
Education and Legal Education

Edward H. Levi

As a former law school dean, who in one year—stretching over two—took part in at least five separate final dedications of the very same buildings, I can only imagine with awe the trail of luncheons, symposia, dinners and dedications which your ten-year program to complete the law quadrangle has left in its wake. We do well to celebrate. Ten years is a long time in the history of any American university; particularly for a private university where the art of planning is a subdivision of fortune-telling and witchcraft. Ten years is a particularly long time now; both law and education are at a turning point. We must welcome the realization that the conditions of 1969 and probably the next ten years are quite different from those perceived in 1959.

Our period is characterized by an enormous sense of inequality, a belief in the unbounded affluence of our country, a self-concern which is within the traditions of individualism and idealism but has other roots as well, an acceptance of power and coercion as ruling principles, and of an anti-intellectualism typical of agrarian or populist movements. These views and attitudes are widely shared. They are frequently coupled with such an assurance of helplessness as to make freedom of choice seem no longer personal, or merely symbolic, or at least something not to be exercised now,

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or to emphasize the desirability of drastic or catastrophic change. A feeling of collective guilt is pervasive. We have a soil conducive to self-righteousness, never hard to come by, for as Edmund Burke wrote describing the attitudes of a time which we hope is not too similar to our own “history consists for the greater part of the miseries brought upon the world by pride, ambition, avarice, revenge, lust, sedition, hypocrisy, ungoverned zeal, and all the train of disorderly appetites.” There is a resurgence, too, reminiscent of older periods, of conviction in the inevitability and, therefore, the rightness of waves of the future.

Our present condition is the result of many circumstances, including the normal ones described by original sin. The attitudes and beliefs have deep roots. A combination of events has made them dominant today. To some extent the beliefs are based on reality. There has been and there is great inequality. The divisions and barriers are high. Steps to reduce them intensify awareness. There is affluence, although progress is not just purchasable—even though we may think it is—and resources are inadequate for the jobs to be done. The individualism in our country has always given high marks for getting ahead, even when individualism is used as an excuse for dropping out. We have not found a comfortable way of assuring an individual that contentment is appropriate. So there is pressure.

Of importance to both law and education is the increased power of the communications media, with new forms and a new reach, and with an effectiveness which has made the creation of stereotypes and images

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a national endeavor. The stereotypes and images not only substitute for thought and discussion, they also substitute for experience. There have been times in the past when our country has had a special failing for platitudes. Now the combination of affluence, delayed entry into the world of doing, and the kind of education we have developed has made a large segment of the population more dependent upon what it is repeatedly told for its view of reality. It is not the world which is made available to the individual, but someone else’s conception of it, telling him not only what is said to go on, but defining for him, in lieu of the real thing, what his reactions are. The individual is enveloped in this stuff. He is hard to reach—where does one begin?—and education is much more difficult.

Despite all the talk about the knowledge explosion and the rat race, we have a leisurely pace for education for many people in our country. At least we can say the education is long in time. Our motto seems to be “the longer, the better.” Many more people are going to college and many more are going to graduate school. We have made a fetish about general education, confusing it with liberal education. We have contrasted liberal education with professional, sometimes called vocational training, meaning by this contrast that liberal education is not serious, or is not held to a high standard of proficiency, or that it is too serious, since it is concerned with self-development, to be turned to practical ends. In a peculiar although historic way, liberal education is often equated with amateurism. As Robert Brustein has cogently written, “the word amateur comes from the Latin verb, to love—presumably because the amateur is motivated by passion rather than money. Today’s amateur, however, seems to love not his subject but himself.” Since he frequently has not known any subject well enough to do anything with it, he often has not learned how to read, write or think very well. So he goes on to do graduate work, or enters a law school or some other professional school.

If he goes to graduate school it is likely he does this not because he wishes to learn how to do research, but rather because he would like to get the credentials so that he can become a teacher of other students who will go to college as he did and then on to graduate school for the same reasons. The process is self-sustaining. The professional schools are in a separate category, although the lines are blurred. In general one can say the overwhelming trend is to build up more graduate programs and more professional schools, including for example, schools of business. It is a matter of some prestige to have the graduate or professional training begin as late as possible and to go on for as long a period as can be justified. Medicine is a good example. Not so long ago a medical student was expected to spend one year as an intern; now it is almost necessary that he spend two or three years more as a resident, or perhaps five or six or more for some specialties. He may be well in his thirties when this part of his training is over. Or, take the law schools. There was a time when we hardly had them. Then we began increasing the number of pre-law years required in college. In 1925 only one state required as much as two years of college before beginning law school. Today the general minimum is to require three years of college, and leading law schools, such as the University of Pennsylvania Law School, proudly require four. All this is regarded as good. But I wonder.

Education is costly. It costs the student. It costs society. For the student, a requirement of added years of formal study preempts part of his life. Should we not have as a mild principle: the required period of formal training will be as short as possible consistent with its proper purpose? To lengthen the period in order to screen or limit entry into the professions or because this is a result of the characteristic behavior of guilds, or adds prestige—these do not seem to come within a proper purpose. Our society has an educational burden which it has not met. The need is greatest at the pre-school, primary and secondary level. It is wasteful to misallocate educational resources—to keep the total period any longer than necessary is wrong. There are

other consequences of the present system. We have isolated a substantial segment of the population, denying to it experiences which it wants and needs. At the same time we have encouraged the megalomania of colleges and universities by demanding they behave as substitutes for the world at large and for the agencies of government. Thus, we have weakened the intellectual aims and life of the universities, and we have deprived students a chance to develop skills and even wisdom by working on tasks outside formal education. The results should give us pause.

On a festive occasion such as this it would be nice to conclude that these doubts and questions do not concern law schools. Perhaps they don't. I hope the merits of our great law schools are obvious. Their intellectual standards are often high. They are teaching institutions in which the students share to an amazing degree in the creativity of research in the humanistic tradition. The unity of subject matter and interest and the method of instruction, which as an ideal, anyway, compels participation, not only create an intellectual community, but they provide a training in the liberal arts not otherwise given in most academic programs. We should take note that these qualities are insufficient in the minds of those who call for more social science training or research in law schools, decry the overemphasis on the case method—which in its pure form surely has not existed for generations—and decry the emphasis on case law, believe that law students should be able to take broadening courses outside of law in other departments of the university, feel strongly that some further training in service and more explicitly in processes of law reform should somehow be a greater part of the law student's experience. I do not know whether the call for a more practical training has waned or has become lost in the effort to staff anti-poverty and similar programs. On all these points of criticism, the law schools over the last forty years—and nothing in this area is entirely new of course—have

made certain adjustments and accommodations. In addition, the schools have developed, and particularly in the foreign field, intensive graduate programs of their own. But I believe it is fair to say that law schools deserve their distinction because of their dedication to the application of structured thought, with precision and persuasion, to complex human problems and transactions. This is a great contribution which, in itself, invites questions.

There are three questions. I do not suggest the answers are obvious. The first is, accepting what the law school's greatest strength is, would it not be possible to give this basic training within a two-year rather than a three-year period. I believe there is general acceptance of the view that for many students the guts of what a law school has to teach have been given within two years. The coverage would not be as great. But the suggestion is not to wipe out a third, fourth or fifth year, but rather to give a reasonable early termination point for those who wish to leave formal law training after two years of study. What an extraordinary constructive challenge to the rest of the academic world it would be if law schools took this step! I don't think they will.

The second question is why should law schools, now that some of the malaise of undergraduate and graduate education is perceived, insist that their students have completed a four-year program before their law study is commenced? I am not sure there is even a doubt but that undergraduates could do just as well as graduates in formal law study. The argument has rather been that a broad liberal arts training or perhaps a general education was necessary to make a man or a woman a good lawyer or a public servant. But law is a liberal arts training. It is one of the best. I realize the argument is that law training will replace other study, although we are not usually sure what this is. It is a fallacy, in any event, and one with particular significance for the age which we seem to be entering, to assume that education must come in these college years or not at all. We must work toward a period in which not only is self-education understood to be the



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education which counts, but also a period in which there is continuing access to courses and lectures, and continuing self-education throughout an adult's life.

The third question cuts deeper. Why not make law study clearly undergraduate with some courses available to all students followed by more specialized work for those who desire this? This shocking suggestion has at least three points to commend it. The first is that it is of greatest importance that the average college student have access to some training in basic legal theory. And second, this should be offered in terms of the serious consideration of legal problems so that college education can be revitalized by a professional standard of proficiency—we once could say excellence—building upon problems which can be perceived. And third, placing the lawyer's professional education at this point would respond to the law student's desire to take other broadening courses while he is engaged in law study. Those non-law courses are usually undergraduate courses which could be more easily available to him. I do not believe this suggestion will be adopted. It somewhat follows a European model, and we believe our training for law is better. Moreover, it flies in the face of strongly held views.

I have asked these questions to put the subject of law schools and legal education in its double perspective. One perspective looks towards the problem of education in its full sweep, with its confinement of the student, the length of time involved, the misallocation of resources as I think it is, the distance it imposes between the student and the reality of doing, and the lack of standards of proficiency when work is not seriously undertaken. We must, I think, find a way to shorten this period, to provide easier means for entrance and exit from the system with time out for doing, and we must find a way to give renewed seriousness—I have avoided the use of the word *relevance*—both in terms of the problems looked at and the standards of excellence required. The other perspective looks towards the law and the legal profession. Law schools do not train a complete lawyer. They cannot do so. In many ways we still have an apprenticeship

system. But I do not believe the Bar has created the institutions which can make the necessary internship or apprenticeship as viable, equal and serviceable as can be done. And here, too, I believe, there are consequences for the law. It is not good to develop programs which only use law students to defend and represent the poor in criminal or civil cases or to lead community action programs, thus giving rise to the public view that the successful lawyer is busy on other things, and giving rise to the law student's view that virtue is to be found only on one side. We are in danger of developing a caricature of the adversary system, forgetting that this system only operates when the institutions of the law are created, defended and reformed by the Bar. It would help if the profession had institutions of doing in which all lawyers spent some time, and which were committed to the aid of the courts, to law revision, and to work in representation through assignment or some other mechanism so that a fair spectrum of causes would be seen and senior lawyers would be available on both sides. This is easier said than done. The institution which I have barely sketched undoubtedly won't work, but I am sure there must be some way for the Bar to face up much more directly to these problems than it has. I realize that in the last few years it has done quite a bit. I am suggesting there might well be a new allocation of responsibility between the law schools and the Bar, particularly if the law school could shorten the time, and young lawyers could more quickly move into a period of supervised practice.

What a queer talk to give at the end of a celebration of the completion of facilities which so elegantly meet the needs of the great law schools of today, and enable them to preserve the community which they have created. Our great law schools must be preserved. They will be. But they will do so best in these shifting times by looking ahead, not only at their own needs, and not only at the needs of the legal profession, but at the pattern of professional life in this country, and not only of education in general, but our system of justice and our understanding of it. The responsibility is very great.