Document généré le 9 mai 2024 23:09

Les Cahiers de droit

Law and the Social Environment

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Volume 11, numéro 2, 1970

URI : https://id.erudit.org/iderudit/1004813ar
DOI : https://doi.org/10.7202/1004813ar

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Éditeur(s)

Faculté de droit de l'Université Laval

ISSN

0007-974X (imprimé)
1918-8218 (numérique)

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Citer cette note

Grosman, B. A. (1970). Law and the Social Environment. *Les Cahiers de droit*, *11*(2), 279–281. https://doi.org/10.7202/1004813ar

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Law and the Social Environment

Two aspects of this topic[1] have particular implications for law teachers : 1) Legal *education* and its relation to the social environment ; 2) Legal *research* and the social environment[2].

1) Legal Education

Traditionally legal education has been approached, in terms of a concentration of classroom interest and time, by an emphasis upon decision-making activity by the highest courts. Very little if any attention has been given to the broad base of decision-making which takes place in the lower courts or to day to day administrative decision which are neither reported nor recorded. Legal decision-making may be illustrated by a pyramid model. At the top of the pyramid is the decision-making by the Supreme Court of Canada, courts of Appeal and Superior courts. The very small apex reflects the number of people who are affected directly or even ultimately by these decisions. At the bottom of the pyramid you have the broad base of decision-making which affects a much larger number of individuals who come into contact with the law. In law teaching we have traditionally stressed the apex without a close examination of the social effect of the application of laws.

What I am speaking about is the implication of the implementation of laws. Who implements these laws ? What is the nature of the environment in which these laws are implemented ? What discretion is exercised by those who administer these laws ? Upon what criteria is that discretion exercised ? Who is affected and in what way ? For example, the police officer on the beat is *the* effective law-maker when *he* decides what laws will be enforced and what laws will remain unenforced, — the prosecutor when he decides that he will reduce the number of charges outstanding against the particular accused person or to withdraw charges.

A functional analysis must be performed of the operational realities of law in order to understand the key problem ; the effect of law upon the citizen, the norms that govern the behaviour of those charged with the implementation of laws, the political and social relations which affect the conduct of legal transactions in the widest sense, and not the least to understand the dimension of the drift away from enunciated legislative and judicial principles. This is what Ehrlich called, at the turn of the century, the "living law".

Il is necessary to examine law and its components from the perspective of administrative demands, professional allegiancies and reciprocal relationships, which determine conflict and compromise within the legal environment. It is by experience alone that information about law and the social environment is gained. Perception is fundamental to all inquiry.

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1 This paper was first delivered at the Association of Canadian Law Teachers Meeting, Winnipeg, June 10th, 1970.

2 See A. KAPLAN, *The Conduct of An Inquiry; methodology for Behavioral Science*, San Francisco Chandler, 1964, for a general discussion of research problems.

Should then students observe the law in action by taking the classroom into the streets, into the community ? But more than that, should law students examine the legal environment, not merely as passive observers even out in the field, but as participants, in order to feel the implications of the law in a particular environment. Active participation by second and third year students in community concerns should be encouraged beyond the context of often narrowly restricted student legal-aid programs. Students should be involved in assessing the legal problems in low-income communities, in channeling persons to welfare services, in educating them about their rights and about the potential answers for their social, economic and political needs. This does not mean that law students should be drumming up litigation and least of all litigating but it means that law students will intelligently empathize with the lot of the poor members of their community and direct their student energies to bettering the lot of these people through legitimate legal and institutional means.

Some of my colleagues moan that we have little time enough to teach basic professional competence, and that we, as teachers have no competence to run these suggested programs, that they involve too much time and too much trouble. They say that it is in the classrom and the case book that we have some expertise ; where there are proven benefits for legal education. But does the classroom and the case book offer an educational experience that awakens students to the role of law in our social environment ? Or does it close their minds to such considerations ? Law must be a mind-expanding experience for students and to be that it must free itself from a set of categories and priorities that have in the past conveniently avoided engagement with the realities of the law for the community.

Similarly, others may groan that we, as law teachers, are not charged with the role of political or social reformers, that we must maintain our credibility by maintaining impartiality. Around us there are critical social problems and urban ills, minority rights, Indians, a variety of discriminations particularly in legal services available to the rich compared to those available to the poor. Our present legal system is not adapted to find solutions to new demands — the adversary system and lengthy litigation will hardly solve these pressing social problems. Should then law professors give priority in their own research and teaching to these critical social problems and the potential for their solution within the system or by creating new avenues for social control. What should be the political role of the law teacher in encouraging law reform, in working to establish adequate legal services for the poor ? What should be the role of law teachers in examining the inadequacies and failures of the legal system and of the profession ? Can there be a marriage between research and social action ?

2) Legal Research and the Social Environment

This leads me directly to a consideration of the role of the law professor in legal research. Traditionally legal research has meant doctrinal research. Work which has taken place primarily in law libraries for it was considered that in the law library could be found all that was required for research — both the tools and the data.

There is a story of a drunkard searching under a street lamp for his house key which he had dropped some distance away. Asked why he didn't look where he had dropped it, he replied, "It's lighter here". Much of our direction in legal research and law reform is vitiated, in my opinion, by the principle of the drunkard's search. Usually there is more to be learned from a study of the disarry than is gained by intentionally disregarding it.

Legal research, particularly when restricted to law libraries often only deals within a context of "Justification" whereas empirical research may belong to a different context, that of discovery. There may be a need for a change of context, from justification to discovery.

It is less important to cherish our own territorial imperative about what constitutes law, legal education and legal research than to cherish every opportunity for growth in these areas. There is no need for law to tighten its immigration laws against behavioural aliens. Good institutions are not easily damaged.

We should no longer abdicate the probing of our own legal environment. We academic lawyers who understand the language and are part of the lawyer-club, should involve ourselves in our own back yards. If we do not accept this responsibility then we must move over for the sociologist. He will put us under his microscope without the same sense of historical and social context which a law-man brings to the investigation. A sociologist, however, may bring to his work, a perspective that displays little understanding or sympathy for the role of law or the lawyer in the social environment. There is however, the potential for fruitful union in interdisciplinary approaches.

What teaching and research require of law and the social environment is knowledge. Empirical inquiries will differentiate fact from fantasy. This will provide, I believe, teachers and students with experience in the real world.

A particular subjective view of "truth" will survive as long as we cloister ourselves, the law and students in a library and classroom alone. For when there is a call for social action as there is today, — then appropriate action by the law and lawyers will depend upon their experience with the legal and social environment. Only adequate empirical knowledge will provide a basis for successful remedial action to answer pressing social problems.

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