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The Moral Responsibility of Law Schools

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The subject I have been asked to address, the moral responsibility of law schools, is perplexing, less because answers to the implicit question are uncertain than because the meaning of the question is unclear. Our ideas about moral responsibility have been formed in reference to individuals. They presuppose the existence of distinctively human characteristics such as understanding and will. What, then, can be meant by the moral responsibility of "law schools," institutions that, just because they are not human, necessarily lack these capacities?

One possibility is to interpret the words "law school" as a reference to the faculty. Yet, the faculty is also an institution, an abstraction. It is, to be sure, composed of individuals, but we cannot ascribe to it a will or understanding that is determined by summing the separate wills and separate understandings of its members. *A fortiori,* we cannot sum the wills and understandings of all the constituents of a school—faculty, students, alumni, and supporting staff, presumably including central administrators—to arrive at the will or understanding of the institution. The requisite will and understanding can be supplied by interpreting the subject as calling for an examination of the moral responsibilities of the individuals who compose the law school, but that too is unsatisfactory. Whether we have reference to their separate or common obligations, "the moral responsibilities of faculty, students, alumni, and supporting staff" seems to mean something quite different from "the moral responsibilities of the law school."

The attribution of moral responsibility to law schools can best be understood metaphorically, as a device for drawing attention to moral issues that arise in the operation of the schools. Despite the contrary assumption of some contemporary critics of legal education, the existence of such issues is not a recent discovery. Still, each generation must find its own way to and through the moral issues it confronts, and in ours the metaphor of institutional moral responsibility is for many an especially attractive path. It is worth inquiring briefly why that should be so.

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It is a commonplace that we live in an age of large organizations, an age in which the pursuit of our goals requires collective action. Automobiles cannot be built, nor the next generation educated, by individuals acting alone or in small groups. Many of the problems that beset us—the threat of war, poverty, and pollution, a malfunctioning legal system—cannot be fully understood, let alone addressed, except by the concerted efforts of many people. And so, large organizations are established to act on our behalf. It is an increasingly common perception, however, that those organizations are themselves the source of many contemporary problems. These latter problems do not exist because any individual has willed them into existence, but because many individuals have acted subject to the pressures and with the limited perspectives and authority incident to their institutional positions. Each may thus contribute to bringing about results that all regard as undesirable. In these circumstances, the appeal of the metaphor of institutional responsibility is evident. It asserts the importance of an institutional capacity to identify and address the moral issues that confront institutions.

The scale on which legal education is conducted would not lead one to anticipate that it would face similar difficulties, but the metaphor has proved to be attractive even there. A principal reason is that, despite their modest size, law schools have in recent years revealed an inadequate capacity to address issues that are central to their existence. The most important of these concern the schools' educational programs. Roger Cramton, among others, has drawn attention to the disarray of what is still, though now euphemistically, called the curriculum.[1] The state of the curriculum, however, is only symptomatic of a larger failure, the seeming inability of law schools to address fundamental issues concerning the goals of legal education. The assertion that schools are not addressing those issues requires brief explanation, since it is undoubtedly true that more, and more intelligent, writing about legal education has been published during the past fifteen years than during the previous one hundred. It would be difficult to maintain, however, that this outpouring of books and articles has led to the adoption of educational programs that embody a coherent vision of the purposes of legal education. To be sure, there has been a considerable amount of curricular innovation during the same period, but far from demonstrating the ability of the law schools to address questions of educational purpose seriously, the innovations suggest only that law schools are prepared to accept, willy-nilly, whatever new ideas may be advanced about the educational needs of students.

Are there lawyers or judges or students who argue that fledgling lawyers should know how to try a case? If so, open a clinic or establish a trial advocacy course to develop the necessary skills. Are there others who believe that lawyers require greater familiarity with alternative methods of dispute resolution? Then start a course in negotiation or in arbitration or perhaps in

1. See Roger C. Cramton, The Current State of the Law Curriculum, 32 J. Legal Educ. 321 (1982).

both.[2] Are there still others who think that lawyers require an understanding of economics or sociology or political philosophy? They too can be accommodated. Of course, we have still not provided for the young man or woman who cares deeply about children's rights and cannot find within the law school a faculty member who shares the interest or sufficient courses to permit study of the subject in depth. Happily, this need too can be met: authorize a semester of credit for an externship at the Children's Defense Fund. Each of these curricular innovations doubtless offers students opportunities for useful learning, but they do not demonstrate that law schools are addressing fundamental issues regarding the objectives of legal education. The ease with which we have accommodated so many disparate pressures bespeaks, rather, a failure to attend to questions about the objectives of legal education and to confront the hard choices that are required in allocating our scarcest resources—the time, energy, and attention of students.

Although responsibility for the educational program rests with the faculty, its failings are not simply the faculty's fault. Were the problems attributable solely to the faculty's derelictions, they would hardly appear simultaneously at all law schools. They are, rather, the product of a number of cultural and societal trends whose effects extend well beyond legal education. A full discussion of these is beyond my subject, but I want to mention one that has particular relevance to the issues underlying the metaphor of institutional responsibility.

In the decades following World War II, faculty members transferred their attention and allegiance from their schools to their scholarly disciplines. The consequences of the shift are pervasive, since both the reward structure of universities and the sources of individual and institutional prestige have been affected. Within law schools, it is at least partially responsible for a number of happy consequences, including a significant increase in the range and power of legal scholarship. But it has also contributed to a decline in the attention given to issues that must be addressed at the level of the school, primarily issues regarding each school's educational program. The problem is not, as is commonly supposed by those outside the university, that attention to scholarship has made the faculty less conscientious teachers. Rather, the concentration of faculty members upon their fields of specialization has influenced their understanding of the objectives of legal education and diverted their attention from issues that must be addressed collectively. The overlapping and lack of coordination among courses, the absence of requirements beyond the first year, and the steady increase in the hours allocated to the specialized courses typically offered in the second and third years are predictable characteristics of a curriculum the content of which is determined by faculties whose members, however conscientious they may be as teachers, are primarily engaged in their scholarly specialties. The effects of specialization are felt even more deeply, however. Faculty members con-

2. The decision of questions regarding the content and aims of the course(s)—whether they are to be concerned with the development of skills, legal doctrine, social policy, or some amalgam—is, however, to be left to happenstance, i.e., to the interests of the faculty members who draw the assignment(s) over time.

cerned primarily with their scholarly specialties are likely to direct their courses toward enhancing student understanding of those specialties rather than concerning themselves with the broader objectives of legal education and with the contributions that their courses might make to the achievement of those objectives.

A legal education thus comes to be understood as the completion of some number of courses that happen to be taught at a law school.[3] Whatever can plausibly be asserted to have some relationship to the study or practice of law has a place but, except in the occasional debates over the courses to be required in the first year, each element of the "program" is considered on its own terms. Such a "program" undoubtedly offers students much that is of value, and there is every reason to believe that students benefit from it. It nevertheless lacks a guiding purpose; it lacks, that is, a necessary element of any moral undertaking. As a complete description of legal education, this is no doubt too stark, but not very much so, I fear. Legal education's winter of discontent, as my colleague Francis Allen has described the malaise of the past fifteen years,[4] is a reality with which we are all familiar; after all, it has even been noticed by the *New York Times*.[5] The source of that malaise is a failure of purpose, and our discomfiture is not likely to end until we have succeeded in reestablishing a sense of purpose, and therefore a moral foundation, for the enterprise in which we are engaged.

The recovery of purpose will require discussion of issues that have been neglected for too long, neglected because of our desire to avoid conflict and because our attention has been directed elsewhere. Central among these is the question how students are to be regarded. I can make the point best by considering the underlying attitudes toward students revealed in three recent proposals for reforming legal education, proposals selected not because of their uniqueness, but because of the very considerable attention each has received.

In a series of articles and speeches during the past decade, Chief Justice Burger has been harshly critical of the quality of advocacy in the nation's trial courts.[6] The deficiencies of the trial bar, he has argued, contribute to court congestion, the high cost of litigation, and a failure to protect the interests of clients adequately. Among the measures the Chief Justice has recommended to remedy the problem he perceives is a reorientation of legal education designed to improve the competence of trial lawyers.

President Derek Bok of Harvard has advanced more comprehensive criticisms, aimed less at the profession—though it does not escape his

3. Indeed, even that is not quite true, since many schools now award credit for externships and for (a limited number of) courses taken elsewhere in the university.

4. Francis A. Allen, The New Anti-Intellectualism in American Legal Education, 28 Mercer L. Rev. 447 (1977).

5. David Margolick, The Trouble with America's Law Schools, New York Times Magazine 20 (May 22, 1983).

6. See, e.g., Warren E. Burger, Some Further Reflections on the Problem of Adequacy of Trial Counsel, 49 Fordham L. Rev. 1 (1980); Warren E. Burger, The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice?, 42 Fordham L. Rev. 227 (1973).

censure—than at the legal system.[7] Among them are an overreliance upon litigation to resolve disputes and the failure to develop effective, less costly means than now exist to vindicate legal rights, especially for people of moderate means. Bok also looks to legal education as a partial remedy for the ills he perceives: "If law schools are to do their share in attacking the basic problems of our legal system," he maintains, "they will need to adapt their teaching."[8] He advocates devoting a larger part of the curriculum to mediation and negotiation, and "drawing upon the services of second-and third-year law students" to help "create new institutions more efficient than traditional law firms in delivering legal services to the poor and middle class."[9]

Duncan Kennedy has bigger fish to fry.[10] His criticisms are directed not merely at the profession or the legal system, but at the entire social order in which they are embedded. In a measured, one might say a subtle and nuanced assessment, he opines that "our society is rotten through and through."[11] His proposals for reforming legal education are cast accordingly; though they are too complex to describe in detail, I think he would not object to my characterizing them as aimed at creating the intellectual vanguard of a movement to dismantle the existing social system, in the hope, though not necessarily with the expectation, that something better would follow. For reasons that he does not elaborate, Professor Kennedy regards these proposals as appropriate for implementation only at a "relatively large, elite law school, operating as part of a private university."[12]

I remind you of these proposals for reforming legal education to draw attention to a premise common to all three. So far as one can judge from what they have written, each of the critics begins with the assumption that legal education should aim at fitting law students to the professional roles that the latter will—or that it is thought they should—play upon graduation. On that premise students are but instruments of the society—or, for Kennedy, perhaps missiles to be hurled against it. Vocationalism is so pervasive in American education that many will regard the premise as unexceptionable, especially in the setting of a professional school.

Students ought not to be regarded merely as instruments, however, not even in the setting of a professional school. They are, in Kant's familiar formulation, "ends in themselves and sources of value in their own right." The notion that a legal education is merely instrumental—that its aim is merely to equip students to fulfill the professional obligations that they will eventually undertake—rests upon a confusion of thought. It does not follow from the fact our students will shortly undertake professional obligations of

7. Derek C. Bok, A Flawed System, Harvard Magazine 38 (May-June 1983).

8. *Id.* at 45.

9. *Id.* at 70.

10. Duncan Kennedy, Legal Education and the Reproduction of Hierarchy, 32 J. Legal Educ. 591 (1982).

11. *Id.* at 611.

12. Duncan Kennedy, Utopian Proposal or Law School as a Counterhegemonic Enclave 1 (mimeo 1980).

service that we are entitled to treat them as instruments. Their status as persons, as sources of value rather than merely a means by which value is attained, is diminished if we abstract from them the roles they later will play in relation to others, seeking only to equip them for those roles. Appropriate respect for them as persons requires that we take as the main object of legal education the enhancement of their capacity to realize their human potential as it is understood in our culture.[13]

If we are to treat our students as ends, whose education is important because of the contribution it can make to their lives, we need to ask what opportunities the study of law affords for developing capacities and knowledge that are valuable in their own right, not only in the eight or ten or twelve hours a day in which the students, upon graduation, will be serving in professional roles. As a way of giving content to this very general statement, I shall consider, briefly and illustratively, some goals at which a legal education so conceived might aim. In deference to the theme of this afternoon's program, I shall emphasize the moral dimensions of these goals, but it is useful to recognize that there are other ways in which they might be discussed.

At one time, there would have been widespread agreement that, as Herbert Spencer put it, "[e]ducation has for its object the formation of character."[14] In the sense that Spencer employed it, the word "character" is not heard very often these days. So used, it has a musty quality that is less likely to inspire than to evoke a faint smile. The loss of meaning is regrettable, for the word captured an aggregation of qualities that are highly useful in sustaining a life.

A man or woman of character has a moral code, but he or she also has something more, the personal strengths that are necessary to steadfastness of purpose in the face of life's vicissitudes. Disappointment, embarrassment, boredom, fear, pain, and temptation are obstacles to the attainment of our goals. They are also part of the common experience of mankind. Courage, patience, perseverance, and other qualities that enable us to overcome these impediments are, for that reason, universally regarded as virtues, and since they are necessary to the success of any sustained moral undertaking, they have a special claim to our attention.

13. In a comment upon this argument, David Luban maintains that treating students as ends entails that we accept each student's "rationally-formed life plan," which may not extend beyond careerist ambitions or the desire for wealth. See 176, *infra*. But the obligation to treat students as ends does not require that law teachers regard themselves as the equivalent of clerks in a mail-order house, whose responsibility to their customers is discharged merely by filling the latter's orders. Surely one may act in another's interest without yielding to his or her wishes. Paternalism may be objectionable for other reasons, but it is wholly consistent with treating others as ends. In considering whether we may appropriately adopt a paternalistic attitude toward students, it is at least relevant that the context is avowedly educational.

So too, the obligation to treat our students as ends does not require that we attend to them as whole persons. Law schools need not seek to develop in their students an appreciation of art and music, important as that may be to the full development of the human spirit. Our concern is with the development of capacities and knowledge that are associated with the study of law.

14. Herbert Spencer, Social Statics 20 (New York, 1866).

Inculcation of these virtues is a traditional aim of education, one that deserves greater emphasis than it has received in legal education. Law schools are not, to be sure, well positioned to play a decisive role in forming their students' characters. Students come to law school as adults. The deplorable faculty-student ratio at all law schools largely precludes a level of personal contact which might permit faculty members to become an important personal influence in the lives of their students. Still, the limited potential of legal education for influencing the development of character does not justify a conclusion that it is irrelevant to that development. As Joseph Schwab, professor of natural sciences and of education at the University of Chicago, has written, character traits like those we are considering are "enhanced only by undertaking and sustaining the actions pertaining to [them] to the point of perceiving and enjoying the enhanced competence which results."[15] By availing ourselves of the opportunities that legal education affords for leading students to such action, we can help to strengthen those traits. The opposite is also true. We can, by inappropriate behavior, help to weaken them.

In this perspective, there are reasons for concern about the moral as well as the intellectual consequences of current practices in legal education. Faculty acquiescence in the absence of students from class and in their failure to participate in class discussion, the willingness of faculty members to tolerate lack of preparation for class discussion and to accept unsatisfactory answers without adequate criticism, and failure to insist upon compliance with reasonable deadlines for the submission of written work represent missed opportunities to assist students in strengthening important moral qualities. Participation in a well-run class discussion, to take a central example, permits students to overcome fear and to learn by experience that the embarrassment of public error may be compensated by the learning that ensues. By encouraging students to risk the expression of novel ideas, we may help them to develop courage. Faculty members who accept the failure to participate in class discussion or intellectually sloppy answers not only miss these opportunities, but act in a way that may weaken these very qualities they should be concerned with strengthening. Students who are permitted to "pass" when called upon, whether they do so from unpreparedness or fear, are reinforced in these tendencies.[16]

Since they have at times been justified as useful in developing character, I want to make clear that I am not calling for a return to the barbarities that (according to legend) so frequently marred law school classes in earlier generations and to which, I suspect, current practices are an overreaction. Ridicule and humiliation are not effective pedagogical techniques. An occasional student may meet their challenge, and may even be strengthened

15. Joseph J. Schwab, College Curriculum and Student Protest 285 (Chicago, 1969).

16. Donald Regan observes that there may be students who can best develop an inner discipline, which he and I take to be the ultimate objective, if they are freed from the external discipline of required class attendance and participation. The point is well taken, but one cost of prevailing faculty-student ratios is that faculty members will rarely have the capacity to identify such students. And most, I believe, are disserved by current practices.

by doing so, but most will merely suffer, some to the point of diminishing the self-esteem necessary to purposeful activity.

The practices we have been considering are important for yet another reason. Among the opportunities that legal education affords for developing character are the occasions it provides for exemplary conduct by faculty members. The faculty member who, in response to a student answer that is wrong or foolish, demonstrates patience in working with the student toward a better answer teaches more than an intellectual lesson. So too does the faculty member who ridicules students or reveals a lack of concern for them by inattention to their performance in class. Ideas about patience, courage, and duty and about the ways in which men and women ought to treat one another take on meaning in our lives as we observe the behavior of those around us, especially those who occupy positions that might reasonably lead us to suppose that they are socially approved models for our own behavior.

A legal education that takes the development of students as its end will, obviously, also be concerned with the enhancement of their intellectual capacities. It is customary, and perhaps useful for some purposes, to distinguish between intellectual capacities and the moral virtues we have been considering, but the strengthening of intellectual capacity has a moral dimension too. Moral action depends quite as much upon clarity of thought as upon purity of motive or strength of character.

The development of intellectual capacity has, of course, traditionally been regarded as an important, at times the most important, objective of legal education. It is the objective stressed by the familiar, if no longer very fashionable, statement that the aim of legal education is "to teach students to think like lawyers." Rightly understood, that ability is not merely a professional technique useful only in the office or courtroom, but a set of skills of pervasive importance in life. Among the skills it encompasses is, for example, the ability to read. The ability to capture meaning from the printed word and to understand the possibilities and uses of fixity, vagueness, ambiguity, and change in language is not simply a professional necessity. It is indispensable to participation in a community of thought that extends beyond very narrow boundaries of space and time. Similarly, the abilities to identify and articulate the premises of thought and to develop arguments that flow in an orderly fashion from those premises are not simply professional techniques, but capacities of mind essential to understanding the world around us and to undertaking purposeful activity within that world.

The idea has arisen recently that the skills of "thinking like a lawyer," both those mentioned above and others, are easily acquired and that, having learned them in the first year, students might more profitably spend their subsequent years in law school learning something else. At least in part, the idea grows out of dissatisfaction with emphasis on the case method throughout law school. I hold no brief for the case method—indeed, I agree that it is overused—but the notion that the skills it seeks to impart can be learned "once and for all" in the first year reflects inadequate understanding of those skills, of the means by which they are developed, and of the uses of the case method. At some mechanical and elementary level, no doubt, an able

student can reasonably quickly learn to comprehend an appellate opinion and the techniques by which other cases are distinguished from it. But the development of these skills is not, after all, the real aim of the case method. The abilities to read imaginatively and with attention to the subtleties of language, to frame and test suitable hypotheses for synthesis, and to detect premises of thought and errors of logic, all of which the case method is aimed at developing, are not capacities that we either have or do not have, in the way that one either does or does not possess a law school degree. Capacities such as these are the product of continuous struggle to wrest meaning from disorder. Like the moral virtues considered earlier, they are developed and maintained only by continually undertaking and sustaining the activities pertaining to them.

The notion that the skills of critical inquiry, having been learned in the first year, can be set aside thereafter so that students may devote attention to other matters suffers from yet another vice, a failure to recognize the interdependence of these skills and of knowledge. Skill in reading and in analysis and synthesis is broadened and deepened as it comes into contact with new subject matter. Similarly, knowledge of a subject, except at a very superficial level, depends upon its having been acquired through the tools of critical inquiry. These considerations suggest that the real failing of legal education is not that it overemphasizes developing the skills of "thinking like a lawyer," but that it gives inadequate attention to the use of those skills in dealing with materials and issues that are not formally legal. The consequence of that inattention is the curious disjunction that too many lawyers display, careful craftsmanship in the performance of professional responsibilities and a lack of concern for the skills of craft in dealing with political and social issues. Increased attention to such issues, which are hardly irrelevant to the study of law, might lead students to an understanding that the skills of critical inquiry have uses that extend beyond the performance of professional tasks.

Obviously a good deal more might be said about these intellectual capacities and the role of legal education in developing them, but I want to turn to some other intellectual qualities with which law schools should also be concerned. A traditional aim of education, from which legal education has no exemption, is to strengthen the capacity of students to avoid common hazards to clear thought, such hazards as self-interest, provincialism of time and place, overdependence on familiar categories of thought, the inability to tolerate uncertainty, and sentimentality. The last of these may be used to illustrate the opportunities that legal education affords to overcoming these hazards.

In Henry Adam's roman á clef, *Democracy*, a powerful politician complains that a sentimental young woman whom he is courting has judged his political behavior by abstract principles. The complaint is made cynically, but even as made it is a telling reproach to all those who suppose that abstractions and untutored sentiment can serve as an adequate guide to the conduct of human affairs. Adam's point is not that principles and feelings are irrelevant in guiding or judging conduct, but that both should be informed by a knowledge of life.

Since the case method has taken such a beating in recent years, it is worth saying that appellate opinions can serve as an especially useful vehicle for the education of sentiment as well as to teach the importance of approaching abstract principles skeptically. The latter point is too familiar to require elaboration, but many will greet the former with astonishment. Appellate opinions, it will be said, report only carefully selected facts, and even those are often stated in highly abstract fashion; they are, for that reason, implausible vehicles for conveying a sense of the variousness and complexity of life. But though it is true that the opinions are written in that way, it does not follow that they must be read in the same way. A skillful teacher will lead students to read opinions imaginatively, with attention to the human possibilities that lie beneath their abstract language. The exploration of these possibilities, conjoined with consideration of their implications for judgment, offers opportunity for developing that fusion of feeling and intellect we call sensibility.

Two points deserve emphasis. First, legal education can dull sensibility as well as enlarge it. A failure to devote class time to probing beneath the abstract language that judicial opinions typically—and statutes invariably—employ conveys to students the lesson that emotion and the complexities of life are irrelevant to law. And by leading students during a formative intellectual period to think only in abstract categories, legal education can dull both feeling and their sensitivity to complexity. But a second point needs also to be recognized. The appropriate objective is not the release of feeling, but its education. This requires, as I have already suggested, bringing feeling into contact with the full range of life's possibilities, but it also requires that it be brought into contact with those general ideas we call knowledge. Raw feeling is transformed as it confronts the knowledge of economics or anthropology, the ideas of philosophy, or the accumulated wisdom of law. We ought not to regard that fact as a source of alarm, but as cause of celebration and as an opportunity for legal education.

It will not have escaped attention that I have as yet said nothing about the study of law. The qualities of mind and character I have been considering might as well be, and often have been, developed outside law schools. What then, it may be asked, distinguishes legal education from education elsewhere in the university? The answer, surely, is that law is the subject of study. Moral and intellectual capacities are enhanced only by engaging in activities that require their use. One cannot, for example, learn to think without thinking about something; students who attend law school enhance their capacity to think by thinking about law.

The study of law, however, is not merely a vehicle for developing moral and intellectual qualities. One studies law, presumably, to learn about law. An elaborate argument is hardly required, at least before this audience, to establish that knowledge of law is a valuable end in itself. Law is a central feature of the social, political, and economic order. It touches large areas of life directly, and in some respects may be said to affect all. The issues with which it deals, the ways in which it deals with them, and it should perhaps be said explicitly, the issues with which it fails to deal are expressions of the ideas, values, and tensions that may be found within the society. Law thus

offers, as Francis Allen recently put it, "a path to the world,"[17] and one studies it for the same reason that one studies anything else, to acquire knowledge of the world. That knowledge is both an end in itself and a condition for intelligent, purposeful, and therefore moral action.

To see the study of law in this perspective is to put to rest any lingering questions, if any remain at this late date, about the appropriateness of bringing to bear upon it the knowledge and techniques of other disciplines. If our object is to enlarge students' understanding of law—both of its internal operations and of the ways that it does, should, or can influence our lives—we will necessarily seize upon whatever tools may help to achieve that object. If philosophy and literary theory shed light upon the uses and limits of language, as it is or might be employed in legal settings, we need to acquaint our students with them. So too, if economics generates plausible hypotheses with regard to the inner dynamics of law or the effects of vertical price fixing, learning about them is appropriately part of an education in law.

There is yet another reason to draw upon other disciplines in the study of law. We are all familiar with Burke's aphorism that "the study of law sharpens the mind by narrowing it." The same is true, as the modern university seems intent upon demonstrating, of every other discipline. As John Stuart Mill wrote more than a century ago,

> Experience proves that there is no one study or pursuit, which, practiced to the exclusion of all others, does not narrow and pervert the mind; breeding in it a class of prejudice special to that pursuit, besides a general prejudice, common to all narrow specialties, against large views, from an incapacity to take in and appreciate the grounds of them.[18]

The obvious safeguard is to provide students with the perspectives of other disciplines, so that they may acquire an enlarged view of their field of specialty and of the world of which it is a part.[19]

Many lawyers and law teachers will object to the goals that I have outlined on the ground that those goals are appropriate to a liberal education, but ignore the responsibility of law schools, as professional schools, to equip their students to meet the latter's professional obligations. I want to address that objection briefly in closing, but before doing so, it may be useful to restate my argument in summary form. The proper objects of legal education, in my view, are to enhance the capacity of students to think clearly, to feel intelligently, and to act knowingly. These are, of course, the traditional aims of liberal education, but they are not for that reason less appropriate as goals of legal education. The intellectual and moral qualities I have been considering are the proper ends of education because they are the

17. Francis A. Allen, The Law as a Path to the World, 77 Mich. L. Rev. 157 (1978).

18. John Stuart Mill, Inaugural Address 7 (Boston, 1867).

19. Fred Schauer points to the risk that we will produce dilettantes, unaware of the rigor and beauty of knowing something really well and the fascination of probing deeply rather than wandering broadly. The question is important, but it raises issues that deserve more careful specification and examination that I can undertake here. Still, it is worth observing that the risk is mitigated by focusing attention upon the law.

qualities that men and women require to realize their human potential and to act as moral beings. But they are also the qualities lawyers require in the performance of their professional responsibilities. Courage, patience, sensibility, knowledge, breadth of perspective, clarity of thought, and the other qualities I have mentioned are essential if lawyers are adequately to serve their clients and meet the obligations of public service they are so frequently called upon to undertake. Legal education, even if viewed solely as professional training, has no more important objective than assisting students to develop these qualities.

It is nevertheless worth asking, if only hypothetically, what the implications might be if there were some opposition between the qualities required of lawyers and those that we seek to foster as human qualities. It is not insignificant that a compelling illustration does not come to mind. To make the point, however, I shall assume, though I believe the truth is otherwise, that intellectual autonomy, including the capacity to hold views that are inconsistent with a client's interests, is incompatible with effective advocacy. On that assumption, should law schools refrain from assisting students to develop intellectual autonomy? Or, would we wish, rather, to alter the way in which lawyers' obligations are defined? In fashioning even a professional education, to put the point directly, the qualities that we value because of their importance to (our understanding of) what it means to be human take precedence over the development of skills and knowledge that are of professional utility only.

The more difficult question is whether, as professional schools, law schools are obligated to foster development of purely professional skills and knowledge in addition to pursuing the goals for which I have been arguing. Adequate consideration of that question would require rather detailed specification of the content of a law school program designed to advance those goals and a specification of the additions necessary to meet the future professional needs of students, both of which are beyond my present purpose. I do not want to avoid the issue entirely, however, and so I shall assume that there are important professional skills and signficant areas of professional knowledge with which law schools would not be concerned were they to confine themselves to pursuing the educational goals that my argument takes to be their proper aim. Law office management offers a convenient example. In using that example, I emphatically do not intend to trivialize the question. The negligent failure of lawyers to meet filing requirements is a common and serious problem. Acquainting students with techniques for ensuring that deadlines will not be overlooked would make an important contribution to the protection of legal rights. Similarly, acquainting students with efficient management techniques might permit recent law school graduates to open their own offices more readily and contribute to reducing the cost of legal services. To dispel suspicion that I am stacking the deck, however, the techniques of trial advocacy may be taken as another illustration. Once again, I do not mean to suggest that the subject is unimportant. Knowledge of the means by which documents are introduced into evidence and skill in framing questions for direct and cross-examination are, plainly, essential to lawyers who appear in court. Chief Justice Burger is

surely right in maintaining that lawyers who lack this equipment jeopardize their clients and contribute to the larger problems of the legal system.

Since lawyers must acquire such knowledge and skills somewhere—whether by apprenticeship or in a continuing legal education program or in law school—do not law schools, which are the only portal through which all lawyers must pass, have an obligation to provide them? The answer, in my view, depends upon a judgment about the effect that the provision of such training in a law school is likely to have upon its ability to pursue the fundamental goals of legal education. The time, energy, and attention of students and the financial resources of law schools are limited. A decision is required about the purposes to which they can most profitably be devoted. None of the resources is sufficient to justify allocating it to purely professional training. Doing so unduly sacrifices the ability of the schools to cultivate the more general intellectual qualities that students require both to realize their human potential and as prospective lawyers.

Moreover, purely professional training can as readily be offered outside law schools, but many of the intellectual qualities discussed earlier are likely to take root and be cultivated only within a university. The nourishment of these qualities is the special mission of the university and, therefore, of law schools within the university. An unwillingness to dilute our efforts to carry out that mission does not signify indifference to societal needs, but a judgment about the ways in which the university can best serve those needs. Hannah Holborn Gray, president of the University of Chicago, captured my point precisely in a recent address. The pursuits of the university, she stated,

> are in the first instance self-justifying, not instrumentally conceived. Its choices should aim at creating and protecting the conditions of . . . educational purpose that will sustain principles and objectives valuable in themselves. The University's special contribution to society will lie precisely in honoring its own mission and nourishing those activities that look beyond immediate or narrowly utilitarian ends, in acting in accordance with those processes which define and make effective the means to fulfilling the goals of a community of learning.[20]

It is in the effort to define and fulfill the goals of a community of learning that law schools can recover a sense of purpose and a moral foundation for our common undertaking, the education of our students.

20. Hanna H. Gray, Making the Case for Higher Education, U. Chi. Mag. 24 (Summer, 1982).