ARCHITECT'S ARCHITECTURE VS. LAWYER'S LAW

Reprinted from the February, 1969 issue of ***Architectural Review.***

For the last two hundred years it has been customary to regard the philosophy of architecture as a branch of the philosophy of the "Fine Arts," or as part of that branch of philosophy known as "Aesthetics." Since there is no disputing that architecture is a "visual art," the advantages of studying its criteria with respect to other "visual arts," or with respect to some philosophical system which demonstrably underlies all forms of "art" (whether visual or otherwise), will be only too obvious. But the justification for basing a philosophy of architecture *exclusively* on such philosophies is by no means self-evident, and may indeed be questioned on three major grounds.

Firstly, the notion that architecture is akin to painting and sculpture is based on certain methods of training which were current in Italy in the early sixteenth century; but even if these methods were valid at the Renaissance (which is by no means certain) it does not necessarily follow that they must be valid today. Secondly, it is clear that, whilst a number of distinguished philosophers have regarded "Aesthetics" as a key to the understanding of all the "Fine Arts," this concept pre-supposes the notion that all activities so classified have certain fundamental qualities in common; for there can be little point in discussing *differentiae* until the existence of the *genus* has been demonstrated. Thirdly, whatever may have been the "artistic" condition of architectural practice before the mid-eighteenth century, it is now undisputably a *profession*; thus it would seem wise to examine whether or not its principles can be deducible by analogy with other professions, such as medicine and law, before regarding the practice of architecture as professionally *sui generis* or artistically unique.

The first two notions, which imply that architecture, sculpture and painting should be considered as belonging philosophically to the same *genus*, and that an understanding of "Aesthetics" provides the philosophical apparatus for comprehending all the "Fine Arts," can be disputed on a number of grounds. In the present context a reference to two authorities will suffice. The first is E. L. Boullée, who complained: "Oh how preferable is the fortune of painters and writers; free and without any kind of dependence, they can choose all their subjects and follow the impulse of their genius. Their reputations depend upon them alone."[1] The second is professor W. E. Kennick, whose essay "Does Traditional Aesthetics Rest on a Mistake?", published in the *Collected Papers on Aesthetics* edited by Fr. Cyril Barrett, suggests that the concept of "Aesthetics" is devoid of all philosophical reality. Undoubtedly, the traditional "Aesthetic" basis of architectural philosophy has certain practical values; but it seems to me that the traditional emphasis on the visual or emotional qualities of architecture has been due to fortuitous historical and philosophical causes which have given "Aesthetic" theories an unmerited preponderance. The purpose of this study is certainly *not* to demonstrate the total irrelevance of this traditional "Aesthetic" basis, but simply to question its total adequacy. In other words, it is an attempt to correct a distortion and disequilibrium of method which has vitiated much which now passes for architectural criticism and has caused architectural philosophy (or "architectural theory" as it is sometimes called) to fall into unmerited disrepute.

At the same time, it should be pointed out that, paradoxically, students of law show considerably more antipathy toward the study of jurisprudence than architectural students show towards the philosophy of architecture; so much so that the Faculties of Law of French speaking universities have virtually abandoned all attempts to include the philosophy of law in their curricula.[2] Similarly, in medical schools, the philosophy of medicine is virtually non-existant as an academic discipline. But it can, I think, be shown that this undervaluation on the part of the students of law and medicine (as compared with students of architecture) is explicable in terms of the peculiarities of their chosen professions. The Anglo-American system of law is such that students enter the legal profession with the primary intention of becoming *advocates*. Doubtless many of them are optimistic enough to hope that one day they will achieve such eminence as to be called upon to *judge*: but it is only natural that their main academic interest, as students, should be with the material and techniques of *litigation*, and only the most exceptional students can be expected to have the perspicacity to perceive the importance of philosophical problems which will have little practical relevance for them before they are either elected to the Legislature or promoted to the Bench.

Similarly, medical students have every incentive to devote all their intellectual energies to the materials and techniques of healing, without pondering about the *condition humaine* of those they will heal. The complex and challenging

scientific problems concerning the prolongation of human life must seem of more pertinence to the medical students than any ethical problems concerning the extent to which such prolongation may or may not increase the happiness of those involved. Hence, the average medical student is as little concerned with the implications of condemning men to live as is the law student with the implications of condemning men to die.

Architectural students sometimes show impatience with the philosophical problem related to their art, but for very different reasons. Their main concern is with the absorbing creative processes of architectural design, and with the vast mass of technological and sociological information required to achieve it effectively; yet they are well aware of the philosophical implications of criticism, since in many schools of architecture those who teach design are in fact called "critics." But students, by virtue of their youthful inexperience, inevitably tend to see the present as the beginning of the future rather than as a transitional period constituting a prolongation of the past. This does not mean that a philosophy of architecture will only be acceptable to them in so far as they can be made to perceive its immediate relevance to their own current creative activities. But it does mean that any attempt to convey that philosophy by reference solely to the past is fraught with peculiar difficulties unknown to the teacher of the Common Law, since (as all law students are well aware) the study of law and the practice of law are essentially, by their nature, *historical* disciplines, based on precedent and on statutes inacted in the past.

The literature devoted to the study of architecture as a profession is scarce. So far, only two standard works seem to have been published in English. The first, by Frank Jenkins, is entitled *Architect and Patron*, and is essentially a factual history. The second, Barrington Kaye's *The Development of the Architectural Profession in Britain*, is far more philosophical; but since the author is a sociologist, he bases his arguments on the general definition of a profession as "an occupation possessing a skilled intellectual technique, a voluntary association and a code of conduct." At first sight, the concept of "a code of conduct" might seem the obvious and facile link between the philosophy of architecture and the philosophy of law. But in fact this present enquiry is not in any way concerned with the social behaviour of architectural organizations, but rather with the problems of choice implicit in the term "skilled intellectual technique." This, of course, has little relevance to Dr. Kaye's thesis.

In order to explain what, in the design of buildings seems to indicate a real affinity between jurisprudence and the philosophy of architecture, I would suggest four headings. The first is the popular concept of "natural laws" as meaning the laws of inanimate nature. The second is the more accurate concept of "natural laws" as meaning the relationships between members of a civilized society. The third is the concept of "conventional law" as meaning obligations based on social convention.[3] The fourth is the concept of "judgement," as meaning evaluation based on explicable criteria. It will be apparent that, in Vitruvian terms, the first three correspond to *firmitas*, *utilitas* and *venustas* respectively; but such correspondence would be merely verbal and artificial unless it could be established that both jurisprudence and the philosophy of architecture have a common basis. I would suggest that they have, and that it is the notion that both professions presuppose "rules" of some sort or another.

The notion that law implies some sort of rule would seem so fundamental to the whole concept of jurisprudence as to be self-evident. Indeed, it might be argued that, in so far as the study of jurisprudence (in its contemporary English sense) originated in the mid-eighteenth century with Blackstone's lectures,[4] the idea of legal rules and the nature of legal rules is the whole basis of a philosophy of law. Yet Professor Hart devotes considerable space in *The Concept of Law* to what he terms "rule-scepticism,"[5] and this scepticism is of immense relevance to any study of the philosophy of modern architecture (which can also be regarded as originating in the mid-eighteenth century), since the conflict as to whether rules are or are not a fundamental aspect of architectural design has been a vital factor in the development of architectural thought. The number of books which, during the last two hundred years, have attempted to demonstrate that architects of the eras prior to 1750 achieved excellence by observing certain rules of proportion (thereby implying that similar rules might be applicable today) is considerable. Even Le Corbusier's *tracées regulateurs* and "Modulor" belong essentially to this tradition of thought. But when J. F. Blondel complained in the mid-eighteenth century that students were wilfully disregarding rules in an unscrupulous quest for originality,[6] he bore witness to the emergence of "rule-scepticism" which many architects today would consider the essential trait of modern architecture. Hence, until the nature of "rules" and "rule-scepticism" has been resolved with respect to both disciplines, there seems little point in enquiring why or how this scepticism arose in architecture, or in what manner any rules do or might still apply.

It is important to emphasize here the generic quality of the term "rule"; for, as John Austin implied in the first lecture of *The Province of Jurisprudence Determined*, a law is obviously some kind of rule, but all rules are not necessarily some kind of law. Thus in architecture, we may legitimately distinguish between those natural laws which affect *firmitas* and *utilitas*, and the possibility of another class of rule which may or may not affect *venustas*, but which is certainly the only class of rule which the majority of architectural theorists from 1750 onward have considered to be the domain of architectural philosophy.

This latter type of rule can best be understood in the context of those which Professor Hart discusses with respect to games. The whole essence of a game is that despite certain intrinsic and widely recognized values, its rules are essentially *arbitrary* and a matter of *convention*. Whether or not it is meaningful to say that someone plays tennis "beautifully" (a semantic problem discussed by R. G. Collingwood[7] and other writers on aesthetics) need not detain us here. The important fact is that it is certainly meaningful to ask whether the game itself is meaningful. Some enthusiasts may justify the sport by reference to "natural laws," such as the desirability of keeping oneself fit, or the desirability of fostering social relationships; and these arguments may well provide a partial justification. But they can never constitute a *total* justification. Tennis may be played because it is healthy, because it is socially useful, or simply because it is enjoyable. But it is only playable at all if tennis-players voluntarily agree to certain rules which, in a legal sense, may be termed "arbitrary." These rules, in other words, are solely tennis-players' rules; but whereas no one would scornfully dismiss the skill of a tennis-player by some derisive expression such as "tennis-players' tennis," architects, doctors and lawyers can see quite clearly what would be derogatory about the descriptions: "architects' architecture," "surgeons' surgery" or "lawyers' law."

The essentially derogatory nature of such criticism is its

implication that the practitioners are making a mere game out of something of far deeper human concern. The histrionic oratory of a popular advocate may effectively save a malefactor from well-deserved retribution, or deprive a plaintiff of the restitution of his rights; but it will usually irritate the judge, and must be considered by any thoughtful member of the jury as being just as despicable as the medical virtuosity which prolongs the senility of an octogenarian by a few more months, or that architectural virtuosity which disregards the reasonable requirements of a client and the amenities of his neighbours in the search for "artistic" expression. It is not that these aspects of forensic, surgical or architectural skill are held in low regard. What is criticized is the cynicism, conceit and distortion of values which arrogates to one aspect of professional skill a virtue isolated from the total good which the profession is intended to achieve and the purpose it is intended to serve.

Ethically, then, the most obvious affinities between jurisprudence and architectural philosophy would seem to be those based on what are termed "natural laws" and those based on laws concerning voluntary obligations. But it seems worth emphasizing that, in the first category, the scientific concept of "law" derived initially from the juridical concept of law, rather than vice versa. Newton regarded his own discoveries as simply "mathematical principles of natural philosophy," and it was the Rev. John Wallis who first seems to have related them to the Laws of Divine Providence. He coined the term "General Laws of Motion" in 1668 when explaining his astronomical theories to the Royal Society. It seems doubtful whether the notion of scientific "laws" entered French thought before Voltaire published his *Eléments de la Philosophie de Newton* in 1738, when he refers in his preface to *"ces lois primitives de la nature que Newton a découvertes."* Moreover, even though Dr. Johnson's definition of law as "an established and constant mode or process; a fixed correspondence of cause and effect" sounds scientific in a modern sense, the source he gives for this definition is Shakespeare's *Cymbeline*.

Hence the question: "To what extent do the laws governing rational structures and functional plans relate to natural law?" is of more relevance to jurisprudence than might first appear, because if one considers structural and functional laws in relationship to the philosophy of law, rather than to the philosophy of science, one can see why so much variety is permissible. The prestige of wide-span structural engineering—despite the number of bridges which have dramatically collapsed—has tended to make architects think of the "laws" governing short-span structural design as imposing immutable shapes on structural members such that they become simply a kind of diagram of the minimal dimensions needed to resist bending, compression, buckling and shearing. For over a century, therefore, the philosophy of architectural structures has suffered through being an intellectual battleground where the most vociferous belligerents have been the ultra-rationalists, who regard the shapes of all structural members as mathematically predetermined, and the ultra-aesthetes, who regard them as completely arbitrary. Yet the juridicial (as opposed to the "scientific") concept of "natural law" is essentially concerned with the prescription of minimal requirements. No jurist ever regarded sumptuary laws as natural. Hence, although an architect is very properly liable in law if the dimensions of his stuctural members prove inadequate for stability, one can readily envisage many reasons why he might be morally and professionally justified in deliberately exceeding the minimal dimensions. Such justification would almost certainly relate to some concept of human happiness or human dignity, and hence might legitimately be regarded as based on "nature," though not on "natural law" as the term is generally understood by scientists. Apart from individual definitions of natural law, many systems or aggregations of natural law have been formulated by successive generalizations during the last two centuries. They are important because they seem to have one fundamental quality in common, namely an appeal to a universal ideal which can be enunciated in the form of certain principles of order. Whether or not any kind of "ideal" is valid will be discussed in due course. But it is relevant at this stage to note that a particular generation often has the illusion that its formulations of "natural laws" are unequivocally applicable to every eventuality by the simple use of reason. Yet jurists usually find that what is "rational" is less a matter of law than a matter of fact, and the failure of architects to appreciate this basic theoretical distinction—so obvious in legal theory—has obscured much of the merit of the so-called Rationalist school of thought.

The Rationalist theory, as expressed for example by Viollet-le-Duc in his seventh *Entretien*, is a clear illustration of this problem. A building, according to him,[8] is a sort of "organism"; the visible manifestation of the laws of nature; and he considers it illogical to enunciate any other kind of rule, since true architectural forms are nothing more or less than the "expression" of structure. But this "expression" can only be deduced by reason, and once architectural theorists embark on speculation as to what is structurally reasonable, they are confronted with the same dilemna which confronts jurists when they are asked to prognosticate concerning legal judgements involving the interpretation of "reasonable" behaviour. Admittedly even jurists are divided as to the nature of this dilemna, possibly as a result of the political theory (derived perhaps from Montesquieu) whereby there has been a failure to distinguish between general rules and the problem of interpreting those rules authoritatively in a particular context.

Thus Montesquieu's assertion that "there is no liberty if the judiciary power be not separated from the legislature and executive"[9] is manifestly misleading, since it ignores the legislative power which the judiciary must inevitably assert. Hence (if I may rephrase a remark by Professor Hart in such a way as to give it a specifically architectural implication) there are two minimum conditions necessary and sufficient for the existence of an architectural system. On the one hand those rules of behaviour which are valid according to the system's ultimate criteria of validity must be generally obeyed, and on the other hand *its rules of recognition specifying the criteria of architectural validity and its rules of change and adjudication must be effectively accepted as common public standards.*[10]

Enough is known of the history of architectural theory during the last two hundred years for the importance of the first condition to be evident. Few theorists have ever been so eccentric as to deny the general rules of architecture. Even among the leading combatants engaged in the Gothic Revival's internecine strife, it can easily be shown that the general principles postulated by Viollet-le-Duc differ little from those postulated initially by Ruskin,[11] and that those postulated by Pugin[12] differ little from those postulated by Vitruvius. The frustration and sterility of the Gothic Revivalists' quarrels (to the extent that they *were* frustrating and sterile) resulted from the failure to grasp the need for establishing the criteria of validity and the rules of change and adjudication. And such frustration and sterility must inevitably be the mate of any theory of architecture which does not see that *criticism* is as fundamental to the natural laws of archi-

tecture as it is to the natural laws of society, since any law, whether it be forensic or architectural, is meaningless except in so far as it is related to specific cases. A similar argument applies to "Functionalism"—the term usually employed by architectural historians to indicate that aspect of Rationalism concerned with efficient planning. Ever since the Napoleonic era, when Durand published his treatise, the principle that good planning is the essence of good architecture has been enunciated with the complacent implication that the mere formulation of the law would itself ensure rational spaces. Even the complete absence of any visible sociological justification for the spaces delineated in Durand's published plans seems to have been overlooked by those who (perhaps unwittingly) have subscribed to his written doctrine. In recent years, the promotion of the study of human relationships and human emotions from the realm of literature to the dignity of "Social Sciences," combined with the awe inspired by electronic computers, has led to a resurgence and enhancement of Durand's theory, whereby architectural planning is again considered to be subject to the same kind of "laws" as those studied in other departments of the Ecole Polytechnique. Yet when the actual *design* of a major public building is involved, it is apparent (from the vast variety of solutions considered totally acceptable by those who designed them) that the element of uncertainty is commensurate with the *rationes decidendi* concerning the application of the fifth amendment of the United States Constitution.[13]

Hence, the conclusion to be drawn from comparing the laws of nature as they affect the philosophy of architecture with those which are the concern of jurisprudence would seem to be as follows: whereas in juridical law two distinct elements are essential, namely a body empowered to create law, and an adequate number of trained professionals empowered to interpret it; in architecture the first of these elements is irrelevant, since any such laws as exist are either the three primary general laws of Vitruvius (*firmitas, utilitas* and *venustas*), or mathematical principles which are so specialized as to be outside the competence of purely architectural studies. These may derive from experiments in acoustics, structural engineering, sociology, psychology, climatology or any other science. But the purpose of an architectural philosophy is not to test the validity of laws, but to establish the criteria of validity and the rules of change and adjudication, combined and applied in specific architectural circumstances to produce a "just" result. The philosophy of architecture is thus synonymous with the philosophy of architectural judgement; i.e. criticism.

The process of criticism implies the need for some kinds of standard, and when comparing jurisprudence to the philosophy of architecture in the mid-twentieth century, few paradoxes are more striking than the persistence of a faith in legal standards and the absence of a faith in architectural standards. Before 1750, when structural materials were virtually limited to timber and masonry, when stuctural calculations were completely unscientific, when human needs were relatively simple, when building-types were relatively few, and when the pattern of cities were relatively homogeneous, it is not surprising that the validity of fundamental principles of Antiquity could be accepted by reasonable men without hypocrisy. Their notions of order, arrangement, eurythmy, symmetry, propriety and economy[14] may not have corresponded exactly to those of ancient Rome; but the correspondence was evidently sufficiently close to allow a universal concept of architectural standards to find wide acceptance among those who, because of influence or affluence, were able to control the environment which architects were called upon to create. Today, however, the multiplicity of building materials, the advances in accurate structural analysis, the complexity of society, the extent of financial investment in real estate and the incompatibility of conflicting urban planning requirements have created a situation where the very notion of a "perfect building" seems not merely incongruous but virtually meaningless.

The same incongruous disparity is evident in law, yet the belief in standards is not thereby destroyed. When American philosophers and jurists framed the United States Constitution, American lawyers were still trained in England, or self-taught on the basis of English legal commentaries. Hence, it is not surprising that their first attempts at creating ideal republican laws should consist of the vaguer legal concepts of Antiquity amalgamated with the traditional specific privileges of their British ancestors; or that, in the expanding economy of a new capitalist and industrialist society, they should interpret "liberty" and the "pursuit of happiness" as legal principles indicating that legislation should be limited to the security of persons and property. Today, when legislation, like architecture, is thought of primarily as an instrument for social reform, the incentives offered to lawyers to find ways of circumventing the law are in some circumstances more tempting than the incentives to urge their strict observance, and experts on taxation law will more frequently be called upon to advise on how taxation can be avoided without penalty, than how the fiscal intentions of the legislature would most properly be fulfilled.

The importance of the advisory function of lawyers is of fundamental relevance to any study of jurisprudence as it relates to architectural philosophy, since legal advice is essentially a forecast of court decisions, and court decisions are based on the notion of *consistency and conformity to standards or norms of judgement*. The architectural implications of this principle are evident to anyone who cares to compare the decisions of the traditional Ecole des Beaux-Arts juries with the results of jury decisions in recent international competitions. The grading of French academic projects after a "judgement" still suggests that the jury, after studying several hundred projects in a few hours, eventually concludes that a certain solution is best, and hence that every scheme which approximates to this solution should receive a "mention" or a "médaille." Similar techniques seem to have been used in judging some of the nineteenth-century public competitions in England (such as that for the London Law Courts). The premiated schemes have much in common, so presumably the rejected schemes were based on concepts which the jury deemed inferior or unacceptable. Yet few would claim that a similar philosophy has been in evidence in recent major competitions. It seems fairly clear that the prizes were not awarded to the schemes which elaborated, in a superior manner, certain norms to be found among many of the more accomplished submissions, but that, on the contrary, the various prizes were given to the schemes which seemed most distinctively idiosyncratic.

The desirability of such norms would seem to suggest that instead of thinking of *venustas* as something which, in the domain of architectural creativity, is highly personal, we should think of it more in terms of the kind of *social obligations* legally associated with the notion of propriety. Even in games, where the rules are discretionary, some kind of *convention* is implied; and the importance of this fact is only too clear when one considers how derisively the term "conventional" is used by critics of the "Fine Arts." When painters or

poets are "unconventional," it is a personal decision connected with the expression of their own private emotions. In so far as it ceases to be purely private, it will usually only concern very few people. But just as the publicity given to certain paintings or certain poems can be considered, by society, to be obscene or libellous according to law, so we should consider whether or not unconventional modifications to our environment can in certain circumstances fall so far outside the norms of convention—either by being too idiosyncratic *or too unimaginative*—as to outrage public notions of decorum and propriety. If so, what is the architect's moral responsibility in this respect?

The ability to establish norms is clearly more difficult in architecture than in law, since in the latter profession, the notion of *precedent* is still highly prized. Yet even with precedents as a guide, differences of judical opinion are only too frequent, as is bewilderingly obvious from the number of times decisions in primary courts are reversed by courts of appeal, and by the number of times a final judgement of the United States Supreme Cout is rendered on the basis of five in favour and four against.[15] What chance, then, has an architectural jury, which regards precedent as a defect rather than a virtue, of achieving judgements which will be acceptable to the contestants, to the profession and to the public at large?

This question can be answered in two ways, and both answers not only call in question certain basic assumptions in current text-books on architectural philosophy, but indicate how salutary it would be for architectural theorists to study their own subject on the basis of the methods of teaching law. First, the current architectural assumption that precedent is the worst kind of guidance can only be based on a partial conception of architecture: that is to say, on the "Aesthetic" theory criticized at the beginning of this essay. Secondly, few jurists can justifiably claim nowadays to be judging by deference to the standards of the public, since the architectural profession—mainly through the influence of Le Corbusier—tends increasingly to regard itself as a paradigm for the whole human race.

The fact that legal judgement implies criteria and that legal criteria imply ideals, has given rise to a basic controversy in jurisprudence which cannot be ignored when trying to relate jurisprudence to the philosophy of architecture. This controversy, expressed in simple form, is whether or not the concept of "justice" is inherent in the concept of "law." Architecturally, this corresponds to the difference of opinion between those who contend that there can be no such thing as "bad architecture," because if a building is badly designed, it is not architecture at all, but simply "building."

Now there can be little doubt that a jurist's failure to forecast accurately a legally valid court decision is in no way synonymous with an assertion that justice has been denied. But if we transcribe this distinction into an architectural context, and ask whether the failure to design an "ideal building" means that there is no such thing as "ideal architecture," the answer seems comparable to the type of answer which justifies the study of legal *dicta*. In law, though there can be no such thing as an ideal judicial decision, the concept of justice makes it essential, in a civilized society, for judicial decisions to approximate as closely as possible to this concept. Such a concept need neither be abstract nor universal; on the contrary, the more the concept of justice relates to the realities and diversities of the administration of the law, the better. But unless law schools demand constant reflection on the nature of ideal justice, it seems doubtful if the approximation of human judgements to the ideal of justice will be maintained, and it certainly will not increase.

In conclusion, then, it may be asserted that the study of leading cases in legal education plays the same role as the study of architectural ideals in architectural education, and that both are increasingly necessary as the complexity of each discipline grows. Both are essentially concerned with the two fundamental facets of every legal or architectural problem: the search to identify the perfection of each discipline according to its nature, and the critical search for specific examples of *decisions* which approximate closely (or are prevented from approximating closely) to these perfections.

Abstract speculation about "perfect justice" is, in isolation, as futile as abstract speculation about "perfect architecture." On the other hand, exclusive concentration on the actual conditions of architectural or legal practice are likely to prove debasing to both professions. The art of effectively teaching jurisprudence and the philosophy of architecture must surely be to treat both these aspects with sufficient realism to make their relevance obvious to the student, whilst at the same time applying such techniques of criticism as will give each student a sense of professional integrity; for unless this sense of integrity is inculcated in the formative stages of a professional career, it seems doubtful if it will emerge during the temptations and human fallibilities of professional practice.

NOTES:

1. *Boullée's treatise on Architecture* (ed. Rosenau), p. 30: "*Oh! combien est préférable le sort des Peintres et des hommes de lettres! libres et sans aucune espèce de dépendance ils peuvent choisir tous leurs sujets et suivre l'impulsion de leur génie.*"
2. In countries where the law has been codified, pedagogical techniques neccessarily differ from those considered most effective in jurisdictions where the Anglo-American common law tradition prevails.
3. Sir George Paton (*Text-book of Jurisprudence* (1967) p. 96) points out that Aristotle "made a useful distinction between natural justice, which is universal, and conventional justice, which binds only because it was decreed by a particular authority."
4. In Sir William Blackstone's preface to his *Commentaries*, he begins: "The following sheets contain the substance of a course of lectures on the Laws of England, which were read by the author in the University of Oxford. His original plan took its rise in the year 1753; and, notwithstanding the novelty of such an attempt in this age and country, and the prejudices usually conceived against any innovations in the established mode of education, he had the satisfaction to find...that his endeavours were encouraged and patronized by those, both in the university and out of it, whose good opinion and esteem he was principally desirous to obtain."
5. *Op. cit.*, ch. VII.
6. *Cours d'Architecture...contenant les leçons données en* 1750 *& les années suivants par J.F. Blondel* (1771), vol. IV, p. XV: "*Il est de jeunes Architectes qui prétendent que les règles ne servent qu'à les embarasser, & à émousser, pour ainsi-dire, la vivacité de leur imagination.*" *Cf.* also *ibid.*, p. LIII: "*Qu'ils ne croient pas, comme quelques-uns leur font entendre, que tout est épuisé, & que, pour paraître neuf, il faille avoir recours à la singularité.*"
7. R. G. Collingwood, *The Principles of Art* (1938), p. 39.
8. *Entretiens sur l'Architecture* (1863), vol. I, p. 285: "*Il est impossible d'enlever à un édifice du XIIIe siecle ou d'y attacher des formes decoratives sans nuire à sa solidité, à son organisme, si je puis m'exprimer ainsi...Cette forme n'est pas le résultat d'un caprice, puisqu'elle n'est que l'expression, décorée si vous voulez, de la structure; je ne puis vous donner les règles imposées à la forme, puisque la qualité propre à cette forme est de se prêter à toutes les nécessités de la structure.*"
9. *Esprit des Lois*, Bk. XI, ch. VI ("*De la constitution d'Angleterre*"): "*Il n'y a point encore de liberté si la puissance de juger n'est pas séparée de la puissance législative et de l'exécutrice.*" Since some commentators have asserted that most of the principles expressed by Montesquieu in this chapter were derived from Locke's *Treatise on Civil Government*, it seems worth pointing out that Locke distinguished simply between the legislature and the executive, and did not comment on the judiciary. Cf. also, in this respect, Diccy's *Law and Public Opinion in England*, Lecture XI, e.g. "judical legislation aims to a far greater extent than do enactments passed by Parliament, at the maintenance of the logic or the symmetry of the law" (1926 ed., p. 364).
10. H.L.A. Hart, *The Council of Law*, p. 113.
11. e.g. in "The Lamp of Truth."
12. e.g. in the first paragraph of *The True Principles of Pointed or Christian Architecture*.
13. See especially Judge Jerome Frank, *Law and Modern Mind*, for a particularly cynical commentary on the administration of justice in the United States of America.
14. Vitruvius, I. ii.
15. *Cf.* J. Frank, *op. cit.*, ch. VI.