

## On the study of law

*... an open letter to new undergraduate students to explain to them some of the hidden possibilities in what may come ...*

Dear Student,

Welcome to your legal studies. I thought it might be a good idea if I shared a short message with you about the law you are going to study and some important things which I think you might otherwise miss in the excitement and the stress of starting your studies.

You are at the beginning of a long road of legal study. You are probably looking three or four years into the future, to the end of your degree (which will probably seem a long way off at the moment) and thinking of that as being the end of your studies. But, in truth, you never stop studying law. No good lawyer ever stops studying it. No good judge ever stops uncovering new areas, or reconsidering old areas with new eyes. Academics devote their lives to the study and agony of law. And now it's your turn.

In a law degree we spend much of our time inching through law reports, decyphering statutes, and learning the language of law. But we must never lose sight of the factors which bring these laws into being, the vested interests which put those laws to work, and the winners and losers in the practice of the law. Never lose sight of the people involved in the machinations of the law, or the physical impact which law has on our world.

What is most important, in inhabiting the little compass of our lives, is to see how law affects each of us.

I am always moved by the words of Gussy Fink-Nottle in P.G. Wodehouse's novel *Very Good, Jeeves*, when presenting the prizes at Market Snodsbury Grammar School. He is called upon to present the spelling and dictation prize to P.K. Purvis. Having been unknowingly fortified with gin (so as to aid his wooing of Madeleine Bassett by impressing her with his public speaking at the prize-giving), he becomes somewhat lyrical. And so it is that he declares to the young spelling genius, with a faraway look in his eye: "It is a beautiful world, P.K. Purvis." You know, I think he has something there.

It is a beautiful world. It is a world full of possibility, pleasure, opportunity, and delight – particularly for you as you try to contain your excitement at starting your law degree at a new university, possibly in a new town, with new people. It is also a world full of darkness, pain, misery and suffering: any Coldplay song will tell you that. It is a world of chaos and of hazard: chaos in the sense that we never know what tomorrow brings, chaos in the sense that our world is full of billions of individuals going about their own random lives, chaos in the sense that the natural sciences would recognise in the structure of atoms. Anyone in New Orleans in 2005 will tell you that the world is chaotic, anyone who had their life washed away in the 2004 tsunami will tell you that

the world is chaotic, anyone struck down with an unexpected disease will tell you that the world is chaotic.

The law is one way in which human beings in liberal democracies attempt to impose order on the fundamental chaos of the world. Law is a bulwark against that chaos. It is a fundamental part of our communal psychological make-up, part of our fight against the fear of real anarchy, that we create law to give ourselves the feeling of order. So, instead of disorder, we comfort ourselves that we have law. That alone makes it worth studying. See, it's not just about textbooks and rules, is it?

So when we come to study law, it is against this background of chaos and complexity. I know this will make my colleagues shake their heads in a weary way and say: "I see Hudson has started to go in for Critical Realism". Well, maybe I have. Maybe what I want to say to any P.K. Purvis on starting a law degree is that it is important not only to learn the techniques of law, but also to have an eye to the world beyond the lecture theatre. It is a beautiful world and law is an important part of how human beings deal with it.

In studying law you will learn more about yourself than about the hundreds of cases you read (many of which will have been overruled in any event before you ever come to legal practice – if you ever do practise law that is). How you react to the ideas with which you are presented will quite probably become as much a part of you as any of those ideas themselves. How your mind digests information, which nuggets stay lodged in your brain and which tumble from your mind as soon as they are read, is a part of how you are. All of this is a part of how *you* function as a human being. Studying law is challenging for everyone who meets it at some point: how you cope with that challenge and discovering the techniques which your mind uses to overcome the difficulties are the most significant lessons you will learn at university.

So, you will study more than just law as you sit bent over those difficult books. You will also study yourself. Being a law student means spending a fair bit of time with yourself reading and, hopefully, thinking. Alternatively, it might be spent face-down in a textbook sleeping soundly as pools of dribble collect on the desk around you. (There is no more disquieting feeling that coming-to with a start in a busy library after half-an-hour's solid sleep.) You are on a journey within yourself, and it's important that you know that from the start so that you can spot the process when it begins. You will learn a lot about law, but you will also learn a tremendous amount about yourself.

At university the training wheels are off. No one is giving you homework or telling you off or organising all of your days. Rather, there are a number of lectures and seminars available to you – which your new community of scholars (your law school) will be annoyed if you choose to miss – but no-one will stand over your bed and tell you to get up, no-one will tell you what to eat, no-one will tell you when to do the work appropriate for your next class. Instead, you are an adult. You will talk about very adult things – how should the state deal with the family? when should a contract be valid? how should we regulate trade in the European Union? – and you will simply be expected to

have thought about it all in advance, to have read all the available literature and to have come to your own conclusions.

Not that dealing with adult things means that nothing is allowed to be fun anymore – it’s such a shame that so many students find it so difficult to laugh because they are so involved in trying to seem grown-up or to reinvent themselves now they are away from home. Oh and reinventing yourself is fun, isn’t it? Did you buy a new top for your first day at university? If not, did you at least spend a few minutes picking out your favourite top or deciding which jeans or shoes would be best for university? Even if you decided not to be cool, you made a decision to be the version of you that’s going to university. And then there’s the version of you that you share with people the first time they ask: “so, where were you before you came to uni?” It’s all about creating yourself.

University offers you the chance to become the person you really want to be. That’s a huge opportunity. You don’t have to conform to the programming you got in your childhood – you can become someone else or concentrate on the things you like most about your life. In the words of the French thinker Michel Foucault: you can develop your own legitimate strangeness. Become what you want to be, think what you want to think, and experience new things every day. Even just within the confines of your legal studies you get to decide the type of lawyer you want to be, assuming you decide that you want to be a lawyer at all (many don’t and good for them).

Personally, my two, principal legal interests seem to be very different. On the one hand is commercial equity (including banking law, trusts law and property law), while on the other hand is the law relating to the welfare state (housing law, access to social services, and so forth). What is most noticeable to me in comparing the two is the complexity which well-paid legal minds ladle over the made-up world of international finance, and the comparatively sparse intellectual treatment that is given in the average law library to disputes arising as to social and welfare rights by the many tribunals (rather than courts) which deal with them.

What do I mean?

Let me start with the first thing I said in that last paragraph which must have seemed odd. I said that the law of finance is “made up”. That’s right. It does not really exist. “Nonsense.” you say, “of course it exists, I can pick up books about it.” Ah yes, indeed, you can pick up books which suggest that it exists. But the thing that is discussed by banking law – i.e. money – does not really exist. There is no such thing as “money” at all. Banking law is primarily concerned with electronic bank accounts, promises to pay, letters of credit, cheques, and so on. All of these things are intangible. There is no money in banking practice, it’s all either computer records or bits of paper making promises to pay. High-street banks do deal with cash it’s true, but what is cash? It seems tangible enough. But look more closely at a British bank note.

On it is the legend “I promise to pay the bearer on demand the sum of [five] pounds”. Ever thought what that means? It’s a promise from the Chief Cashier

at the Bank of England under a picture of the Queen that, if you ever need *real* money, then the Queen will dig out five pound's worth of gold for you from the vaults. Until then we all accept that simply passing these bank notes and coins will be deemed to be as good as passing gold of that value. So, even British bank-notes are simply *promises* that the Bank of England will pay you money if you ever ask for it. The money itself does not exist tangibly. That money in France (except in a bureau de change) has no value at all.

So, all of banking is made up. But yet you cannot say that or the world will fall in around our ears. What would happen if we all stopped and thought: "hang on, none of the money exists, so no-one can buy anything, so no-one really owns anything, so I can take next door's Mercedes, and I should also get myself a gun to protect my CD collection ..." You see: chaos. It is only through the fact that we accept the viability of our financial systems that we can keep order. Law is a big part of this.

And yet lawyers huff and puff and produce miles of shelving containing thousands of books on subjects like banking. (I know, I have added to those shelves.) All of those books discussing something that does not really exist. So why do it? Well, as I said before, we do it because it appears to be important that all of this money keeps moving round and round, so that people stay in jobs, so that governments do not fall, and so that we can convince ourselves that we can control the chaos.

Compare that to the law dealing with the welfare state. There are comparatively few books on this subject. I think it is important that there are only a few books on this area compared to the shelf-miles dealing with commercial law. I think it is also significant that most of the cases to do with rights provided by the welfare state are decided not by judges but rather by tribunals where lawyers are discouraged from representing their clients at all. You see, even if you win in front of a tribunal, you are generally not entitled to recover the cost of hiring a lawyer nor can you get legal aid for proceedings in front of many such tribunals. It's different in front of a court. So, ordinary people are forced to represent themselves in front of these tribunals, unless they are sensible enough to belong to a trade union which will do it for them. It is important that some areas of law are dealt with by judges in courtrooms and other areas are delegated to tribunals without legally-qualified judges.

So how can we explain this? Well, it's all about money and power. People with money have power (and lawyers) to fight for what they want. No-one else does. It's mixed up with that chaos - the good and the bad, the rich and the poor, the powerful and the weak, the busy and the dead.

Does this matter? Yes, I think it does. The way in which law is put to work is all important. If law exists, it must exist outside books because it has a direct impact on the lives of ordinary people. But, here is the most important thing, just like money, *the law does not actually exist at all.*

Law only has any power because we all agree that it does. Our world is organised around law in liberal democracies. We believe in the rule of law: that is, we believe that no-one is above the law. So we think that law exists

because we can see its traces everywhere: people behaving in a particular way because they know there is law controlling their actions. I do not steal your pen, you do not murder my dog, she does not burn down the building, we pay to get on the bus, they buy their house by means of a deed of conveyance - all because we agree that there are laws which say that these things must be so.

The power of law is that despite it being intangible we all obey it (almost all of the time) throughout our whole lives. There may be occasions when ordinary people break the law – driving just a little over the speed limit, or perhaps once in a lifetime on a political demonstration – but these excesses are very, very rare compared to our obedience to the law for the vast majority of our lives. Even career criminals like habitual burglars both accept that the law will punish them if they are caught and also obey the rest of the law (where to park their car, how to create a contract, etc.) in the rest of their lives. So, we obey legal obligations because the law tells us that we should. There is a common understanding in society that the law must be obeyed. Even habitual protestors only protest against some laws some of the time. Law is very powerful because it compels our obedience, sometimes through its officers and sometimes simply through its ideological power.

We are like the characters in Beckett's *Waiting for Godot* who stand throughout the play waiting for someone they do not know, Godot. They cannot move from the place where they wait. The lives of those characters seem empty and absurd as they stand on that empty stage under a leaf-less, single tree waiting for someone who will not come. In a similar way, we all wait for Godot as we stand around waiting for the law's permission to move, agreeing on our legal conventions, without ever *seeing* this law that controls our lives. It is intangible and controlling at the same time – like the Godot who never comes even though we wait for him. Godot controls the two characters who wait for him because they dare not move in case he arrives in their absence. The law does not need to stand over us – we obey it anyway. If you, as a student of law, agree simply to wait for Godot in your legal studies, you will never see what is behind the law and it will never come to life for you.

Let it all come to life: that is where the beauty and the interest lie. Don't be content to sit quietly in your room trying to copy out your textbooks in your notes: work out what the effect of this decision is; read the case again and try and imagine the people involved and what drives them; or get out of your room and go and see some cases in court to watch the stress in the litigants' faces, to feel the tension in the room, or just to watch the dust motes twirl in the shafts of light. Feel the chaos of the lives which end up in court, the occasional dryness of legal submissions and the passion in a plea in mitigation in a criminal trial.

Go out and look for the real lives which are affected by the legal rules. With every case you read, consider who wins and who loses in the world generally. Every case not only decides a conflict between two litigants but it also sets a precedent for the rest of society. So, why did the judges decide as they did? Do you think they were aware of the broader impact of their decisions? Or were they all too aware of the ramifications and so showed themselves determined to reach a particular conclusion for some reason? And if so, why? Are you

comfortable with judges having this much uncontrollable power? Does the legal system provide sufficient checks and balances?

Remember all of this as you get lost in the detailed legal rules in those difficult books. Those rules come from somewhere and they impact on the real world simply because we say they do. It's part of the order we try to make amongst the chaos. It's a part of how you will come to know you a little better during your degree.

It is a beautiful and chaotic world, P.K. Purvis, a beautiful and chaotic world.

*Alastair Hudson*  
Professor of Equity & Law  
Profoundly moved, somewhere in Mile End  
London