Humanities and the First-Year Curriculum in Law School

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COMMENTARY

Humanities and the First-Year Curriculum in Law School†

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A common saying goes, "Ignorance is bliss." Each of us has, at times, probably wished to escape into that state of existence which the phrase connotes. But the undeniable truth is that we as human beings are not ignorant. We are, to the contrary, cursed or blessed with knowledge; human beings have known this since the earliest cultures, as evidenced by the stories of Adam and Eve, and Prometheus. If we cannot escape knowledge, then we have a duty to deal with knowledge to the best of our ability.

A liberal arts education best enables us to deal with knowledge because it fosters a questioning, self-critical attitude. Through the liberal arts, students are encouraged to ask questions about the meaning of life and of history. Students are encouraged to ask questions about substantive values, ethical duties, and cultural heritage. In the end, this questioning, self-critical attitude becomes a commitment to intellectual curiosity, which stimulates the student constantly to ask why.

But, it might be countered, questions about the meaning of life and history, questions about substantive values, ethical duties, and cultural heritage have no final answer. Constantly to ask "why" is to ask questions without end.

Even presuming that humanistic questions are questions for which there are no final answers, and that the humanistic quest is an endless one, there is immense value in the quest itself, because while engaged in the quest, the student should have come to a clearer understanding of responsibility—to self, to society, and to history.

A liberal arts education enhances responsibility to self by permitting a person to articulate those beliefs he considers important and worthy of allegiance. Through this process, he gains an identity that permits a coherence and consistency to personal life. As a result, he is enabled to act upon principle rather than prejudice, upon personal values, rather than social expectations.

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A liberal arts education enhances responsibility to society by permitting a person to ascertain those values that society considers important, that give substance to the common good. Through this process, he gains an understanding of the reciprocal obligations and mutual agreements which permit the existence of social groups. The person thereby becomes aware of the need for trust and mutual respect, attributes without which the fullness of social life is not possible.

A liberal arts education enhances responsibility to history by permitting a person to learn about the past and how to project into the future. Through this process, he gains an understanding of the debt of gratitude owed to those who have preceded him, and acquires a sense of duty toward those who will succeed him. As a result, he is enabled to appreciate the importance of culture.

The person who has been humanistically educated is more likely to have a sense of security about his own personhood, while at the same time possessing an empathy with others of the past, the present, and the future. Thus, the liberal arts education is a broadening experience that allows the student to see beyond the horizons of the familiar to the discovery of alternatives presented by individuals, cultures, and historical periods. In addition, a liberal arts education teaches how to evaluate these alternatives, and then indicates that each person must accept responsibility for the choices made as an individual and as a member of society. Far from being an impractical, abstract education, a liberal arts education is best suited for individual growth, social cohesion, and the maintenance of culture.

Humanistic education can be contrasted with professional education, which has been praised, at times, for its ability to sharpen minds by narrowing them. The professional education encourages students to acquire skills in order to become a certain kind of person—for example, a lawyer. It encourages students to be “practical,” and to acquire knowledge that can be put to a specific use. In the end, the attitude fostered by professional education is one directed toward the solution of immediate problems, with the consequence that students are forced constantly to ask how. The quest for competency replaces the quest of intellectual curiosity.

Such a quest for competency at the expense of curiosity may soon result in a routine, unfeeling execution of the skills that have been acquired. The professionally educated person may soon feel as if he is merely a means to the accomplishment of an end—an end most often set by other persons. In such a milieu, a person cannot feel responsibility either to self, to society, or to history. Instead, the person may view himself as an actor in a play, one in which the meaning and satisfaction of life are found solely in having performed well. Professional competence becomes a substitute for the personal fulfillment.
that exists for an individual with a sense of responsibility to self, to society, and to history.¹

There can be nothing objectionable about persons becoming competent professionals, but the attitude that so often accompanies professional education is objectionable. There is value in the emphasis that humanistic education places on theory as opposed to practice, on the reflective life as opposed to the solution of immediate problems. Priority should be given to questions that ask why over questions that ask how because hidden within every how question are assumptions about life and history which can be articulated and evaluated by asking why questions. Moreover, the most important questions are questions of meaning and values in contradistinction to questions of technique and procedure. These most important questions are faced only if one possesses an attitude of intellectual curiosity, which is most easily acquired through a humanistic education.

Thus far, only the differences between humanistic and professional education have been addressed. Now attention will be specifically directed to the question of the place of humanities in the first-year curriculum in law school.

I propose that the entire first year of law school be devoted to the study of law as a humanistic discipline. As a first-year curriculum, a law school should offer courses in legal history, legal philosophy, jurisprudence, comparative law, sociology of law, anthropology of law, ethics, professional responsibility, and other courses that approach law as a humanity.

The second year can then be devoted to courses that presently occupy the first year—torts, contracts, property, criminal law and procedure, legal method, and introduction to civil procedure.

In the final year, the law student can select from a broad range of substantive and clinical skills courses meant to provide a basic introduction to the areas he determines will be useful during his professional career. These courses should be designed as introductory courses upon which the student can build in the years to follow through continuing education. Hence, using only the third year of law school to introduce law students to substantive areas and clinical skills in the law will not degrade or diminish the quality of legal education in the law school setting.

By devoting the first year to the study of law as a humanity, several valuable attitudes can be inculcated into law students.

Many students who enter law school with a liberal arts degree think that legal education is somehow different and distinct from their

previous education. They look upon their prior humanities education as having had value for personal growth, but think they must now settle down to prepare for the "real" world. Of course, many students come to law school from backgrounds other than the liberal arts. Consequently, law is simply not considered a humanity in the minds of most who aspire to be lawyers. The proposed first-year curriculum is meant to convince them that law is indeed a humanity.

During this humanistic year of law study, students can come to realize that it is not necessary to separate professional competency from personal fulfillment. On the contrary, students can be convinced that the separation of professional life from personal life is undesirable—that, in fact, competence is enhanced, not lessened, by the insights obtainable through a humanistic education. Specifically, this integration of professional and personal life can be accomplished through the lived experience of the first year itself. The proposed first-year curriculum should demonstrate to students that law and humanities can be combined in ways that are relevant to the careers they desire to pursue with a law degree.

Finally, devoting the first-year curriculum to the study of law as a humanity can set an intellectual tenor for the remaining years of legal education. If students can be convinced that law is a humanity and that humanities are relevant to the career goals they desire to pursue, then they can also become convinced that the attitudes of a liberal arts education are attitudes which they should value throughout life. The law student can then undertake the last two years of law school with a questioning, self-critical attitude accompanied by a commitment to intellectual curiosity. He can then view law school as part of the unending humanistic quest for a fuller and deeper understanding of ourselves, society, and history.

It is particularly important that this humanistic tenor be set in the first year because the pressures of the remaining two years, and most assuredly the pressures of a law career, are the pressures of a professional education. As students become more concerned with how to accomplish certain goals and the completion of tasks entrusted to them by others, the tendency is to concentrate on the immediate and expedient. Unless students have a firm grounding in the attitudes of a liberal arts education, the current of daily life simply sweeps them along without a chance to reflect upon substantive values, ethical duties, and cultural heritage. This first year of humanistic law study is meant to hold back the tides of professionalism until appropriate humanistic levees can be built.

If students possess an attitude of intellectual curiosity, then the admittedly legitimate professional tasks of law school can be accomplished in the second and third years.

The second year, with courses in torts, contracts, property, criminal law and procedure, legal method, and introduction to civil
procedure, can still provide students with the ability to read cases and "think like a lawyer" while it develops core legal concepts upon which all later substantive courses build. But now the students acquire these intellectual skills against the background of law as a humanity, which permits them to integrate these professional skills into their personal lives. Students should be able to relate legal materials to their personal values.

The third year can then begin the process through which students acquire more specialized knowledge about particular substantive areas and experiences in clinical programs. But again, this third year is against the background of a humanistic orientation to law, which, it is believed, will inculcate a commitment to intellectual curiosity and generate an awareness that the process of learning is a continuous process throughout life. As a result, the false attitude, the sad misconception that one can obtain all knowledge about a particular subject in a neatly wrapped and properly labeled three-hour course can be dispelled. Students can thus recognize that the third year is just the beginning—that they should be wiser and more competent lawyers with every passing day, and will be so long as they maintain their commitment to intellectual curiosity.

William Pincus of the Council on Legal Education for Professional Responsibility (CLEPR), has argued for a reduction in the liberal arts education of the law student because law schools need three years to accomplish the really important task of professionalization. I argue just the opposite. The acquisition of competency skills and substantive knowledge of the law is a life-long task, not a three-year task. But it is a life-long task that will be undertaken only if the student approaches it with the proper attitude—the attitude acquired through a liberal arts education. Once this humanistic attitude is inculcated into law students, we can safely rely upon continuing legal education and programs of specialization and recertification after law school to provide the structured formats necessary for more specialized education about specific areas of the law. Furthermore, when approached with the proper attitude, daily professional life itself provides the most important learning experiences.

This essay has no purpose of opposing clinical education, the legal profession, or practicing attorneys. It is the vision of law school as a professional education that is disturbing because that vision is accompanied by attitudes which in fact work against the creation of knowledgeable and competent lawyers. Moreover, it should not be forgotten that lawyers acquire knowledge and competence not as ends in themselves but rather to enable lawyers to do justice. And, justice, after all, is not a virus that can be caught and communicated, isolated

2. Pincus, *The Case for Shortening Legal Education at the Liberal Arts Level or Other Levels*, 1 *Learning and the Law* 78 (Fall 1974).
and analyzed. Hence, the medical model of education is not appropriate for the study of justice. Justice is more closely related to the attitudes inculcated by a liberal arts education—the willingness to question and to be self-critical, and the commitment to intellectual curiosity. Imbued with these attitudes, students and lawyers should then be able to render justice to themselves, to society, and to history.