

LAW: THE LANGUAGE OF LIBERTY

By

John Wheeler
Des Moines, IA

“First thing let’s do is kill all the lawyers.”¹

Introduction

Perhaps the most over-used and misconstrued of Shakespeare’s quotes, this line from Henry VI, Part II has been taken out of context to denigrate the legal profession. In context, the line speaks volumes about the role of law, legal processes, and legal experts in preserving a free society.

Let’s set the scene:

Followers of Jack Cade, an anarchist in Kent, gather to plot the overthrow of the British government. In their minds the monarchy would be replaced by a “popular” government, led by Cade, who promises essentially no government at all. One of the rabble makes the remark to Cade that the first step to overthrowing the government is to get rid of the lawyers. A later remark adds all those who can write their own name to the condemned list.

So, the first thing to do to ensure that an underhanded plot to subjugate the citizenry succeeds is to do away with the primary line of defense – the law and lawyers. Obviously, the flip side of this is the observation that law preserves a republic and the basic tenets upon which it is based – in our society, concepts of freedom, liberty and equality.

Our nation is founded on the idea of rule of law – that no person is above the standards set by citizens (nor anyone below it); that all should be held accountable for their actions; and that intractable disputes in our society should be resolved peacefully in a neutral, legal setting. The principle established at Runnymede and reinforced through the American Revolution is that sovereignty rests in the people and that they are bound by no laws except those that they have consented to themselves or through their representatives.

But the law is much more than a society’s way of keeping order and resolving conflicts; it is also a nation’s way of achieving higher goals – in our case to secure the blessings of liberty, to promote the general welfare, to establish justice, and to form a more perfect union. Law is a product of historical experiences and collective intelligence designed to reinforce and

preserve the fundamental social contract rather than an arbitrary amalgam of statutes and decisions pronounced by lawmakers and judges. Within the nation's body of laws, one can find the commitment to our higher goals.

At its foundation, the United States is unique. Americans are brought together not by common religion, common ethnicity, common geography, or even by common language. To be an American is not to be classified as *who* we are, but by *what* we believe - a common political philosophy and understanding; a shared belief in the democratic vision of liberty, equality and justice. If Americans are to preserve that vision and put abstract thought into concrete action, it is essential that all citizens understand how it was shaped in the past, what events and forces either helped or hindered it, and how it has evolved to the present day.

The law is an integral part of that vision and that history. While it is possible to separate legal events from other events in our history and to study them carefully, it is far more difficult to separate the history of law from the history of the people in our nation. The law mirrors the aspirations of the American people and illuminates the conflicts and controversies that occur when different conceptions of liberty, equality, and justice collide.

In 1835, Alexis de Tocqueville observed that "Scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question."² More than a century and a half later, the observation is still valid. In the United States, the tensions among and between liberty, equality and justice often play themselves out in the legal arena – the laws we make, the way we enforce them, and how we interpret them. The 4th Amendment's provision regarding search and seizure is one example. On the one hand, there is the belief that a person's home is a castle – very much in line with the concept of liberty and rights. On the other hand, there is the more justice/security oriented belief that the police should have broad authority to search, since those who are not guilty have nothing to hide. Obviously these two mindsets stand in stark opposition to one another. The legal process seeks to make sense of the conflicts and mediate between the polar views.

Because of the pervasiveness of law in our society, it is incumbent on a "good citizen" to have at least a basic understanding of law, to be proficient in legal processes, and value the expertise of legal professionals – in essence to know the law (for ignorance of the law is no excuse), know the system, and know where to go to seek help. This charge forms the basis for law-related education. Law-related education enables

young people to acquire a knowledge and understanding of law and the legal process, the fundamental principles and values on which they are based and their impact on society. It seeks to equip young people with the essential skills, attitudes, and values necessary to become informed, responsible participants in the civic affairs of their local community, their state, their nation, and the world.³

Under the theory that “If you want to learn how to cook, you need more than a cookbook; you need a kitchen,” law-related education methodologies rely heavily on active participation by students. Using the law as the primary focus, students take part in case studies, role plays, simulations, mock trials, and other hands-on strategies to confront the actual dilemmas that we must face if we are to make democracy work. In a sense, through law-related education, the social studies classroom becomes the practice kitchen of democracy.

The uses of law in the social studies is also an important means of breaking through superficial textbook commentary to case study confrontations of value conflicts, the nature of decision making, and the quest for a hierarchy of values in our society. Case law is authentic. It involves real issues, real conflicts, and real people.

One of the long-standing criticisms of social studies education (and perhaps why surveys show that it is one of the least liked classes by students) is the emphasis on what the noted Harvard Law Professor Paul Freund called “inert” knowledge – that is knowledge that doesn’t connect to anything – memorizing the names of the Presidents in chronological order, for example. The purpose of the social studies in civic education is to prepare young people with the knowledge, skills and habits of mind to take an active role in our society. That “inert” or passive knowledge must be transformed into active knowledge – challenging students to make connections and to experience concepts and values in practice. To use Freund’s example of the Presidents, active knowledge might be an observation that in the first 40 years of our nation, only the Adams’ failed to achieve a second term in office. Why? Was it something about the family? Was it something about the specific character of the two men? Was it something about the country at the time? Or was it simply a coincidence of political forces at the time?

When you begin to ask those questions, you begin to transform “knowledge for knowledge’s sake” into a relevant and topical inquiry. As social studies educators, we can view the study of law as essential for the

following reasons:

The Law Is:

Real – Teaching about specific laws, legal processes and cases brings a note of authenticity to the classroom. While television dramas may portray the law in simplistic terms, a look at real processes, etc. lets students see the “shades of grey” that exist in most cases.

Relevant – Opportunities abound to focus on laws and cases that involve young people and/or situations students could find themselves in. Students love to ask “hypothetical” questions about school, work, home and community situations. Law is relevant to their lives.

Personal – Behind every legal theory, court decision, and judicial pronouncement lies a personal story. More than anything the law evolves based on the personal stories of genuine people. By focusing on the story behind the case, we can uncover great personal sacrifice, triumph and tragedy. Students should be exposed to the fact that it takes courage to take a legal stand on behalf of convictions.

Practical – Courts are ultimately asked to resolve specific disputes between people. While legal theorists will try to formulate overarching themes based on decisions or patterns of decisions, at root, the law consists of practical solutions to real life problems. The law attempts to balance the rights, responsibilities, opportunities and obstacles of multiple actors in society.

Historical – As de Tocqueville noted, major political questions in the U.S. ultimately become judicial questions. Therefore, a study of the legal heritage of our nation becomes an examination of U.S. history itself. It is possible to discern patterns of history through legal investigation.

Current – The most vexing issues in present day society can be found in courtrooms around the country. Examination of recent cases gives a good indication of current trends – in legal circles, in politics, and in society at large.

Futuristic – Through a thorough examination of past and present cases, it is possible to predict the types of problems that will work their way to the courts in the future. The Constitution was designed as a living document. The law, as an outgrowth, is constantly changing to meet new needs and new realities. Innovations in communication technologies, the growth of multi-national corporate entities, and advancements in health care are just a few examples of areas where the law has adapted in recent years.

Challenging – Legal problems are real “cases or controversies.” Rarely are there quick or easy answers. Examination of legal problems allow students to see multiple perspectives and to research possible solutions. As opposed to bland recitations of fact, legal cases allow students to apply critical thinking and problem solving skills to real life situations.

In a global age with an expectation of “global citizenship”, it is not enough to simply focus on our own laws and legal processes. Now more than ever, it is important for students to be exposed to laws, legal processes, and legal customs elsewhere in the world. Law-related education can expose students to 3 additional aspects of law:

Comparative Law: Law reflects the collective values of a people while directing their individual lives. A cross-cultural examination of law may uncover links between the rules that a society has enacted and the values that it holds. A comparative look at law can help in understanding the vision of what is “just” and “good” in a society and how rules promote that vision.

International Law: The laws, treaties, and agreements formulated to regulate the behavior of one nation or people to another provide for interesting case studies for multi-national interaction. In a larger sense, these laws and agreements attempt to formulate a grand vision for a global community. Often these attempts fail and become mired in legal minutia. However, the processes by which the agreements and laws are negotiated reveal much about international relations.

“Exporting Democracy”: Following the break-up of colonial regimes in the 1950’s and 1960’s and again with the collapse of Soviet domination in the 1980’s and 1990’s, new constitutions, new laws, and new legal processes were put in place in attempt to jumpstart democracy. In many instances, the transplantation of democracy to fertile soil was successful. Often, in these cases, the promulgation of a new constitution and the creation of codes of law were aided by skilled American jurists and scholars. In other circumstances, democracy has not fully taken root. These failed attempts most often reveal the imposition of a legal system rather than a nurturing of a homegrown version that places a premium on the realities, history, and culture of each place. No matter the degree of success, each attempt to “export democracy” is a fascinating legal case study.

Whether the focus is at home or abroad, ultimately, law-related education strives to help all students understand their role in a pluralistic, democratic, law-based society. It promotes an understanding that the law is not something abstract, distant and restrictive but rather that it pervades their lives and is potentially liberating and empowering.

Law is the language of liberty. To preserve the values of our nation and to come closer to the ideals upon which this nation was formed, it is crucial that citizens, young and old, understand the law, master basic legal skills, and acquire the habits of mind that realize, in the words of John Locke, "Wherever law ends, tyranny begins."¹ Shakespeare captured its essence: "Let's kill all the lawyers" and let anarchy reign. For the sake of our democracy, perhaps we better rethink the death sentence for lawyers.

"Let every lover of liberty, every well-wisher to his posterity, swear by the blood of the revolution never to violate, in the least particular, the laws of the country and never to tolerate their violation by others. As the patriots of '76 did to the support of the declaration of independence, so to the support of the constitution and laws, let every American pledge his life, his prosperity and his sacred honor. Let every man remember that to violate the laws is to trample on the blood of his fathers and to tear the charter of his own and his children's liberty. Let reverence for the laws be breathed by every American mother to the lisping babe that prattles on her lap. Let it be taught in schools, in seminaries, and in colleges. Let it be preached from the pulpit, proclaimed in the legislative halls, and enforced in courts of justice. In short, let it become the political religion of the nation." --Abraham Lincoln⁶

¹ Shakespeare, William. Henry VI, Part II, Act IV, Scene II

² de Tocqueville, Alexis. Democracy in America. Volume I, Chapter XV

³ As defined by the Law-Related Education Act of 1978

⁴ Freund, Paul A., "Law in the Schools: Goals and Methods", Social Education, May 1973, pp. 363-367.

⁵ Locke, John. Two Treatises of Civil Government. 1690

⁶ Lincoln, Abraham, "The Perpetuation of Our Political Institutions", Address before the Young Men's Lyceum of Springfield, Illinois. January 27, 1838.

John Wheeler is the Director for The Iowa State Bar Association Center for Law & Civic Education. In this capacity, he serves as the state Law-Related Education coordinator for the National Youth for Justice program. John consults with law-related and civic organizations world-wide on a variety of programs and projects, including mock trial, civic education curriculum, and the use of legal professionals in K-12 education. John is currently the vice-president of the Iowa Council for the Social Studies.