROLE OF LAW SCHOOLS IN PRESERVING, STRENGTHENING AND PROMOTING DEMOCRATIC INSTITUTIONS\*

L. R. Sivasubramanian\*\*

I deem it a special honor extended to me to be called upon to place my thoughts before you on the very important subject of the Role of Law Schools in Preserving, Strengthening and Promoting Democratic Institutions. By anticipation of the concurrence of the Chairman, Organizing Committee of the Conference, I have added the word 'promoting' to the other functions of the law schools, — an addition which I deemed as essential. As a Law Professor for over thirty-six years, and as the Dean of the Law Faculty, for over eight years at one university, and nearly sixteen years in another, I had been constantly thinking of what the functions of a proper law school should be in relation to society, and I endeavoured to build and develop the law schools of which I was in charge, with what success it is not for me to say. The opportunity, therefore, to speak to you on this subject, and to get benefited by your views, is most welcome to me.

To many it may seem that what is going to be presented in this paper is the most obvious, and that a discussion of it is like holding a torch to the midday-sun. One fervently wishes it were so; alas, it is not. No student of history can fail to have noted how, throughout the ages, democratic institutions had to be cultivated and strengthened in the most adverse conditions against successive and many terrible onslaughts against them; how throughout the centuries, in all parts of the world, among all people, there has been

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domination and oppression, of one kind or another, by one over the other,—the domination of the strong over the weak, of the rich over the poor, of the clever over the dull, of the priestly class, in the name of religion and morals, over the lay and the unknowing, of the educated over the ignorant, of the socially superior over the depressed classes and the outcasts, and of the economically advanced over the backward. It has been domination not merely of one individual over another, of one group over another, within the framework of the same society, where people have the same faith, follow the same modes and entertain the same values of life, though strange as it may seem, but also domination of one race over another or a number of others on the ground of race, or color or creed. The downtrodden throughout the world, from the dawn of history, much before the Plebeians seceded and later asserted their rights, have been fighting against such domination and trying to put an end to it; but again and again the forces of domination have raised their heads. Slavery was abolished, but indentured labor came, with colonial expansion, as a substitute. This too has disappeared, but other forms of domination still persist. We have been witnessing a great struggle in one of the biggest democracies of the world for the assertion and enforcement of civil rights; and it should be mentioned to the credit of the progressive administration there that the forces of liberalism, realizing the fundamental righteousness of the claims of the oppressed have fought, and come out victorious in the establishment of laws, following the wake of enlightened judicial decisions, for the protection and enforcement of civil liberties of the segregated and neglected,—an achievement which would not have been possible but for the fact that that State is a democracy, and it has a truly representative government with persons of progressive and humane views at the helm.

It is only recently that we witnessed political freedom conceded to a number of peoples in Africa and other places; and it is only now that we notice how these nations have formed governments of their own, and are vocal in the counsels of the world, or assertive about the rights of those still not free.

While these are very encouraging and satisfactory developments, there are other trends which have raised their heads, and which are alarming,—the recent trends at propagating a cult, of indoctrinating the unwary masses and trying to achieve a form of Government and a way of life by force and violence. In a sense,

these trends constitute a greater menace because, in the process, the minds are captured and corrupted, leading to what Mahatma Gandhi described as 'slave mentality'—a kind of subjection worse than physical enslavement. There are pet theories, masquerading in the name of patriotism and altruism, claiming to establish the rule of the poor and the downtrodden worker, under which the State is raised to a superior position over and above the interests of the individuals and the community of which it is composed, being regarded as no more than a cog in the vast wheel of the State. Such theories give no recognition to the personality of the individual or his rights; and their adoption creates a state of affairs where there is no liberty in the sense in which it is ordinarily understood, where law is not for the protection of the oppressed but an instrument of State domination to the abject subjection of the individual. Dangerous as such theories are, they constitute a still greater danger when a particular fanatic and his associates grasp power, sway the emotions and guide the actions of the unsuspecting people who themselves are rendered crazy by the promises and temporary achievements of those who have seized power.

In such circumstances, what should one wish and aspire for than the restoration or preservation of liberty,—liberty to keep a free thinking mind, to understand truth in one's own way and to strive to realize it by conduct which would not be detrimental to the interests of others in the community,—a liberty which symbolizes respect for Human Rights, a liberty which is the essential attribute of a democracy, and which indeed can obtain only in a democracy. To my mind, true democracy, the maintenance of the Rule of Law in the proper sense of the term, respect for Human Rights and recognition and preservation of the moral no less than the physical personality of the individual are complementary ideas, each one essential for the existence and the functioning of the other.

The importance of the role of the law schools in the maintenance and promotion of democratic institutions thus now becomes clear.

What is a democracy? I know of no truer or pithier description of it than Lincoln's, that it is a rule of the people, by the people and for the people. To ensure democracy as a rule of the people by the people, there should be representative government, a government representative of all sections of the people chosen by the largest franchise and in completely free elections; representatives whose terms expire periodically and who have to seek again

the mandate of the people. There should be decent chances for other parties, — people with other views, — others who have gathered the support of the majority of the people, — to come into office and govern the community. There should also be an impartial and independent judiciary enforcing the law made by the people of their free will and in the best interests of the people, and not as behests of a dictator, or of an oligarchy; and further there should be administrators who are public servants, who feel, and are made to realize, that they are servants of the people and that they are not ministers or agents of the divinely ordained despot or a blessed junta.

That is democracy where the State exists for the individuals composing it, and not the individual for the State; where exploitation by one person or group of another is sought to be put down and eliminated; where there is respect for Human Rights and human personality; where, indeed, the law is not the instrument of aggrandisement for perpetuation of vested interests; where the universal injunction preached by all religions, "do not do unto others which you would not like others do unto you" forms the basis of all laws; where there is freedom for all individuals to think, and toleration for the views and observances of others,—views and observances which may be most to the dislike of the majority; and where the minorities can live peacefully and without harassment enjoying equal political, economic and social rights with the majority.

All the above is not possible without a proper body of laws impartially administered; and by enjoyment of true liberty is meant no more than the recognition, preservation and the enforcement of the rights and principles which secure for the people the conditions of life just described.

The functioning of such a democracy involves a delicate and complicated legal process.

Firstly, there are the abstract concepts of justice and law that have to be borne in mind and which constitute the ultimate rational basis of all administration, for man is a rational being, his thoughts are not only about his interests and well-being, but also about his family, his near and dear, and of the organized community which constitutes the State to which he belongs. When a person is a disciplined and developed soul, his concern encompasses the interest of the whole of humanity, and, indeed, of the uni-

verse. Rational justice, therefore, has to comprehend and reconcile the conflicting interests of the different individuals and groups in the State. The liberty, which every individual loves to have, of thought, speech, action in the pursuit of happiness in all its senses, has to be consistent with the interests of the community as a whole, and in a world which has been brought so close together by modern scientific advance, which have so much reduced time and distances, and facilitated so many to come together, consistent with the interests of the whole of humanity. Administration of justice and of law has, therefore, to conform to some universal pattern, and has to rest on universal basic moral principles.

Secondly, the concepts of law and justice abstractly conceived in the older or classical sense of the term, are not sufficient to deal with the problems of a modern society. Life is not so simple as it was in ancient days. Liberty, as freedom to be left alone completely, is the liberty to be thrown to the wolves. Such a liberty is a mockery. To preach to a man facing death by starvation the virtues of the commandment "thou shalt not commit theft" is sacrilege; to tell a poor person afflicted with dire disease that he is suffering for his past Karma (past sins), that he should have faith in his Maker and pray for a happier life in the next birth, without extending him sympathy and affording facilities for a cure, is an insult to the doctrine itself. Society consists not only of the strong and healthy, of the intelligent and the aggressive, of the adult in the full possession of all faculties, but also of the weak and the sick, the stupid and the craven-hearted, and the infants and the aged. These are not the only disparities. There are others, even more cruel sometimes, which are man-made,—economic, social and religious disparities, brought about by conditions of trade and acquisition of property, by caste, by modes of worship, etc. It has become the function of a true democracy to remove the disparities and disabilities through the instrumentality of law and the administration of justice. Liberty which is the fundamental characteristic of democracy, to be truly enjoyed, must be accompanied by the ability to enjoy it. Civilization and progress consist not in the abandonment of the weak and the needy, and of the sick and backward, but in the amount of care bestowed on their protection and well-being. A modern State, therefore, has to, and seeks to care for the poor, the sick, the children, the aged, and the worker in the factory or the field, and to provide amenities which are beyond the resources of individual charity,—amenities which can be provided effectively only with the resources of the State.

Moreover, it has been the aspiration of the human beings from time immemorial to promote the happiness and well-being of others even at the sacrifice of one's own interests, for happiness at the expense of others. Man in his better nature has always believed that disparity is ugly and that equality is that which is consistent with natural justice. One reason for this belief, I venture to think is this. Mankind realizes that there is no escape from death, and that all worldly possessions do not provide any help and do not constitute any preferment. Therefore, death, the most feared event, is the greatest leveller of all mankind, and the God of death is regarded as the most impartial judge. Believing in divine judgment after death, and a life hereafter, mankind has considered that the avoidance of the suffering of others and the promotion of their well-being and happiness, are moral duties,—recognized by all faiths. These moral duties get translated into a legal arrangement in a modern democratic society. The doctrine of laissez faire in the old sense has given place to a new conception of State and liberty.

Thirdly, in the modern world, various newer forms of property and interests have come into being. Various means of communication and transport have become available which were unheard of about a century ago. Various means of livelihood have come into being. Naturally the modes of life and enjoyment have greatly changed and have become most varied and complicated. The result is that human relationships have assumed such a variety and have become so involved as could never have been imagined in the classical ages when notions of law and justice and their administration were simple. Today, however, the content and function of law and administration are very different; while certain basic notions like property and theft, marriage and divorce, contracts and crime remain, the contents of the concepts and the mode of the maintenance of the rights and interests and the manner of enforcement of the obligations have changed. Large economic interests, which are not exactly property in the legal sense, have cropped up. Forms of control over trade and industry have become even more important than possession of vast goods or lands. The simple notion of theft is no longer sufficient. There are many forms of abstractions of property or interference with the interests of others which have to be prevented or punished.

The expansion of the area of the law of contracts is perhaps the greatest in the modern world; various forms of contracts have developed, each with a special set of rules for itself. And so in other fields.

The enactment and enforcement of the law in the field of the economic activities of man—the field of property and wealth, contracts and trade, is not sufficient to meet the needs of a modern social order; nor in respect of torts and crimes, nor again in respect of the recognition and maintenance of family relations and the redress of wrongs relating thereto. The law is not merely an instrument of economic justice but of social justice also. It has to deal with the problems arising out of the age-old disparities already set out, as well as problems arising out of changed conditions of modern life; risks of modern industry and manufacture and dangers of the spread of disease rendered so easy by modern means of transport. It has become the function of the law positively to promote the well-being of the individuals in the community; and today the older ideas of punishment and repression have given place to modern ideas of reform and rehabilitation.

Thus the range of the law and its administration has become very wide, and it is ever widening. Legislative output therefore now is enormous, and in fact the legislatures, sitting for the greater part of the year, do not find the time to enact laws in detail; and confine themselves merely to laying down the policy and the main principles, leaving it to the administration to frame the rules for their proper implementation,—a process which is not without its resultant legal complications.

The above survey would indicate how close is the relation of law to all aspects of life of man in society, and the need therefore of the study and understanding of the law not only based on a proper appreciation of philosophical and fundamental moral principles but also informed by a knowledge of history, anthropology, economics, political science and other social sciences. Its study has also to keep abreast of the results of the advance made from time to time in the study of the physical sciences.

A law school can no longer afford to be what it was in the Victorian era, training professional lawyers. Time was when the function was to train so many lawyers who would be adept in the intricacies of the laws of procedure and the technicalities of the

substantive law, lawyers who would be champions of their clients' causes, who would discern the strength and weakness of their clients' case and so present it as to lead to success. It was training for a combat,—combat in respect of a limited list of items on which there could be dispute. Then, as human relationships became more complex, new interests and liabilities sprang up. Training began to be provided in special fields like the law relating to insurance, patents, copyrights, carriers, etc. A still further development was to advise parties in respect of company formation and management, and to counsel clients regarding tax matters and to obtain relief for them. Soon the field of international law claimed attention, and many began to specialize in it. That law schools could be training centres for a public career became before long clear. And as it came to be appreciated that there was not an aspect of life which law did not touch, it was realized that there was nothing more helpful to the understanding of human relationship, human values, and of the springs of human action than a proper study of the law in a law school. Good law schools have been training excellent practitioners for a long time. To train clever lawyers is a good thing; to inculcate therewith the proper spirit of the law, the noble spirit which must activate the profession that it is an adventure in the defense of the weak against the mighty is to lift it to a dignified public career so essential in a democracy, for in a real democracy there can be no oppression even by the State, which does without redress. English history is full of noble episodes of fearless lawyers who braved the frowns even of the Crown, the example of Coke being the one most often cited for his defense of the Common Law and the privileges of the House of Commons and its members against attacks by the Crown. Even in France and in the days of the Terror are to be found noble examples of persons like M. Malesherbes, who at the cost of not only of their own lives but also the lives of their dear ones defended clients who had become victims of mob prejudice and dire persecution. This spirit of service and sacrifice, this spirit of fearlessness and conviction for a cause, is that which should be imbibed in a law school.

The law school has also to train judges and legal administrators, persons who would administer the law not only impartially but with an appreciation of the purpose and function of the law, and of the background against which the law was made, and an understanding of the evils it was intended to suppress, and the

good of the society it was meant to promote. Then only would the administration of law be consistent with true democratic principles; otherwise it would deteriorate into an instrument of domination.

It has also to train suitable law teachers. It occurs to me that this is even a greater function than to train practitioners and judges, for a practitioner is to prosecute or defend a cause, and a judge is to decide disputes as and when they arise. Neither need think, in the discharge of his functions, of what the law ought to be. Both, in a large measure, are bound by practice and precedents. While the lawyers may, outside the Court, give expression to their own views on the deficiencies of the law and the need for reform, such expression of views by judges apart, perhaps, in the course of judgment, might be misunderstood, and they may find it highly embarrassing. The law teacher, however, is free to speculate and to criticize, unhindered by present practice or the binding character of precedents. He is free to refer to foreign law and experience, and to draw upon other fields of knowledge like economics, political science, history, and natural sciences, etc.

He has neither to win a case for a client nor to settle a dispute. He is not limited to single cases as they come up. His concern is more of the system of law, the adequacy of its content from the moral, the economic, the political and the social point of view. His range, therefore, is wider and much more comprehensive.

Such a law teacher is not obviously one who merely conveys information to a student. He is expected to guide the process of reasoning of the student, to enlarge his vision, and indeed, if he can, to inspire the student. Merely trying to inspire by rhetoric would be poor effort resulting soon in the cooling down of the excitement kindled. The inspiration has to be sustained by study and mature reflection, and this, in my view, is true research. Real research, I submit, is not mere grave-digging and unearthing the past; it is certainly not a mere collation of other peoples' views, not preparing digests and vade-mecums, however useful they may be in practice. In my view, real research is the projection of the mind into the future and an understanding and appreciation of the problems not only as they have arisen but as they are likely to arise, and the suggestion of modes of solving them in the light of the experience of the past and knowledge of

the present conditions. It is my personal conviction that all true research in law must be based on a proper knowledge of philosophy and understanding and appreciation of fundamental human urges and aspirations, for these arise from the nature of things, and law has to take notice of them and conform to them. The strength of positive law consists in its endeavor to approximate to the fundamental law. There is no set of people in any civilization which has not believed in a fundamental law, in one form or another. It may be that in the short period of peace and plenty, in the middle of the 19th and the early years of this century, there were persons who mocked at the conception of a fundamental law, but the devastation brought about by two world wars has profoundly affected the complacency of man and his reliance on his own wisdom, and has led to his training in humility to a higher wisdom to guide his path, resulting in a revival of interest in Natural Law. Mankind has realized the futility of hate, and the need to live together in happiness and harmony for neither can be enjoyed in a full measure in a community divided by illwill and strife.

Law schools should be centers which will constantly examine proposed legislation, how far they are consistent with existing law, how far they are adequate for the needs sought to be met, how they compare with provisions in other countries and how, above all, they affect fundamental human rights, for it is the business of law teachers more than practitioners to act as sentinels on guard for protection of human liberty on which democracy depends. In fact, it should be the function of the law schools to examine the problems arising out of the ever changing human relationships, for change is the essence and order of life,—and find out how far conflicts and tensions can be reduced, and how adjustments can be better made—a most fascinating task, though a most complex one. Discharging such a function, the law schools will act as counsellors of the State in matters of law reform.

Such research, ambitious as it is, is feasible in a university law school where there are other departments of knowledge carrying on advance studies in their respective fields. Other institutions, acting in isolation, however highly organized or mightily connected, will not be able to do the work in an adequate measure.

Research is to examine, to criticize and to formulate. It may

be done individually, and, indeed, in most cases it is individual effort. But modern urgent needs demand organized, planned, research as an institutional output. Individual initiative and individual meritorious work are to be welcomed, but the area for research is so vast, the materials to be collected and studied so immense that nowadays it is beyond the physical and mental resources of individuals ordinarily to cope with them. Therefore, team work in an organized manner under the auspices of an institution like a law school is to be recommended.

A law school such as I have envisaged, will be a pillar on which democratic institutions will rest and thrive. For law without a constant examination of its content and adequacy, and without the needed reform will soon deteriorate into mere ritual, an instrument of injustice. Without such examination and reform right will go unrecognized and wrongs unredressed. Such injustice is inconsistent with democratic institutions.

The traditions of law schools are great. They have the oldest pedigree of all educational institutions. Several of them were founded by Kings or Emperors to train men to rule parts of the realm to be entrusted to their care. Law schools, rightly considered, have a tremendous role to play. Yet many of them are starved,—starved for staff, for library and for other equipment. Even Dean Griswold of the Harvard Law School, undoubtedly the richest and the best-equipped law school in the world, complained of inadequacy of resources for the needs of the work of his school in these times. He points out that the endowments of Harvard Law School represented but 3% of the total endowments of the Harvard University and how the Harvard Medical School spends seven times as much on a student as the Harvard Law School. If this be the story of the Harvard Law School, how much more should be the difficulties of other law schools; especially of those in the East. The need, therefore, is for governments of democratic states to equip the law schools in their area adequately so that they play their proper role.

Further, I would submit there is great need for cooperation between law-teaching institutions in the work of teaching and research. All law schools cannot specialize in all or even the more important fields. The libraries of some may be inadequate. The needed books may be available in one school, but not in another. Moreover, individual reflection, however high and penetrating, is no substitute for an exchange and, indeed, even a clash of views

with those of others. This can be had only by a meeting of the minds when people gather to deliberate and discuss. In providing for exchange of teachers and of materials, in providing a meeting ground for deliberation and discussion, in promoting advanced studies and research on a cooperative basis, the Association of Law Teachers of East Asia can play an indispensable and very fruitful role. I, as one who was associated with the first meeting we had here in August 1962, when ideas about the formation of this Association originated, and as one who has the privilege of attending the meeting again and witnessing the actual coming into being of the Association, entertain every hope that it will fulfill its functions most adequately, that it will be the main body from which democratic institutions would radiate, take root and flourish throughout South East Asia.

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