

1985

Virtues and Vices in Practical Legal Education: Address Given on the Occasion of the 1985 Commencement of the Dickinson School of Law

Charles A. Morrison Q.C.

Follow this and additional works at: <http://elibrary.law.psu.edu/psilr>

 Part of the [International Law Commons](#), [Legal Education Commons](#), [Legal History Commons](#), and the [Legal Profession Commons](#)

Recommended Citation

Morrison, Charles A. Q.C. (1985) "Virtues and Vices in Practical Legal Education: Address Given on the Occasion of the 1985 Commencement of the Dickinson School of Law," *Penn State International Law Review*: Vol. 4: No. 1, Article 2.
Available at: <http://elibrary.law.psu.edu/psilr/vol4/iss1/2>

This Article is brought to you for free and open access by Penn State Law eLibrary. It has been accepted for inclusion in Penn State International Law Review by an authorized administrator of Penn State Law eLibrary. For more information, please contact ram6023@psu.edu.

Virtues and Vices in Practical Legal Education

Address Given on the Occasion of the 1985 Commencement of the Dickinson School of Law

Charles A. Morrison, Q.C.

Foreword by Dean William L. Wilks

For many reasons but in part because of technological changes of fantastic variety in communications and transportation, dramatic political and social changes around the world have forced upon all peoples and nations new relationships, tensions and interdependencies. As we are drawn together geographically and economically, the lawyer is inevitably challenged to develop an understanding of the legal systems of our political and economic friends and foes. The growing interest in international law demonstrated by law students and the practicing bar is, therefore, not unexpected and is indeed necessary. It is essential that the lawyers of today and tomorrow be educated in the law of other nations to understand the underlying basis for and present operation of different legal systems and their impact upon our own interest.

In recognition of the internationalization of the law practice and legal education, The Dickinson School of Law took the occasion of its 1985 commencement ceremony to honor four distinguished lawyers, scholars and educators from friendly foreign powers. Those receiving honorary degrees were Dr. John Brierley, professor and former dean at McGill University School of Law, Dr. Georgio Gaja, professor and former dean of the School of Law of the University of Florence and the Honorable Doo-hee Kim of the law faculty and now president of Cheju University. In addition, we honored and were honored by the presence of Charles A. Morrison who delivered the commencement address.

The training of barristers for high British courts and the courts of other Commonwealth nations is the charge of the Inns of Court School of Law, Gray's Inn, London. For sixteen years and until No-

vember, 1984, this important school was directed by the dean of its faculty, Charles A. Morrison, Q.C. Dean Morrison is a graduate of the University of Aberdeen and of Christ Church College, Oxford. At Oxford he earned both his B.A. and M.A. in Law. Dean Morrison is a member of the Inner Temple and served as Master of the Bench at that Inn. He has been a teacher of law since 1953 and a distinguished writer, lecturer and legal commentator for decades. At the moment Dean Morrison is serving as Director of the Post Graduate Practical Law Course at the National University of Singapore.

It is with great pleasure that we may now read the words delivered by Dean Morrison at the commencement ceremony at Dickinson. His philosophy of lawyering is appropriate reading for attorneys on both sides of the shrinking Atlantic. His remarks are erudite, enlightening and entertaining. We are grateful for this contribution to international legal literature.

*William L. Wilks, Dean
Dickinson School of Law*

Address of Dean Morrison

We assemble here today to mark, with congratulation and rejoicing, a memorable day in your lives, a day which allows you to step into the real world and assume a large responsibility for your own affairs, free of tutelage. It is a time for looking forward and for looking back. These are happy days for you, your teachers, and, let us not forget, for your families. We tend, in our days of youthful pride, to think we are entirely self-made, and indeed the decisions which you have taken to work and strive in your chosen direction have normally been yours, with or without advice. But as John Donne said: No man is an island, entire of itself. Every man is a piece of the Continent, a part of the main, and we should not forget at this culmination of your studies that, more often than we give them credit, our parents have guided us, motivated us, grieved for us in our disasters, rejoiced with and for us in our triumphs, and in the background provided, as fully they could, the emotional and material stability that makes a professional and intellectual life possible. This is parents' day as well as graduates' day, and they are entitled to express now and treasure up for the future every surge of pride and emotion they feel as you step forward to receive your diplomas.

This, too, is a day in which the Dean and Faculty may take pride. The Dickinson School of Law now sends you out with the fullest preparation and training it can provide, having expended their most careful thought and experience in devising a program that will

best fit you for a life in the law. Coming, as I do, from a different background and jurisdiction, I have been immensely impressed by the range and excellence of your training, and I have looked with envy and admiration at the program which your Dean and Faculty have created to produce what I believe to be one of the most imaginative and creative law school programs available anywhere in the field of practical legal education.

You are now entering a profession, with all the obligations which a profession places on you — obligations not only to display high technical skill and proficiency and special knowledge in your tasks, but also to exercise the highest degree of judgment and conduct. In the end the client will employ you not only for your technical skill, but above all for your wise judgment applied to his affairs. And the professional is distinguished from humbler forms of occupation in having frequently to face ethical dilemmas, in which he must adhere to the highest standards of conduct.

You will look back to a period of happy and successful study, punctuated by the pain of examinations. I am happy to report to you from common experience that your future recollection of your unadulterated joy here will increase as the present memory of the pain recedes. I am unhappy to report to you, however, that when, after such an occasion as this, I resolved never voluntarily to submit myself to another examination, I found that life held many other less obvious, less formal, more subtle forms of examination by which we are judged.

Education, it has been said, is what remains after you have forgotten all you have ever learned. It is what resides in the tissues and channels of your mind and muscles and character — the permanent acquisition of attitudes and skills and values. Information grows outdated and the rules of law fly quicker than the layman thinks, but what matters is the feel for legal and factual situations you have acquired, the intuition that tells you that some proposed rule or solution or action is right or wrong, and the confidence to back what your intuition and judgment have told you. These mark the educated lawyer who is not a slave to detail. I am sure that the nature and quality of your training here will send you out with that feel and intuition for situations, as well as with that master of rules and procedures which must be the foundation of your judgmental skills.

But that is not the only permanent acquisition you will have made. Treasure the friendships you have formed here. The ways of you and your friends may now part, but let it not be said, as the Greek poet said:

How oft, alas, from sight and speech removed
The Friendship passes with the Friend we loved.

Rather let the words of the English poet remain with you:

From quiet homes and first beginning
Out to the undiscovered ends,
There's nothing worth the wear of winning
But laughter and the love of friends.

For those of us who must toil in a less caring, more demanding, world than the poet's, the sentiment may be slightly overstated, but it may provide a useful antidote to daily woes and strife, and may prove of as much value to you in staving off calamities of health and spirit as jogging or Zen Buddhism.

I feel little qualified to urge you into any particular mode of conduct or to deliver words of wisdom that would be relevant to the American legal scene. I need only remind you that your graduation here and your subsequent admission to the Bar will place you in a privileged position in society, with the opportunity to acquire wealth and status, and often political and community leadership, with power always to do good or ill, to serve justice or less worthy causes, each night to sleep well or badly, and in the end to count honestly a life that has achieved something towards the advancement of justice and the peace and happiness of your fellowman. As you step out on the highway of life, it is worth remembering that the quality of life we lead and the sum-total of our achievements as human beings are elements to be considered when we measure the success of a life.

When in due course you are among the leaders of your generation, you may be in a position to express views on and to influence the direction that the legal profession and legal education are taking. When that time comes you will draw on your own experience and may cast a glance at how things are done elsewhere.

It is in the light of that approach that I will venture to say something about the training of the English Barrister. The more I hear and see of legal education in different parts of the common law world, the more I believe we are gradually coming together on certain lines. Perhaps one of the first observations of interest that I can make is that the impetus for the reform of English legal education in a practical direction came very largely from the judges. In 1292, two hundred years before you-know-who spied an empty continent waiting to be populated by lawyers, King Edward I gave the royal judges the right to choose those fittest and most apt by their learning and skill (and those only) to appear before them to argue cases on behalf of others. As a result, four Inns of Court, constituting a kind of common law university, outside Oxford and Cambridge where Roman and Canon Law were studied, grew up in the fourteenth and fifteenth centuries. Eventually the judges delegated to the Inns-their

right to admit persons to the Bar. The circle was completed, however, in 1852 when the Inns formed a Council of Legal Education composed of judges, and other representatives of the Inns, and later also of the practicing Bar, to take over the conduct of legal education.

It was the judges on the Council of Legal Education who gave the impetus and support for reform. Changes in the law in the 1960's had generated much new civil and small matrimonial work, and the judges saw coming before them the younger products of the system of Bar education, and found them wanting. Bar education, the Bar examination, and even pupillage (a one-year apprenticeship) were widely regarded as having broken down. In 1968 the process of reforming these began, and has continued to the present day. In 1971, a watershed year for the whole of legal education in England, there was published the Omrod Report on Legal Education, which has been influential in many common law jurisdictions. It supported, adopted and extended the reforms achieved by the Bar between 1968 and 1971 and generalized them in several ways, recommending a three-tier system of education:

(1) The academic stage, completed by a three-year law degree taken in a law school of a university or polytechnic; (2) The vocational or professional stage, completed by a one-year period in a professional law school (i.e., one organized and conducted by the profession — the Inns of Court School of Law for barristers, and the College of Law for solicitors). At the end of the one year, students have to pass the professional examination ("Bar Examination" or "Solicitors' Examination"); (3) A period of apprenticeship, called pupillage for barristers, and articulated clerkship for solicitors, the period being one year for barristers and two years for solicitors. The barrister will therefore expect to spend 5 years in legal studies, and the solicitor 6 years, before being qualified to practice on his own.

In the Academic stage the student acquires his knowledge of the legal and judicial system, of the rules, concepts and sources of law and develops and sharpens his power of analysis. In the Vocational stage he must add to these the skills and techniques of the practitioner. We do not now assume that the possession of a law degree or even the passing of a Bar examination adequately prepares a lawyer for the practice of the law. The Vocational stage will therefore concentrate on teaching him in a practical way how a barrister approaches problems in the main fields of law. It will also try to ensure that he acquires a thorough understanding of procedure and evidence, and when other elective legal subjects are studied, (chosen from the subjects he is most likely to meet in the first years of prac-

tice) there will be throughout an emphasis on acquiring the skills and techniques, the know-how, of the practitioner. He must learn how to handle facts as well as law, and to ask himself, no matter how sophisticated the legal arguments may be, "can this case be made to stand on its own (factual) feet in court?" He will also study some matters incidental to these, e.g., some elementary knowledge of Forensic Science and Medicine, and the ability to read and understand corporate accounts.

But that is only half his training, the other half will be devoted to Advocacy, and the learning and practicing of trial court skills, and the precise drafting of various documents. The trial skills will be in the area of simulated court problems involving not full scale mock trials, but selected typical skills of which the barrister will be required to be the master in his first few years of practice. Such trial matters will be demonstrated in action by experienced judges and counsel, and students in classes of five or six with a practicing barrister as teacher will then practice the skills they have seen demonstrated. They will also receive lectures in Advocacy from leading members of the Bar.

As I see it, such developments towards the practical training of the lawyer constitute a significant advance in legal education. Yet there are two matters which I believe we should keep in mind as possible danger areas in the most beneficial form of training.

The first is that the more proficient we manage to make our students, the more young lawyers, and perhaps their teachers, may come to believe that proficiency, high technical skill, the efficient dispatch of business, are the touchstones of good lawyer-like qualities. Heaven forbid that we should turn out mere technocrats. Technocrats we must produce, and we as teachers should not easily be forgiven if the young lawyer is not fitted for the work he holds himself out to practice. The public has a right to expect that a high standard of competence has been inculcated into the law school product even at the moment of graduation. High proficiency, though the base rock of practical training, may not be enough. The danger I see is that there may be a tendency to enshrine special skills, techniques and procedures for which we have developed successful teaching methods. I am thinking particularly of rules of evidence and procedure. In England the separation of university and professional law schools has much to recommend it, but the fact that English universities are not generally concerned with the teaching of procedure, while the professional law schools are concentrating on effectively teaching the use and manipulation of present rules, leaves a dangerous gap regarding the critical evaluation of these rules. The American law schools and universities have a better opportunity of avoiding the danger that we

may entrench ourselves as the skilled interpreters, and the protectors and guardians, of the status quo.

The second area of danger is that our technical excellence may tempt us occasionally to an impatient disregard of standards of conduct. The more expert we become, the more we must take care to use our expertise wisely. I must immediately say that I believe more high quality thinking and writing on legal ethical problems is being done in the United States than anywhere else in the common law world, and your experience may lead the way to sound practice not only in the traditional one-to-one relationship of lawyer and individual client, but also in the more complex problems arising from a continuing relationship between a law firm and corporate clients. Nevertheless, I shall address myself to ethical problems in the trial scene and the adversary system, as litigation presents the public face of justice and of the legal profession. It remains the prototype of legal work because the enforcement of rights and the protection of society's values lie ultimately in the courts. There, too, are submitted the emerging problems of maladjustment in society.

The United States is well ahead of England in the public discussion of professional legal ethics, but I confess to disappointment when I read the following words:

We can have a system that does not charge user fees, lets everyone play, seeks both law and common justice, and is subject to few inhibitions in style. We can also have a system in which a trial is a serious search for truth or at least a ceremony whose essential virtue is solemnity. But we probably cannot have both. So long as the advocate in the American system is supposed to be at once a champion in forensic roughhouse and a guardian in the temple of justice, he can fulfill his responsibility only if he combines extraordinary technical skill with an unusually disciplined sense of propriety.

That seems, said the writer, to be asking too much of any profession.

I do not believe the choice before us as advocates is to be either streetfighters, full of exploitive cunning and aggression, or enfeebled, uncommitted officers in the temple of justice. There must be a reconciliation of our various obligations to client and justice and the integrity of the legal system — a golden mean that preserves solemnity and dignity in the courts where matters of great moment in the lives of the parties or the accused are being determined, we hope rationally and dispassionately.

A Code of Professional Responsibility may provide a guide for judging the rightness of our conduct, but it is for the most part a set of minimum standards, perhaps like the rules of criminal law. It may

not take sufficient account of modern problems of corporate practice; it may leave disturbing gaps and fail to guide us or indicate alternative courses of action when we most need guidance.

But if it is deficient, what else is there? There remains the field of positive personal moral standards. The participants in a Conference of Legal Ethics in 1973, after wide-ranging discussion, came back to broad concepts such as "civility," conduct being "ethically pragmatic" or that of a "decent human being".

That conclusion would find favor amongst English judges and barristers. Ethical problems have not been at the forefront of our thinking until recently, though we now have a published Code of Conduct. The English Bar had the advantage of being a highly-educated, closely-knit, homogeneous group of practitioners drawn mainly at one time from the public schools and Oxford and Cambridge, practicing, lunching and dining together in the Inns of Court, a compact area of London, and in close bonds of trust, respect and familiarity with the judges who had emerged after twenty or thirty years of practice from the ranks of the most successful barristers. Even only three or four years ago, a Court of Appeal judge could say to graduate students commencing their Vocational Year of studies — and be well-understood when saying it — "the essential thing is to behave like a gentleman; if you do that you will not go far wrong." But since World War II the Bar has been drawn from all ranks of society and all universities and polytechnics. The consequence is that common assumptions about standards of conduct are breaking down, and with professional disciplinary powers now having to be more visibly exercised in increasingly complicated ethical situations, the English Bar has begun to teach ethics in a practical way, buttressing what the bar student takes in by osmosis while dining in the Inns, and what his pupil-master instills in him during pupillage.

From mid-Victorian times to World War I, the English judiciary and Bar laid the foundations of the present English common law, and its trial procedure and advocacy. 1880 to 1914 was the golden age of the great trial advocate. At that time, too, the ethical values of the English Bar were more clearly established. I should find it hard to produce chapter and verse for this thesis, if challenged, but I believe those ethical values came not only from a class consciousness, but also from the fact that barristers and judges were steeped in the classical learning, literature, history and philosophy of Greece and Rome. Latin and Greek were the daily food in the public schools, and I believe that the school-masters passed on to their charges a set of beliefs derived from classical studies. Many of the judges even down to the present-day members of the House of Lords, did not study law at university, but subjects such as History, Mathematics,

Chemistry and most of all, Classical Literature.

It is my belief also that they imbibed much from Aristotle's Nichomachean Ethics — a very practical set of ethical guidelines and pre-Christian values, which perhaps chimed more easily with the holding of an empire and the expanding world of business and law. Aristotle's discussion does not aim at theoretical or intellectual notions but, importantly for us in our modern situation, allows for worldly advancement, for proper ambition and a due perception of one's own merits, for the making of money and the seeking of honor and power.

Aristotle would have taught the fledgling barrister something about justice and equity, and other concepts such as consent, voluntariness — not as jurisprudential concepts but as stars to steer by. "Justice," he said, "was often regarded as the sovereign virtue more wonderful than evening or morning star." Quoting a proverb he noted, "all virtue is summed up in dealing justly." Justice is perfect because it practices perfect virtue.

Aristotle also discussed virtue and happiness. "We do not possess virtue," he said, "we exercise it." Happiness is an activity in accordance with virtue. "In doing well," he said "the happy man will of necessity *do*. Just as at the Olympic Games it is not the best-looking or strongest men present who are crowned with victory, but competitors — the successful competitors — so in the arena of human life the honors and rewards fall to those who *show* their good qualities *in action*." For him, then, cloistered virtues were of limited value. "The quality of life," he continued, "is determined by its activities." Our actions determine our dispositions. Moral goodness is the child of habit, and it is the repeated performance of just and temperate actions that produces virtue. Just as it is by habituating ourselves to making light of alarming situations and to confronting them that we become brave, so it is in the course of our dealings with our fellow-man that we become just or unjust — a statement of the James-Lange theory of emotions made so many centuries ago!

According to Aristotle, the good man chooses the mean in action and in feelings. Too much and too little alike destroy perfection, while the mean preserves it. He examines excesses and deficiencies in courage, honor, ambition, anger, truthfulness, friendliness, wit, attitudes to money, liberality, meanness, magnificence, charity, the giving and receiving of favors. He advises that you won't have money unless you take the trouble to have it. But being virtuous is hard, he tells us, since finding the middle point is never easy.

But it was when Aristotle came to describe his ideal or superior man (some say his superhuman man) that the public schoolboy would have been called on to consider the qualities of a gentleman.

The superior man is ready to help others, but is reluctant to ask help for himself. He has justifiable pride in his own merits, and shows a greatness of soul. He has the right attitude to honor and dishonor and "while it is true that honor is the main theatre of the great man's activities, still he will also deal in the right spirit with riches, power and every good and bad fortune that may befall him. And when he meets with good fortune he will not be overjoyed, nor will he be excessively depressed when he meets with bad." Honor is the chief of external goods, and while power and riches are desirable, it is for the sake of the honor that surrounds them. The superior man does not assume airs in dealing with humbler people. He is open in his likes and dislikes, and cares more for truth than what people think. He is straightforward in word and deed. He lives his own life, uninfluenced by anyone except perhaps a friend. He does not nurse resentment, nor gossip about others or himself. He is not interested in seeking compliments for himself or in making uncomplimentary or recriminatory remarks against others — unless he means to be deliberately insulting. He has a proper ambition, manly and noble-hearted, but not an inordinate desire for honor. He has a calm and equable temperament, but may be angry on the right occasion, with the right people, and for the right length of time. Truthfulness has become second nature to him, and the sincere man will be truthful even in matters where nothing depends on his veracity and will be more careful of the truth when something does depend on it. He never hurries, and has a deep voice and a deliberate way of speaking.

You must make your own evaluation. I have omitted some alleged qualities that would not commend themselves to us now.

It was not only by Aristotle's notions of gentlemanly conduct that the young lawyers were influenced. There were those who came under the sway of a more idealist moral philosophy derived from the philosophers Kant and Hegel through the Oxford School of Philosophy headed by Thomas Hill Green. The philosopher and historian, R. G. Collingwood, wrote:

The real strength of the movement lay outside Oxford. The 'Greats' School was not meant as a training ground for professional scholars and philosophers; it was meant as a training for public life in the Church, at the Bar, in the Civil Service, and in Parliament. The school of Green sent out into public life a stream of ex-pupils who carried with them the conviction that philosophy, and in particular the philosophy they had learned at Oxford, was an important thing, and their vocation was to put it into practice Through this effect on the minds of its pupils, the philosophy of Green's school might be found from about 1880 to about 1910, penetrating and fertilizing every part of national life.

It is my belief that the English Bar was heavily influenced by such practical, non-intellectualized views of ordinary ethical obligations, and I hope that when we direct our efforts to the effective practical training of the modern lawyer, we shall not neglect the broader requirements of proper conduct, and should encourage our students, whether from such sources as I have mentioned or some other, to fill in gaps left by any published code of conduct by resorting to a standard of behaviour that governs a good human and professional life.

I revert finally to some words inscribed, says Aristotle, upon the temple of Delos:

Justice is loveliest, and health is best,
And sweetest to obtain is heart's desire.

May each one of you serve justice, keep in good health, and above all obtain sweet heart's desire in the law and in life.

