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INTERACTIONS OF LAW AND SCIENCE

HUBERT WINSTON SMITH*

Mr. Justice Holmes confessed, in one of his opinions, that in explaining the genesis of a rule of law "A page of history is worth a volume of logic." He did not make the error of confusing understanding with justification: for him the role of history was to illuminate the forward path of law rather than to enforce allegiance to an outworn creed.¹ With the penetrating discernment of a social prophet, he declared that "An ideal system of law would draw its postulates and its legislative justification from science."² Years later, in a memorable address to members of the New York Academy of Medicine, Mr. Justice Cardozo painted a bold and intriguing picture of "What Medicine Can Do for Law."³

No well-informed person contends that law can forsake the history of its own experiments and experiences; the real question is whether modern law and science can be brought into interactions which might spell a renaissance for both.

If science is the father of truth, then surely law must be its mother, ready to be impregnated with the vital germ, to nourish the embryo and bring it to birth.

In the age of Scientific Jurisprudence, law will gain new authority by deriving its rules and statutes from social data carefully collected; it will welcome illumination from cognate fields of learning to guide its formation of value judgments; historical rules will be put to the test of current utility; the pure introspectionist will have to move over for the inductive scholar and the functionalist; psychiatric criminology will lead to radical reform of our criminal law; behavior problems will be studied in law schools and a new type of lawyer will appear on the scene, trained to function as a social clinician. Law will aid men of

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¹ "I look forward to a time when the part played by history in the explanation of dogma shall be very small, and instead of ingenious research we shall spend our energy on a study of the ends sought to be attained and the reasons for desiring them." (An address, Jan. 8, 1897) *HARVARD LAW REVIEW* 10: 457.

² *Learning and Science* (speech at a dinner of the Harvard Law School Association in honor of Professor C. C. Langdell, June 25, 1895), *Speeches by Oliver Wendell Holmes*, Boston, Little, Brown & Co., 1918, at p. 68.

³ When he gave the address on Nov. 1, 1928, Justice Cardozo was still Chief Judge of the Court of Appeals of New York. Printed in *Law and Literature* (and other essays and addresses) by Benjamin N. Cardozo, New York, Harcourt, Brace and Co., Inc., 1931, at p. 70.

medicine and of science to extend the social effects of their discoveries, to eradicate certain diseases, to help cure the widespread disturbances of physical and mental health which now spring from socio-economic maladjustments. Between law and science the whole fabric of society may be spun anew.

These vital cooperations must be nurtured by joint programs of law schools and medical schools; by purposeful cooperation of physician and scientist with members of the bar and bench. In the medical college the old lectures in medical jurisprudence must give way to an audacious program in Legal, Social and Industrial Medicine dedicated to systematic study of socio-legal-economic-scientific problems.

The time is gone when law and science might continue to expand their authority while pursuing mainly a course of intellectual isolationism. The survival and security of man, and his hopes of happiness, depend upon the successful quest of social synthesis.

Every social order is made up of illuminators, prime movers and followers. The hope of a stable and equitable society depends upon proper relations between all three; the prospects of social evolution may well depend upon the readiness of the illuminators and prime movers to exercise their great powers as trustees for the benefit of all.

The challenge of our times is to secure maximum illumination in advance of action; to strengthen fact-finding mechanisms and to protect the purity of proof; to bridge the old gulf between illuminator and prime mover; to lay the ghosts of antipathy and aloofness which separate men and estrange them. Here, too, lies the challenge for those who would join the ranks of the army Mr. Justice Holmes saw assembling to march in the cause of Scientific Jurisprudence!

The law is both a reflective and a reflected science. If there is anything which needs constant renovation it is the law. It needs extrinsic criticism to rescue it from historical errors and the obsolescence brought by time. To maintain its authority in an age of skepticism and science, it must maintain communion with science and, indeed, with all of life.

It is true that the present Symposium covers but a limited segment of the problems in which science and law have a common stake. But for that no apology is required. No man can say what might be done to bring the learning and experience of one great discipline to the aid of another. Areas of common interest have first to be demarcated: juxtaposition of ideas leads to apposition and finally to active interaction. The present Symposium is devoted largely to problems of joint interest

to law and to medicine; the same rationale may as readily be applied to relations of law and other disciplines. The participating authors have spoken with such clarity and authority that their contributions have been simultaneously acceptable to a legal and a scientific journal. They have thus demonstrated the continuity of truth, and that law and science may both profit from concerted efforts to develop still broader forms of cooperation.

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