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A LAW TEACHER'S TOUR AROUND THE WORLD*

JEROME HALL**

In an age of accelerated change, uncertainty and frustration, a returning traveler may serve useful purposes. He can, e. g. correct certain myths regarding foreign peoples, provide first-hand information about international problems and suggest opportunities for effective participation in the contemporary drama of world affairs. It is with these hopes in mind that I should like to share with you some travel experiences and my reflections on them.

On May 18, 1954, never having previously been in an airplane in my life, I began a flight which continued, with various stop-overs, until I had circled the world sixteen months later. On that date in May, I flew from Indianapolis to San Francisco, and on May 21, from San Francisco to Honolulu. On the 26th I went on to Tokyo, where I lectured at the University of Tokyo Law School to several hundred students on recent American legal philosophy. Then I went to southern Japan and held a faculty conference on negligence and criminal liability and also lectured at Kyushu University in Fukuoka. Returning to Tokyo, I lectured on June 2 at Chuo University and Waseda University on some aspects of comparative law. The next day I left for Seoul, the capital of Korea, to begin the six weeks' tour of service which was my principal mission in the Far East.

The Koreans had been under Japanese dominion for thirty-five years during much of which time Syngman Rhee was an exile in the United States, getting his doctorate at Princeton and struggling to liberate his country. The Koreans achieved their independence as a result of the World War, and they want a legal system to supplant Japanese law. Moreover, under the Japanese regime, all the law teachers and almost the entire judiciary were Japanese. President Rhee believed that Korean officials and lawyers needed to engage in additional studies, and he requested our Department of State to assist them. It was in response to the latter's invitation that Robert Storey, a former President of the American Bar Association, and I lectured to judges, prosecutors, and other officials in Seoul in the summer of 1954. There were also lectures to hundreds of students; and we participated in other functions, met educators, editors and lawyers, and saw a great deal of the country.

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There was abundant evidence of the magnificent work of the United States' army in Korea. For example, American soldiers had built several hundred schools and hospitals there; and I shall never forget the public ceremony in connection with the dedication of a new school building. The entire local community had assembled, and a Korean girl of ten, representing the students, told of the destruction of their school and how they had seen American soldiers working hard and long, often in stormy weather, to build them a fine, new school. Among this ancient people, devoted to learning, there could be no surer way to their hearts. They are, moreover, one of the bravest peoples in the world. Several times during the World War practically the entire population in the way of the invaders left their homes as the Communist armies approached, and they travelled many miles in desperate circumstances which only an heroic people could withstand. Many of the leading citizens, including the father of the law professor who acted as my interpreter, were kidnapped and, I was informed, they have never been heard from after that.

For Americans, living in Korea is so austere that it is difficult even for the American Embassy to secure and retain an adequate staff. For example, in Seoul, a city of over a million in population, there are only two American, and no European, restaurants. Movies, usually years old, are shown in a quonset hut; and other familiar types of entertainment are practically non-existent. In addition, recurrent damage to the prestige of foreign service and consequent insecurity make it exceedingly difficult to render the quality of service that ought to be provided, not only in Korea but in many other countries. One resents incompetence in our Foreign Service, and one wonders why our ablest young men and women are not more frequently enlisted. Before joining the chorus of easy criticism, however, ask yourself whether you are willing to work in far-off countries under severe conditions, at small pay, and subject to the whims of political irresponsibles at home.

I left Korea July 16 for Tokyo where, this time, I lectured at the Institute of Comparative Law; then travelled over most of Japan, lecturing at the principal universities, and returned to Tokyo on August 2 when I addressed the Japan Bar Association. I cannot speak of Japanese scholarship in other fields, but in law it is very impressive. Many of the older legal scholars studied in Germany or France. They are familiar with the best continental legal thought and their interest in American law, going back to the early

years of this century when Terry and Wigmore taught there, was greatly accelerated by the American Occupation. I spent the greater part of an afternoon with the Japan Society of Criminal Law and have rarely participated in a more thoughtful discussion of difficult theoretical issues. Later, I saw the large shrine in Fukuoka, which honors Sugiwaka, a scholar. This counterpart of a great European cathedral symbolizes the traditional scale of values in the Far East. For many centuries the teacher and scholar held the position of highest prestige in Oriental society.

In Japan, a population of almost ninety million is crowded into a very small territory, only a fraction of which can be farmed. The Japanese Empire, including Manchuria, Korea, Formosa and many smaller islands, provided a solution to Japanese needs. Now, all these vast resources have been lost and the economic struggle is acute. It is easy to see what will not help Japanese recovery, e. g. the refusal of the Korean government to spend American money in Japan, even when that is the economically sound thing to do. It is not easy to place into active operation measures that will restore the industrial strength of the only nation in the vast populous stretches of Asia which has the potential to stem the tide of Communism there.

From Japan, I went to Formosa for a week's stay, and in addition to the lectures and meetings with legal scholars, I conferred with the leading officials of the country—extremely competent, well-educated men whose interest in the mainland of China was obvious and pathetic. Once again, as on other occasions in my tour of the Far East, but now more fully and definitely, I was able to understand the potentially vast significance of the communization of China whose ancient civilization permeates the cultural fabric of most Asiatic people. If the six hundred million Chinese are thoroughly organized and equipped with the tools of modern technology, who in Asia will be able to stand up to them? And if Asia falls under that harsh dominion, what will happen to the rest of the world? These problems challenge our competence to influence the course of history, especially the preservation and expansion of democratic institutions.

Next, I spent a week in the Philippine Islands where I did the usual lecturing at the principal universities in Manila. But my visit there was different from all the others because a group of Indiana University alumni were my hosts. Let me tell you something about them because there is an important point to be made.

In 1914, three young Filipinos decided to go to the United States to study law. They had heard — as who had not? — that there was racial prejudice in the United States and so they came here rather timidly and with apprehension. They went to a small college town in Indiana and, to come directly to the point, they were received as fellow human beings, fellow students and friends. They returned to their own country and, as the years passed, they rose in their profession until they reached the summit. Two of them became members of the Supreme Court, the third, a leading statesman; and they and their friends sent their children to study at Indiana University. I must leave to your imagination the generosity of their hospitality that would have pleased the head of a very large State. It was all but overwhelming. American decency and fair play have made the Filipinos self-governing devoted friends of the United States. When any charge of American "imperialism" was made in my presence in Asia, I did not need to argue the question. I simply pointed to the Philippine Islands.

From there I went to India where, for five weeks, I lectured at universities and meetings of Bar associations in Delhi, Calcutta, Madras, Mysore and Bangalore. India is a vast land of mystery, even though one quickly learns that not every Indian is a Yogi or an idealist; and it would take years to understand it. But a few things are so obvious that they are immediately understood. For example, I shall never forget the shock, in Calcutta, of seeing thousands of human beings clad in the barest minimum of clothing; thousands sleeping night after night on the sidewalks; beggars so numerous that they defy estimate, and it was literally impossible ever to leave my hotel without being immediately surrounded by dozens of them. It is difficult to communicate one's feelings at the spectacle of such wholesale human privation. It is one thing to read about such conditions; quite a different one to witness them. It was in India, not in Japan or Korea, that I was brought to a vivid realization of the crude biologic fact that for many millions of human beings, life is a daily battle to get enough food to keep body and soul together. I learned my lesson and when, later in Europe, people occasionally made unkind remarks about the United States, I was able to charge much of that to a very human reaction at the sight of a lush wasteful economy.

From India I went to England where I spent eight months as a Fulbright Lecturer, mostly at the University of London, but also at other universities in England and Ireland. During the long vaca-

tions I visited the Continent. In November, I spent three weeks lecturing at universities in Sweden, Denmark and Norway, countries which are a delight in every imaginable way. In April, 1955, I went to Tel-Aviv to participate in the commemoration of the 20th anniversary of the founding of the law school, to which ceremony scholars representing four countries had been invited. I found Israel a modern community, an outpost of Western civilization, with fine universities, housing, hospitals, courts and lawyers. I then spent five weeks in Italy, conferring with scholars in Rome, lecturing at the University of Perugia, and touring northern Italy. Then, I spent ten days in Hamburg, Berlin and Bremen, where the Auditors Association of the International Law Society of the Hague was holding an annual meeting.

In Europe, as well as in Japan and India, I was questioned about civil liberties in the United States. There was criticism of the unusual difficulties of entering the United States, especially the finger-printing requirement, and of the apparent unwillingness of lawyers to defend persons charged with serious political offenses. People in democratic countries do not expect civil liberties to thrive under dictatorship; but they are alarmed when they read reports indicating that civil freedom is being seriously undermined in the United States. I did what I could to remove the impression that a vociferous minority represented general opinion in this country and to demonstrate that persons charged with serious crimes were actually protected by all the common law safeguards and the Bill of Rights, and that appeals are much more frequent here than is possible elsewhere.

In Germany, the Association to which I lectured was given a very warm welcome because of its international role as an affiliate of the Hague Academy, and I met many officials, judges and businessmen, as well as many academic persons. There is an amazing economic revival in Hamburg, and Bremen is also thriving. In those cities, there is hardly any evidence of war-time destruction. The contrast in Berlin is very great. It was a shocking experience to see the formerly magnificent public buildings and churches in utter ruin, blackened by fire and shattered by bombs. The rubble is piled high even in central areas of the city and the former well-tended avenues and beautiful boulevards have a desolate appearance. The Germans I met seemed devoted to democratic ideals. But I learned that there are numerous die-hards and problematic segments among the youth who grew up in a Socialist society.

Later, in France, I saw tablets marking places where civilians had been shot by German soldiers. I was also reminded of the long intimate relations between France and pre-Communist Russia. The Russian aristocrats, the intellectuals and the scholars read French books, spoke the language fluently, employed French tutors, and visited France frequently.

If you add up all these factors, you begin to see the difficulties of foreign policy, just as when, in conversation with Filipinos, you learn of the ruthlessness of the Japanese army during the war, and realize that the rehabilitation of Japan is not an easy matter. Nor can we pierce the veil of the distant future and predict what the countries to which we have contributed billions will some day do. It is important to understand the complexities of these problems so that we can at least avoid obvious mistakes, e. g. of turning our backs on what seems to be French intransigence or becoming impatient with Eastern peoples who cannot forget the havoc wrought by Japanese soldiers as quickly as we can.

During the eight months I lived in Britain, I travelled a good deal not only in England but also in Scotland, Wales, and Ireland. A few years ago some American newspapers made the mistake of writing about the "eclipse" of British power. But I saw much which convinced me that the British are politically the ablest people in the world. They have a long history of brilliant achievement and a unity of thought regarding foreign affairs that makes them very influential. If we can contribute to them in some ways, they, in turn, have much to teach us.

I have reported some of my experiences and observations and I should like now to discuss the principal problems they suggest. First, there is the economic problem which, in its raw aspect, reveals a literal struggle to get enough food to survive, and that is being aggravated by the vastly accelerated increase in populations. When a man and his family are hungry, it is futile to lecture about the evils of Communism. We must help people to solve their economic problem and that, unfortunately, is much too complicated to be solved merely by giving them machines.

Besides, it is a truism that man does not live by bread alone, and we could make no greater mistake than to think that "hand-outs" provide the best solution or that they endear the wealthy donor to the impoverished recipients. Thus, second, we must do our best to understand the cultural life of foreign peoples and reveal our own to them. That is the purpose of "cultural exchange".

But the wider challenge is to our universities and to all thoughtful Americans to try to understand the world, not merely one-third of it, and to do their part as responsible persons, instead of assigning an impossible task to public officials.

Third, there are the problems of race and community. We hear a great deal about racial prejudice in this country, but the far more pervasive and enduring processes of acculturation and assimilation are not widely publicized. In India, millions of persons are "untouchables", and some highly educated members of these socially inferior castes told me that they cannot eat in certain places, their wives cannot patronize the same shops as the women of other castes, and there are many other discriminations which the laws cannot eliminate. In Japan, traditional ties are so strong that it is extremely difficult for a foreigner to be accepted into the family system. On the other hand, more than 30,000 American soldiers have married Japanese girls and the fluidity of class structure here and the tolerance of American society allow a place for all of them. I do not in the least minimize the gravity of discriminatory practices in this country. But it is of equal importance to know our good points, our areas of strength and potential contribution.

Many of the problems concerning race and community are products of history and culture. In times of stress we tend to identify with the primary group in which we grew up. We derive comfort from those early bonds, and when they are weakened, there is anxiety and even anomie, as the French sociologists put it. At the same time, the primary community seems to set barriers to the range of our capacity for identification and sympathy. Thus, there is tension between the old ties and the appeal of more inclusive communion. It is a principal function of education to lessen this tension so that people can live a healthy emotional life and at the same time forge the bonds of a wider community. Certainly, a traveler sees much that indicates the feasibility of this, e. g. he learns that he is closer mentally and spiritually to many persons across the seas than to some of his neighbors. For me, it was an exciting, wonderful experience to meet scholars far away across the oceans who, for many years, have specialized in jurisprudence and criminal law, and in other ways have lived the same kind of life (I almost said the very same life) that I have lived in the United States.

In sum, it seems to me that we represent the future as regards race relations, and that we have made great progress. While the

racial constitution of the United States creates serious tensions, it also places us in a strategic position which has many advantages. But we have not studied this problem sufficiently to make the best use of our assets as a multi-racial nation.

Fourth, there is the problem of leadership in a democracy. I have touched upon some of the disappointing aspects of our Foreign Service; but that is only a small fraction of a problem which permeates every phase of American life. The time has come, in my opinion, when we must enlist our best men and women in the public service if we are to survive as a great democracy. It is foolhardy to think we will meet the Communist challenge without doing the very best we can — not in the exceptional instance, but throughout the public service. The principal obstacle is indifference; and there also prevails a false egalitarianism, with the consequence that opportunity and voting for office are confused with the selection of experts. Here, again, it is relatively easy to recognize the need, but extremely difficult to make the necessary political reforms effective.

Fifth, there is the problem of civil liberties in the United States. To lose freedom at home while fighting dictatorship abroad would constitute a comedy of errors, did not the issues threaten tragic consequences for democratic society. In England, the Inns of Court foster such intimate associations that the Bar can protect lawyers who accept unpopular cases. Indeed, the British public has been educated to understand that barristers are required to defend anyone and that they discharge an essential function in the administration of justice that is different from, but no less important than, that of judge and jury. And newspaper editors there have been near enough to the continental dictatorships to realize that the freedom of newspapers is inextricably bound together with the freedom of the Bar and of the Universities. One of several lessons I draw is that professional persons, especially lawyers and newspapermen, should improve their organizations so that they can act vigorously to preserve freedom at home. In this way they can also make a major contribution to the success of American policy abroad.

Perhaps the most important thing I learned in my travels is that there actually is a universal human nature. I used to be somewhat doubtful of the reports of anthropologists who emphasized the differences, but I did credit much of their writing. Now, I know that their emphasis, at least, is faulty. In the elementary relationships,

e. g. in the family and as regards other simple values, the differences are negligible.

I can testify to that from countless observations. For example, I spoke to thousands of law students in many countries, and everywhere I heard the same sort of thoughtful questions and comments that I get from American students. Those students, including the Asiatic ones, even laughed at the same jokes, which are my stock in trade, that my own students seem to enjoy — and humor is supposed to be a special trait. Let me cite a specific experience that may seem more pertinent. In Hong Kong, a Chinese businessman, the father of two of my former students, pointed to his youngest child, a boy of sixteen, and said, "He is my seventh child. All the others have university degrees and some of them have graduate degrees. When I have given him the same opportunity, I shall have discharged my obligation to all my children." I could add many other examples if it were necessary, as I know it is not, to disabuse your minds of the myth that Eastern peoples are radically different from us.

Upon that foundation of common, simple values and aided by the resources of modern science and legal scholarship, the human drama takes on a new, heightened interest. In science and in law, the Western world is far in the lead. But morality is the most important of the three, and it would be presumptuous to imagine that we have anything in the sphere of ethics to teach Eastern peoples or that we live by a higher code of morals.

As a legal scholar, it is natural that I should focus my experience and the available resources for solving our problems upon the field of law. Let me conclude, therefore, by outlining some suggestions for world-wide cooperation among legal scholars. For the first time in history this has become feasible because of the airplane. It has become feasible because of the progress in rapid on-the-spot translation of foreign languages — witness the wonders of the linguists employed by the United Nations. The progress in the scientific study of law also makes the present time encouraging. The legal scholars of the world comprise a relatively small number of persons. Divided into groups, they could meet easily and frequently, not for the usual speeches and papers, but as specialists working on specific problems previously prepared in accordance with careful schedules. In this way, we could marshal the world's resources in the realm of law and the related disciplines.

There are, accordingly, some specific goals towards which

thoughtful Americans might well concentrate their efforts. The first would have as its objective the discovery of a modern *ius gentium*—the common law of all the leading cultures of the world.¹ Its attainment requires much more than technical consultation of legal experts. The collaboration of many non-legal scholars is essential. The cultural knowledge of law, in all its depth and inclusiveness, acquired by the full use of relevant science and social discipline, would need to be drawn upon to discover the common problems, the structures and functions of the various legal procedures and institutions, as well as the areas where improvements can be made.

Second, we need to formulate the soundest theories and the most feasible plans of research with a view to constructing a science of law. It would not be easy, but it is surely not impossible, to organize the world's creative legal scholars and allied experts into divisions of collaborative research so that important scientific studies could be carried on simultaneously in different countries. The mere bringing-together of these scholars would be enormously worthwhile. We may not look for, may not even want, "one world," especially if that implies the levelling of interesting differences. But just as physicists and biologists have thought universally for many years, so is it time now to construct one world of legal scientists.

Third, we need an American institute of law to act as the central clearing house and co-ordinator of the on-going researches in the *ius gentium* and in the science of law and also to give graduate instruction in the cultural study of law. We need an institute that could enlist the support of legal scholars everywhere, regardless of their academic affiliations. I hope it is not immodest to say that the United States is uniquely equipped to be of great service in the above areas provided thoughtful lay persons are willing to assist. Many of the most important advances in law, even in such technical areas as procedure, resulted from the pressures and participation of laymen. The kind of lawyers produced by the schools and the character and conduct of legal and related research are matters of public concern. Moreover, it is unlikely that marked progress will be made in these areas unless many thoughtful persons influence and assist the professionals.

Beyond the above special activities, there is the wider challenge to every educated American to develop his potentialities in ways

1. Cf. the writer's studies in Jurisprudence and Criminal Theory, Ch. 6 (1958).

that enable him to make a contribution to the values of democratic society in these perilous times. Many of the problems that confront us may never be solved to everybody's satisfaction. But it is part of the American faith to repudiate determinism and blind chance and to affirm the effectiveness of thoughtful, honest action. The ultimate goals are far off in a remote future, and no insurance company will underwrite the outcome. But we can be reasonably certain about some things, and I have touched upon what seems to me to be some feasible objectives. Educated men and women who study these problems, can strike out in the right directions — and add to the significance of their lives. They can help to determine what kind of new world will be born in this century.