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LIBERAL EDUCATION, THE CASE-SYSTEM, AND JURISPRUDENCE*

HARRY KALVEN, JR.†

On my conscience, I have spoken prose above these forty years, without knowing anything of the matter; and I have all the obligations in the world to you, for informing me of this.—MOLIÈRE, *Le Bourgeois Gentilhomme*.

IT IS the purpose of this paper to outline tentatively the kind of course in jurisprudence that might result from a conscious adaptation of some traditional techniques of liberal education to the needs of the modern law school, and to evaluate briefly the contribution such a course might make toward a solution of some of the recurring problems in teaching the general content of law.

The traditional techniques of liberal education have in recent years been the subject of considerable publicity under the label "The Great Books," and the theme therefore is, in a sense, the relation of "The Great Books" and jurisprudence. "The Great Books" label is, however, an unfortunate and misleading one. Because of its connotation of a rigid list of "One Hundred Great Books" against which everyone else's education can be measured, it has almost invited the ignoring of the values in the educational theory behind it.

"Jurisprudence," too, is a bad term today. It suggests strongly that part of law in which no one is interested and it has a singularly cold, dead, and pompous sound to the modern ear. Perhaps it was given the kiss of death when Professor Llewellyn coined that noun, *jurisprude*.

A proposal, then, to combine "The Great Books" and jurisprudence cannot but sound unattractive. I shall therefore attempt to take the curse off the vocabulary by the familiar expedient of redefining the key terms.

I

I shall start with "The Great Books." Properly understood it is the doctrine of liberal education, and as such it has something to say about both content and method, although perhaps more about the latter than the former. The best prospectus for it that I know of is to be found in a slender

* The substance of this paper was read before the Jurisprudence and Legal History round table at the Association of American Law Schools meeting December 27, 1946, in Chicago.

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book by Mark Van Doren¹ entitled *Liberal Education* and published in 1943.²

Mr. Van Doren warns us that he will not say much that is new and indeed many of his points are familiar and easy to accept. We are told that no one thinks he is well educated today, but that a dip into history shows that men have always expressed dissatisfaction with existing standards of education. We are told that a large burden of education must remain on the student's shoulders and that the good teacher is always teaching himself. We are told that education without intellectual design is intolerable and that much education is in that state today. We are reminded with eloquence of the intimate relation between education and democracy and that democracy cannot have too many men educated as well as possible. And we are admonished not to expect too much of education alone; not, that is, on the one hand to expect her to solve all the world's problems or on the other, singlehanded to make us moral men.

We are also given a series of striking characterizations of the liberally educated man—he has a disciplined yet free mind; he has somehow been made more human; he, in a phrase Van Doren borrows from Pascal, “be-

¹ Popularized statements of the program are to be found, among other places, in Adler, *How to Read a Book* (1940); Adler, *Manual for Discussion Leaders* (Prelim. Draft, 1946); in connection with the application to law school it may be of interest to compare Hutchins, *Autobiography of an Ex-Law Student*, 1 *Univ. Chi. L. Rev.* 511 (1934). On the popular magazine level see, for example, Hill, *A Business Man Views the Classics*, *American Mercury* (Aug., 1945).

² Although the program has been much discussed, it has not been widely adopted. The only school I know which fully incorporates this program is, or was, St. John's College, Annapolis, and it has had, I believe, less than fifteen years of experience with it. The only other proposal I know that is centered on this approach is the experiment in a full curriculum for adult education started this fall by the Downtown College of the University of Chicago. Courses which reflect some of this emphasis have from time to time been given at the University of Chicago, particularly under the auspices of Robert M. Hutchins and Mortimer Adler. The original impetus to the program appears to have come from Columbia University under the sponsorship of John Erskine and Everett Dean Martin. Educators such as Scott Buchanan and Stringfellow Barr have also been particularly active on its behalf in recent years. There is, in addition, a project under way in connection with the *Encyclopedia Britannica* to reprint a series of books together with a detailed analytical index and commentary.

One other bit of data is worth noting. The greatest success and popularity of the idea in recent years has been in the field of adult education. I am told that this year over eight hundred adults are taking such courses in connection with the Downtown College of the University of Chicago. Perhaps more impressive than these classes, which utilize, in general, university teaching personnel, are the so-called community groups which meet on a purely voluntary basis in neighborhood libraries, churches or homes and use non-professional teachers. This program is expanding rapidly and recent reports show some sixty classes scattered throughout Chicago with approximately twenty-four hundred students, and another eighty classes in Cleveland, Detroit, and Indianapolis with some twenty-five hundred students. There are plans to extend the program by next fall to Seattle, Portland, Tacoma, and Vancouver. Perhaps the most arresting variant is a class which for several years has been conducted at the Stewart-Warner plant in Indianapolis for plant workers.

lieves and doubts well"; his activities have relish for him. He can even fight evil without illusion it will stay away, and can look forward to serenity in old age.

And then in a particularly effective passage Van Doren tells us:

The student who can begin early in his life to think of things as connected, even if he revises his view with every succeeding year, has begun the life of learning. The experience of learning is the experience of having one part of the mind teach another, of understanding suddenly that *this* is *that* under an aspect hitherto unseen, of accumulating, at an ever-accelerated rate, the light that is generated whenever ideas converge. Nothing that can happen to men is more delightful than this, and it is a pity when it does not happen to them as students. To all but a few students today it cannot happen. There are gaps or breaks for them, as for their professors, between poetry and mathematics, between science and ethics, between philosophy and politics; their advance through these "subjects" is not on a single front; they do not study proportion as something equally present in arithmetic, in geometry, in architecture, in music, in physics, in the human body, and in poetry where its name is metaphor; they do not study form as something common to mathematics, metaphysics, and morals; they do not study tragedy as a process in ideas parallel to the course of calamity in the lives of persons. If they did, their leisure hours—so necessary to the studious career—might themselves possess a center, and the work unconsciously done in idleness might have results worth waiting for.³

From the book as a whole five things emerge as most distinctively characterizing Van Doren's position:

(1) Liberal education is not a specialty. It is the common core of education which all men should have and share, particularly in a democracy.

(2) Liberal education is the proper preparation for becoming a specialist. "The specialist," he says, "is the fine end of education." But it would appear that the specialist is not only the graduate student or professional man, but in a sense any man with a calling or a vocation.

(3) Liberal education involves mastery of certain basic intellectual techniques or disciplines which Van Doren likes to call the liberal arts.

(4) Liberal education uses tradition critically, but emphasizes the contemporaneity of *some* traditional materials and warns that we will have tradition still with us even if we try to ignore it. The liberally educated man has settled a relation in his mind between past and present.

(5) Science and literature are partners in liberal education. Mr. Van Doren is singularly insistent on this point and devotes an enjoyable chapter to unsparing criticism of the classics, English letters, and even the humanities as these are taught today. Science, he would emphasize, is liberal and humane; literature, he would equally emphasize, is disciplined and rigorous. And no education is complete or liberal if it has one without the

³ Van Doren, *Liberal Education* 115-16 (1943).

other. The liberally educated man has settled a relation in his mind between literature and science.⁴

We come then to the actual pattern of the educational process and finally meet up with the books. Van Doren can put the program into a few sentences:

.... the curriculum for any college may be simply described. The four years of every student will be devoted to two principal and simultaneous activities: learning the arts of investigation, discovery, criticism, and communication, and achieving at first hand an acquaintance with the original books, the unkillable classics, in which these miracles have happened.

Neither activity is conceivable without the other.⁵

We see then the books in perspective as part, albeit a central one, of a college curriculum which envisages intensive laboratory work in experimental science, and training in languages and mathematics as co-ordinate aspects of the process. And if we examine Mr. Van Doren's list of books we discover no less than forty selections out of the total one hundred ten deal with works in the physical and biological sciences.⁶

Mr. Van Doren has one further corollary which follows from his theories—in the good school all teachers would teach interchangeably all courses. No one, remember, is a specialist in liberal education.

II

There are, I know, objections to this program entirely apart from its possible relevance to law schools, but I suggest postponing a consideration of difficulties until the scheme is applied to law schools. At that point the general difficulties should appear in a more virulent form.

⁴ There is relevance at this point in an extended quotation which Van Doren takes from Scott Buchanan on mathematics: "It is true that mathematics sometimes deals with rigid structures, chains, and networks, but they are not made of propositions, and long and elaborate arguments are most often bad mathematics. The structures with which mathematics deals are more like lace, the leaves of trees, and the play of light and shadow on a meadow or a human face, than they are like buildings and machines, the least of their representatives. The best proofs in mathematics are short and crisp like epigrams, and the longest have swings and rhythms that are like music. The structures of mathematics and the propositions about them are ways for the imagination to travel and the wings, or legs, or vehicles to take you where you want to go. The solemn sound of demonstrated mathematical truths is a professional way of announcing an arrival at some point on the journey fantastic. Let it be added for good measure that some of the greatest mathematical discoveries by the greatest mathematical minds have been theorems that they could not prove; some have never been proved. The fact of the matter is that anything worth discovering in mathematics does not need proof; it needs only to be seen or understood." Van Doren, *op. cit. supra* note 3, at 134-35.

⁵ *Ibid.*, at 144-45.

⁶ The names are worth noting: Hippocrates, Aristarchus, Archimedes, Euclid, Apollonius, Nichomachus, Ptolemy, Galen, Leonardo, Copernicus, Gilbert, Bacon, Kepler, Harvey, Galileo, Descartes, Boyle, Newton, Huygens, Lavoisier, Dalton, Fourier, Lobachevski, Faraday, Peacock, Virchow, Darwin, Bernard, Mendel, Riemann, Dedekind, Maxwell, Joule, James, Freud, Cantor, Hilbert, Poincaré, Russell, Veblen, and Young. The list appears in Van Doren, *op. cit. supra* note 3, at 151-52.

It is time, then, for the other key term—"jurisprudence." I suggest it be used here to cover simply the basic problems and assumptions of law. Its field is simply the good and profitable basic or general questions one can ask about law, however many or few there may be. Its concern then is with whatever we talk about when we talk about law in terms that apply to more than one field of positive law.

This may begin to have a vacuous sound. We do not like Law with a capital "L" any more than we do jurisprudence. There is, however, one way in which it can readily be made more concrete. To a large degree jurisprudence deals with the kinds of questions a curriculum committee must have asked itself in designing the curriculum. If we would reply that no man can see law steadily and see it whole, let us recall that we must at least be trying to do something like that when we design the curriculum. And designing and redesigning law curricula has been a popular activity in recent years. One shorthand way, then, of talking about a course in jurisprudence is to say that it should approximate what would happen if we were critically to re-evaluate our curriculum each year and to permit our students to participate in the discussion.

There is perhaps another way of talking about it which Mr. Van Doren has suggested—and it should become apparent how carefully I am loading my key terms. Jurisprudence is the part of law that all intelligent laymen can know and understand without thereby becoming lawyers. It is the juncture at which the specialty merges into the common knowledge of men. It is, in brief, the liberal education component of law. This is not an altogether strange view. It is a frequent notion today that a man who truly understands his specialty can truly popularize it, that is, communicate something of it to the non-specialist. And we all know hard-headed lawyers who follow the practice of consulting their wives on tough and intricate cases.

Note, however, that no one would recommend teaching law only in this aspect to lawyers. The lawyer is to be a specialist and he is still to know a great deal more of his field than the layman. Jurisprudence at its best is never more than a part of the education of the specialist. Neither was Van Doren's liberal education.

There are perhaps four familiar problems of contemporary legal life that we should particularly keep our eye on. The first is the difficulty of communication between law faculties and other faculties, especially in the social sciences. The second is the difficulty of communication between members of a given law faculty, each of whom is today almost forced to become a specialist in a few fields. The third is the state of mind of the senior law student who has now had his two or three years of detail and

who has become increasingly disenchanted with his prospective life-work. And I would suggest that the fourth is this same student ten or fifteen years later.

Now it is not suggested that a good course in jurisprudence will magically solve these problems, but I think it will make some inroads on them, and I think that is its main job, and that that is the way it should be tested.

This again is an old story. Professors Patterson and Llewellyn in their proposal some years ago for a required third-year course in jurisprudence said the same thing and said it better. Here is Professor Llewellyn's closing statement:

In sum, then, a compulsory third-year special course in Jurisprudence seems to me an obligation we owe to every man who is to be a lawyer. That he may try on his own, to make what he has been doing, and what he is to do, take on meaning, as a Whole. That he may enter into recognition that his profession is not apart from life, a thing of drudgery, but a part of life, a thing of eternal service. That law may regain for him its rightful status as a liberal art, as a humanity, as the very focus and balance-wheel of men's lives together.⁷

III

So much then for "The Great Books" alone and for jurisprudence alone. It is time for the wedding.

It is as you might expect a simple ceremony. A course in jurisprudence should utilize those materials which will best raise the best common questions about law and best realize the liberal-education component in law. Some of those materials are traditional; some are not.

The proposal then is for a senior course running throughout the last year, meeting perhaps as a two-hour seminar twice a month. The students would read perhaps a dozen books and would devote one or more sessions to a discussion of each. The classes would be kept down to seminar size, that is, twenty to twenty-five students at most. It would be a required course for all seniors. All members of the faculty would participate equally in teaching it.

One somewhat special feature of the seminar would be the use of two leaders rather than one. "The Great Books" people have adopted this device perhaps partly to get as far away from the lecture method as possible, partly to bring greater energy to the discussion, and partly to give it greater flexibility. In any event the scheme works very well in practice.⁸

⁷ Patterson and Llewellyn, *A Required Course in Jurisprudence*, 9 *Am. L. School Rev.* 582, 593 (1939).

⁸ There is some explicit discussion of the reasons for the device and some rules of thumb for leader co-operation in Adler, *Manual for Discussion Leaders* (Prelim. Draft, 1946).

Under the best circumstances the course would be conducted jointly with the other social science departments and perhaps half the students in a given class would be graduate students in sociology, economics, anthropology, political science, psychology, and philosophy.

The efficacy of such a proposal obviously turns on considerations of both method and content.

The method is simply that of rigorous discussion in small groups. It is the method first and perhaps best used by Socrates. It is the method in which Mr. Van Doren is fond of saying the liberal arts of logic, rhetoric, and grammar come into play on a worthy subject, or if you prefer the more contemporary usage, it is the good exercise in semantics. It is the method, in short, of the case-system. And no less a critic of law schools than Robert Maynard Hutchins has said that they are the only places in university life today where the liberal arts are really practiced.

The parallel between the case-method and "The Great Books" method is striking. In each the materials are used to raise the best questions the topic permits. In each the procedure is intensely dialectical—the articulating and critically examining assumptions and the exploring of them to see where they lead; in each the procedure is the repartee of question and answer. And in each there is emphasis on two other things: reading originals rather than secondary comments about them and reading them whole rather than by excerpt, although the modern case-book is beginning to look quizzically at these two.

Nothing has been said as yet as to what would be read and discussed, except that some of the books would be old. I should prefer holding specific suggestions as to content until we have first looked at some of the many objections and difficulties in the proposal as outlined thus far.

Remember, however, that the purpose of such a course is not cultural. It is not to give the student a veneer of erudition or to enable him to quote Alice in Wonderland or Oliver Wendell Holmes in the peroration of a brief or in an after-dinner speech. Its purpose is to give him additional and necessary insights into his specialty and unless it can do so it has no place in a law school.

IV

Some objections are objections to any course in jurisprudence in a law school; others are objections to the particular proposal. We shall look to each briefly in turn.

Professors Patterson and Llewellyn have already argued the case on the first grounds in their defense of a required third-year course, and to my

mind argued it most convincingly. So the job is much easier on this score.

The first objection is that there is not time enough. That would be better stated as an objection to the utility of examining the general assumptions of our field of study. For if such an examination would enable the student in some degree to see law as a Whole, in Professor Llewellyn's phrase, there must be time for it. We have it is true only so much of the student's life, and lack of time would be a good answer to a proposal to teach Shakespeare in law school. But it is another matter to say we lack time to do something integral to a good education in law. Mr. Van Doren frequently consults an imaginary layman in his book for advice on education. On this point I would suggest we consult the lawyer who has been out for, say, ten years and who has forgotten some of his law. He would, I think, tell us that he now realizes that we have plenty of time—in law school.

There is a variant on the time theme that is more compelling. It was, I believe, Professor McDougal's point in reviewing Professor Fuller's book.⁹ The point is that we have so many urgent social problems clamoring for action which we can all see and grasp that we cannot afford to divert our time and energy to more speculative matters. If that were the choice, I think we would all vote with Professor McDougal. But no proposal has been made that we speculate about the foundations of law for the next twenty years and then act. The suggestion simply is that the man of action and the specialist will both act better if they frequently, but not incessantly, pause to inquire about what they are doing.

I do not suppose, however, that this is what Professor McDougal really meant. He was perhaps voicing the age-old skepticism of the inaction of philosophers. The planners, as Mr. Thurman Arnold has put it, never do. This is, therefore, an appropriate place to note that the University of Chicago Law School has been working for the past year on the activating of an institute for legal research. The plans call for a full time staff of lawyers and economists and other social scientists working seriously on contemporary problems and making available relevant social and economic data and techniques for legal action and education. A start has been made in that direction on housing.

Another line of objection is that this may be a good thing but that it is

⁹ McDougal, Fuller v. The American Legal Realists: An Intervention, 50 Yale L. J. 827 (1941). The more recent Lasswell-McDougal prospectus for legal education nods to the importance of attempts to "legitimize democratic values" and contemplates a basic seminar on ideology. Lasswell and McDougal, Legal Education and Public Policy; Professional Training in the Public Interest, 52 Yale L. J. 203 (1943).

not the law school's job to cure all the defects in the student's prior education. In brief this is education the student should have received before he came to the law school. Recently I participated in some discussions on the desirability of using a general education test as a way of selecting applicants for admission to law school. The education people kept asking if we were not interested in general education and insisting that if we were interested we would surely use the test. We decided, however, that it was not the law school's job to attempt to improve the general education of its applicants, however desirable that might be. I do not think that conflicts with the position here. If the Shakespeare course were being suggested again, the appropriate reply would be that it is too late to correct that educational deficiency in law school and that many a lawyer who knows no Shakespeare will in all probability be a better lawyer than many a lawyer who does. The proposal here stands or falls on its being integral to a complete education in law and on hypothesis it could not have been done earlier because it requires that the student come to it with a considerable knowledge of the detail of law.

This is also the point to the insistence of Professors Llewellyn and Patterson that their course be third-year rather than first. The course to be most effective must capitalize on the data the student has acquired. It is the re-examination of basic assumptions in the light of so much that is special and concrete that is the job.

It is another of Mr. Van Doren's points that the good books are infinitely re-readable. Hence, repetition here is not wasteful but necessary. And this is not to say that anything worth doing once is worth doing twice. Thus, the examination of these materials as an undergraduate or as a first-year law student, however useful, is not the same as their examination by the well-informed student specialist of the third year.

Nor is this to say that the problem of orienting or introducing the new student to law is not a serious one and that such general discussions are not most valuable in this connection.¹⁰ I will not pass on the difficult choice of whether it be better to have the student meet law by seeing it whole at the start of his legal education or better to have him put together what he has amassed so as to see it whole at the end of his legal education. I think it is rather clear he should have a chance to do both.

The final objection on this level is that such discussion is really impossible; that necessarily it will have climbed so high that its abstractions

¹⁰ At the University of Chicago Law School there is a basic first-year course in Elements of the Law. There has also been in recent years increased emphasis on individual research in the first year which shows promise as a complementary method for introducing the first-year student to law.

will have lost meaning and it will therefore be reduced to a verbal exercise. This is, I suppose, the objection that Professor Underhill Moore made so effectively some twenty years ago to Wigmore's *Rational Basis of Legal Institutions*.¹¹ It is an excellent objection. But there is a stubborn difficulty with it—at what level do generalizations about law cease to be valuable and analogies become too thin? It is surely possible to undergeneralize or analogize. Unless the curriculum has been so designed as to realize explicitly in its various courses the maximum useful generalizations and analogies of which law permits, there remains the problem of finding a vehicle for doing this.

We turn then to some specific objections which can be levied against the particular proposal rather than against a separate treatment of jurisprudence as such.

First of all, why not the lecture method here? We have the classic example of Dean Roscoe Pound's lectures at Harvard, and we find Professor Patterson in his otherwise excellent proposal indicating a preference for the lecture method as "more economical and more conducive to good synthesis." It seems to me a little ironic that it may be the jurisprudence courses where the virtues of the case method are perhaps least often found. The case against lectures here is essentially the same as the case against them elsewhere in the law curriculum. No matter how skilfully composed, they permit the student to be too passive and they give him the synthesis too soon. Professor Mortimer Adler has said that it is difficult to justify giving a lecture rather than writing a book or article; that the lecture is in effect simply reading the book or article aloud. I think he has a point, although it should be added that Professor Adler is still very active in giving lectures.

A second objection goes to the apparent preference for few and relatively complete materials as against the anthology of which Professor Hall has given us so good an example.¹² Why, in fact, is not Professor Hall's compilation closer to the ideal of the case-system? There are at least two difficulties with this approach. The one has to do with the necessity for quoting out of context. The job of fairly editing such materials is probably impossible, and there was striking unanimity in the reviews of Professor Hall that the editing had been too severe, and each reviewer had a different set of examples to cite.¹³ The other difficulty has to do with the

¹¹ Moore, *Rational Basis of Legal Institutions*, 23 Col. L. Rev. 609 (1923).

¹² Hall, *Readings in Jurisprudence* (1938).

¹³ See, e.g., Fuller, book review, 87 U. of Pa. L. Rev. 625 (1939); Konvitz, book review, 49 Yale L.J. 160 (1939); McDougal, book review, 34 Ill. L. Rev. 109 (1939).

effect on the student. A large collection of purple passages from good and great writers, no matter how carefully selected and arranged, is likely to give the student a sense of bewildering detail again and an attack of intellectual indigestion. I have a hunch, too, that it is the reading of a single complex exposition in whole or at least in large units that most closely parallels the process of the case-system, and it is the smaller parts of such exposition that may be truly analogous to the cases themselves.

We come then to the proposal that all members of the law faculty teach the course interchangeably. This, oddly enough, appears to me to be the key to the whole enterprise and I am tempted to say that if the entire faculty takes over the course in jurisprudence, I am rather sure the details of this course will work out satisfactorily regardless of the precise pattern. The objection here, I take it, is that all members of the faculty are by no means equally equipped to do this and that they will not be unless they devote a prohibitive amount of time and energy to it.

The answer has already been suggested. They already have the method and they are not expected to have mastered the content. The insight that the tradition of liberal education can give us here is a simple one. It is that this is the one field of law in which all law teachers have an equal stake. And it is that part of law about which the professional specialist can and perhaps always should be an amateur. Some faculty men will perhaps do this sort of thing better than others, but the experience suggests that all will do it well enough.¹⁴

There is one other assumption of Mr. Van Doren that further clarifies this point. It is that the good books themselves are the teachers, and the teacher is the mediator between book and student. The books themselves, he insists, carry a large part of the teaching load. It is clear that here we part company with the case method to some extent, but it has been suggested that Langdell at least contemplated reading relatively few cases and reading them well, and it would perhaps not strain the analogy too much to say that his was "The Great Case" method.

The next objection has a familiar ring. It is that the prospectus by its emphasis on tradition and the past involves the great waste of dwelling on obsolete materials out of tune with the contemporary world. This is a difficult point to debate sensibly. It is easy to talk about "provincialism in

¹⁴ During the last year at least six of the members of our law faculty at the University of Chicago participated, without casualties, as leaders in University Great Books classes, and some of the books were as remote from law as Hamlet. The University Downtown College reports that of its forty-one teachers of The Great Books this year, nine are lawyers, fifteen businessmen, three scientists, and one a newspaper columnist; and that in the community groups there are at least fifty lawyers acting as group discussion leaders.

time" or "priests of change" as even the usually mellow Mr. Van Doren does. It is easy to ask just when in time a book becomes obsolete—after five years, ten years, one hundred years, or when? And it is easy to challenge the critic on the grounds that he has not read the books he insists are not worth reading. I do not propose to solve the problem except to say that we must work out some relation between past and present which does not ignore the past or the present entirely.¹⁵

I will not conceal where my sympathies lie in the matter and therefore I cannot resist a quotation from C. S. Lewis' engaging *Screwtape Letters*. The letters are being written by an undersecretary in the hierarchy below to a young fiend and are letters of counsel on how best to achieve success in the chosen field. Remember that this is the devil speaking:

Only the learned read old books and we have now so dealt with the learned that they are of all men the least likely to acquire wisdom by doing so. We have done this by inculcating The Historical Point of View. The Historical Point of View, put briefly, means that when a learned man is presented with any statement in an ancient author, the one question he never asks is whether it is true. He asks who influenced the ancient writer, and how far the statement is consistent with what he said in other books, and what phase in the writer's development, or in the general history of thought, it illustrates, and how it affected later writers, and how often it has been misunderstood (specially by the learned man's own colleagues) and what the general course of criticism on it has been for the last ten years, and what is the "present state of the question." To regard the ancient writer as a possible source of knowledge—to anticipate that what he said could possibly modify your thoughts or your behaviour—this would be rejected as unutterably simple-minded. And since we cannot deceive the whole human race all the time, it is most important thus to cut every generation off from all others; for where learning makes a free commerce between the ages there is always the danger that the characteristic errors of one may be corrected by the characteristic truths of another.¹⁶

There is a variant on this objection which is perhaps more challenging. It is not that the old books are invariably inapplicable today, but that they are relatively inaccessible to the modern reader. And if the choice is between inaccessible profundity of the past and accessible mediocrity of the present it is not an easy one to make. It is true that many of the old books, such as those by Plato, are remarkably readable today and this fact is borne out by the experience with the adult education program. It is also true, however, that some such as those by Aquinas or Spinoza sound strange indeed to the modern ear. Some years ago there was a

¹⁵ I would suggest, however, that anyone who is firmly convinced that old books are for antiquarians only at least try a small sampling of some of the oldest and read Aristophanes' *Lysistrata*, or Callicles' tirade against Socrates in Plato's *Gorgias*, or the Melian episode in Thucydides' *History*. I need not add that these are hand-picked examples.

¹⁶ Lewis, *Screwtape Letters* 139-40 (1943).

popular jingle around the University of Chicago that had the pertinent refrain:

Nobody knows what Aristotle meant,
Nobody knows but Adler.

We come finally to the last of the objections—that somehow this program has an authoritarian and non-democratic bias. Those are, of course, fighting words, and I find the case for them pretty weak. The proposal, remember, is not that we read only Aristotle or only Aquinas, and it must be noted that the proposal carries two great safeguards against dogmatism. The first is the method, which is intensely dialectical and critical. The second is that by taking from the whole range of man's thinking on the matter you force the student to recognize and understand the variety of mankind's views.¹⁷ It is an old saying that men must at least have a common topic of discourse before they can disagree.

V

It is inevitable that in an enterprise of this sort the book-list finally rears its ugly head. The listing of books beyond a certain point becomes exactly parallel to discussions as to whether Lajoie, Collins, Frisch, Hornsby, or Gehringer was the best of the second basemen.¹⁸ It is fun precisely because it provides material for inherently endless debate.

However, there are better and worse books as there are better and worse second basemen, and the suggested proposal needs to be further particularized. In what follows I ask that the words of Professor Rodell in his recent and unkind survey of the Harvard book list for prospective law students be kept in mind:

To criticize any list of books put together for any purpose is something like shooting a sitting bird. It is not quite sporting, for any fool can do it.¹⁹

It should be noted that if we go by books rather than points we will get an overlap but not a complete one between any two or more books in the series. A single book, say Aristotle's *Ethics*, will have several companions on each of several points and in this sense there is one further analogy to the case method.

¹⁷ Perhaps "The Great Books" label is the culprit again. It may suggest to some that only those books are "Great" which agree on all points with the views of the compiler of the list. A brief survey of the variety of Mr. Van Doren's list, for example, would quickly make evident the misconception.

¹⁸ Or Martin Marion.

¹⁹ Rodell, book review, 54 Yale L. J. 897, 898 (1945).

I shall assume that a certain number of basic books will be included. That is, say four to six from a list which includes: Plato, Aristotle, Aquinas, Machiavelli, Hobbes, Locke, Rousseau, Spinoza, Kant, Mill, Bentham and Austin. It is clear that these will raise a cluster of questions as to justice and the normative in law, the function of the state, revolution and civil disobedience, the definition of law, change and stability, equity, court and legislature, laws and men, freedom and democracy.

And, let me hasten to add, the list should include at least two from the following incomplete list: Holmes, Brandeis, Dewey, Cohen, Cardozo, Stone, Pound, Frank, Arnold, Cook, Douglas, Kelsen, Llewellyn, Hall, McDougal, and Fuller.

Let us turn for the moment to a completely non-legal book. I would include at least one great work in the physical or biological sciences. Perhaps Galileo, Newton, Harvey, Lavoisier, Faraday, or Poincaré. However, any great scientific work might lend itself to a rich comparison to legal method and to the structure of law and would perhaps allay some of the suspicions of lawyers that their own intellectual methods are altogether queer and invalid.

And I would also like to include a book such as Professor Elton Mayo's recent *Social Problems of an Industrial Civilization* which is a serious attempt to apply an exacting experimental method to some social problems.

If one had time it would further be useful to read a good statement of law in some field, perhaps some Williston or Wigmore; or perhaps something somewhat different such as the late Henry Simons' *Personal Income Taxation*. Conceivably, even one of the Restatements would be illuminating in this connection.

So much then for one aspect of structure and method. Another line might center on a serious reading of Marx to focus the basic issues of economic justice, private property, and a competitive society.

And, of course, there should be some good example of legal history, perhaps some Maitland, Pollock, or Holdsworth.

Again it might be refreshing to pause and seriously read the Constitution as a single document, or perhaps read it parallel to the new French Constitution.

And again something, perhaps Grotius, perhaps E. B. White, would raise the international issues, or use might be made of materials from Nuremberg.

To again shift ground, there might be a serious reading of Freud along with one of these: Aristotle's *Ethics*, Mill's *Utilitarianism*, or Kant's ethical writings.

And again the great defenses of injustice as they appear in Plato's *Gorgias* and *Republic* or perhaps Machiavelli's *Prince*.

And certainly some attention to anthropology and primitive law; perhaps Malinowski or Sumner.

Or to change directions once more, perhaps some of the basic defenses of free speech and tolerance as in Milton, Voltaire, Mill, and perhaps the censorship in the *Republic*. Or maybe instead the Frankfurter volume on the *Sacco-Vanzetti* case.

Or it might be possible and productive of insight to take a single judge and actually read through a substantial number of his opinions at one time.

And I would be in favor of reading one good biography, perhaps the new Brandeis, to focus on the problem of life at the law. Or, perhaps, to take Rodell's suggestion, the James Reid Parker short stories about New York law practice.

And somewhere along the line something from Aristophanes or Rabelais or Swift which would center on the public relations problems the lawyer has always had with the rest of mankind.

And Pareto should deserve some serious consideration.

And in any case I'd suggest starting with Plato's small dialogue *The Ion*, which although not at all about law raises the central query of what it is the lawyer should know. And it might be fun to read Rodell's *Woe unto Ye Lawyers* at the same time or the recent Lasswell-McDougal piece on legal education.²⁰

Such listings are obviously endless. There are many other pressing candidates from sociology, rhetoric, logic, analytical jurisprudence, etc. Perhaps a case could even be made out for reading some Blackstone. I hope that a rough pattern may be clear.

But once again the point is that it is better to read a few books seriously and to discuss them seriously than to attempt scholarly coverage of all the materials.

It will be remembered that the Van Doren scheme emphasized the role of all the liberal arts in education. Those arts include not only reading well, listening well, and talking well, but also writing well. It should therefore be a part of the current proposal that the student write. A minimum suggestion would be three serious writing jobs over the year. And there are rich possibilities for imaginative assignment. The student might carefully review one of the modern books, or he might review a modern book three times during the year. Again, he might review many opinions of a

²⁰ Note 9 supra.

single judge. Or review an older book—if you read Hobbes in the course, then he might tackle Locke. Or he might tackle in some detail any one of a dozen of the darker themes—the relation of law and history, law and psychology, or precedent and statutory construction; or, perhaps best, he might write a critique of the curriculum itself.

The proposal then amounts to no more and to no less than this: the senior law student in his last year would spend part of his time reading some good books, part of his time writing about them, and part of his time engaging in good conversation about them; and the faculty would do the same.

VI

There remains one central difficulty with what has been said. We have been talking about a single course in jurisprudence and not paying any attention to what the rest of the curriculum may be like. Perhaps any attempt to discuss the design for jurisprudence without co-ordinately discussing the design for the rest of the curriculum is doomed to failure. Perhaps the lesson is that we must discuss legal education as a whole if we are to discuss any part of it intelligently.²¹

In any event it is clear that the better integrated the curriculum, the less need there is for separate courses on the general content of law. The present discussion may well have sounded as though I were concerned with the narrower legal curriculum of twenty-five years ago. I realize that all law schools have been increasingly critical of the content of legal education and that they have been translating that criticism into action. Professor Beale's mot about making noise like a lawyer is not heard so frequently these days nor is that other joke about going to the divinity school. And the names of Veblen, Marx, Pareto, Freud, et al., no longer strike so alien a note when uttered within a law school's walls.

It may be that a proposal such as that outlined will be in competition with curriculum changes or unduly repetitious of them. Perhaps under the ideal setup the Marx would be read as part of the course in contracts, the Freud as part of the criminal law, and perhaps we should concern ourselves only with the task of designing and redesigning the curriculum until the perfect balance was achieved throughout it of the general and the special, of the legal and the non-legal, until all good analogies and assumptions had been made explicit. That may be the main job of legal education today. But few claim to have achieved such model integration and articulateness as yet.

²¹ It is one of the many virtues of the Lasswell-McDougal commentary on legal education that the authors actually do come to grips with the curriculum as a whole. Note 9 *supra*.

It is therefore appropriate to look at this time to the possible help we may get from the older notions of liberal education. For me the most attractive feature of a general law course designed along such lines is that it provides a vehicle for participation by the entire law faculty on appropriately challenging materials. And it is not clear that any program of integration can be altogether successful unless there is such participation.

It must be remembered once again that such an approach is not cultural, and that it is radically incomplete and even dangerous unless coupled with a proposal such as that for the research institute.

Perhaps the full analogy for the liberal education approach to jurisprudence would require that the reading, writing and good talk about law be kept up throughout the entire legal education and thus run parallel to the rest of the curriculum for the full three or four years.

Whether you treat such suggestions as merely insurance against the probable lack of integration of any de facto curriculum, or as something more, I believe they deserve the attention of those who are at work fashioning a legal education in which the cross-fire from general to special, legal to non-legal, will be truly effective and through which law will take its place as the pivotal social science.