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THE PLACE OF PROFESSIONAL EDUCATION IN THE LIFE OF THE UNIVERSITY

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The subject we are called upon to discuss is one frequently set for ceremonial occasions. We tend to romanticize the ideal of an undergraduate and graduate education—kept non-professional. A conflict is seen as arising when professional education moves into this haven. So far as our law schools are concerned, the history evoked is the overtaking of apprenticeship training by the schools, and then the movement of the schools into the universities. We think of the same thing as having happened in a much bigger way with medicine. We note also the emergence of newer professions which already have created schools within the universities, or are about to do so. The history, looked at from this narrow point of view, suggests that there is a question as to whether any particular profession should receive its formal professional training within a university. It reminds us, in any event, that successful training can take place outside the general academic halls. At the present time, the older professional schools see themselves as important, though separate, parts of the university. They naturally wish to maintain their own strength, and to a considerable extent their separateness. Since the topic is ceremonial, the conflict is seen as resolved by a proper appreciation of what each part of the university contributes to a whole, and an expectation of further, usually broadening, relationships. Frequently, not much is said about that part of the profession which continues outside the university; not much is said either about the kind of minimum commitment which is necessary before any part of a university, including a professional school, can contribute to the whole.

But the topic is a serious one, and particularly when new responsibilities are placed upon universities and upon the professions, and when the results of our present structure and arrangements are sufficiently disconcerting to suggest major alterations.

It is not just a matter of historical peculiarity to note that, if one traces the modern university to the medieval university, then professional education is central. The notion that professional education has somehow forced its way into university education is a kind of Americanism. But as a matter of history, if we trace the modern university to the medieval university, then the point should be made that professional education was the reason for that university. In the medieval university, work was directed toward the professions of theology, law, and medicine. Among the oldest universities there are those which began as law schools and then

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built around the study of law to become more general academies. The university itself was a kind of guild collectivity, sharing some of the same characteristics of other more clearly vocational guilds. If one thinks of the liberal arts emphasis of the medieval university as the recapturing of an older tradition, this, too, has a professional emphasis in its desire to inculcate the skills required for a citizen. This suggests the importance to higher education of a primary concern for the kind of doing and understanding believed to be helpful to the individual who is going to handle important problems for individuals and for the society. It is an intellectual tradition, but it involves skills and training for doing. If there is relevance in this history, and I believe there is, it is no compelling argument against the inclusion of subject matter within a university to say that the approach is professional. There are aspects of a truly professional approach which have been, and continue to be, basic to proper university work. There is a sense in which the best university education, and the only real university education, is professional. One has to remember that the liberal arts themselves were training for the profession of a public citizen.

Whatever the history, the modern university faces a difficult set of problems which require decisions as to what should be included within its responsibilities. The land grant impetus helped create a new kind of institution with enormous service obligations. At the same time, the land grant moneys enhanced liberal arts training. The land grant help furthered the idea of the applied wonders of the enlightenment. The modern state university is in this tradition. It is a marvelous facility. All kinds of duties have been placed upon it because it is such a useful agency. But it is hard to know what its proper boundaries ought to be. Moreover, the liberal arts concept itself, never fully controlling for a university in any event, has become a weakened guide. Changes in the structure of life, in training for vocations, and the rejection of class distinctions never accepted as ideal in the United States (distinctions which no doubt helped to support the idea of what the liberal arts might be, or what was properly professional and not vocational) have made it more difficult to determine which skills ought to be taught at the university level. Decisions of this kind become more important and immediate once it is decided a general education at the college level ought to be available to every citizen. There is a strong temptation to believe it makes no difference. Tastes and needs differ; there is to be education for all anyway; perhaps the institution should offer something for everyone. That kind of happy evasion of responsibility cannot hold for long. There are important overall problems of the allocation of educational resources within the society, and among the levels of education. Within individual institutions there are questions which relate to their own integrity. The questions are: What can an in-

stitution do well, and what is the effect of the doing on the quality of other activities of the enterprise? Universities do not perform well in some areas. Their performance may be no better, and indeed be worse, than that of other possible institutions. This is true in many of the applied or practical areas. There are striking differences among diverse fields, as indeed among universities. For example, many areas are not served by a profession. There is no one profession—some would say there isn't any at all—despite the lawyers, the political scientists, the sociologists, the psychologists, the economists—which represents the social sciences. Many items which become the focus for pressures of the moment, such as remedies for pollution of the environment, find no ready profession to test and carry out solutions in the practical sphere. Where there is no profession, it is particularly difficult for the university to carry out a program involving all kinds of facets of life, even though the need to do so may seem great. And where there is a profession, one has the opportunity and the necessity to determine the best division of responsibility between the university and the profession. Universities do run medical clinics, but it does not seem likely they should run the court system, and it is at least questionable how much of the delivery of health care should be centered in educational institutions, if the desire is to have the best health care, or the best educational institutions.

Universities have to be concerned about the effect of one function upon another. Unless the university is merely a geographical place—and perhaps even if that is all it is—it must be realized that the inclusion of skills and subjects has an effect on other skills and subjects. It is both a shallow and incorrect answer to say this variety is justified because it mirrors life. New skills and subject matter result not only in different approaches which may be seriously incompatible, but also in the inclusion of faculty who will influence not only their own area but have an influence throughout the institution. We like to believe this is good, but in fact it is good only under some circumstances. The question need not be what is important or not, nor a judgment as to what areas can have quality of their own, but rather what is sufficiently related to the ways of thought and to the particular and appropriate standards of excellence for the entire institution, so that inclusion is mutually helpful. Admittedly there are ways around this view of the total institution. An institution can be so divided that it is really one institution in name only. It may find then that its salvation is in separation. But even if this, in a given case, is the best possible, the implications on accountability, institutional integrity, and the university ideal are disturbing.

As one thinks of professional education, therefore, one must see a relationship in one direction to a profession, and in the other direction to the life of the university. Professional education which has no particular

need for the disciplined process of criticism and discussion, closely related to a shared body of knowledge, gains less and contributes less to the university. This is a matter of degree and emphasis—the impact of inclusion to increase either the centrifugal or centripetal forces within the institution, and thus to reduce or increase shared values. The sporadic attempts to sustain the theater and the arts generally, by placing them under the university mantle, raise this kind of problem in an appealing way. There are no automatic answers. But, if the interrelationship is to have qualitative advantages both to the institution as a whole and to the separate discipline, there are concerns which can be stated. For example, there is the right to insist, from a university point of view, that professional education seriously examine the problems with which the professions deal, in part, but only in part, because a never-ending attempt to determine what is crucial is implicit in university education. Thus, the training cannot be regarded as set solely by the way the professions now operate. It is a criticism of social service schools if they have not been concerned with the theory of the approach to poverty and social welfare, but instead have been totally involved in the training of practitioners. It is a criticism of law schools if matters of public policy are totally submerged in the analysis of appellate opinions, or are skewed by absorption into the concerns of constitutionalism without recognition of the broader domain of how law operates. A statement such as this last one is often taken as an emphasis on law in action, as in a way it is, but also as a plea for the relevance to law training of the kind of social science research which goes on outside law schools. But that kind of research, while it always may be important for law, to the extent that the research itself is opinion-making and thus value-forming for the society, is not necessarily germane to direct the insights and judgments which should illuminate the professional study of law.

In any event, law schools might have done better in recent years in the United States if they had given greater attention to legal history and jurisprudence as a way of looking at problems which are around us, and which tend to evoke the coercive power of law. I mention these subjects, perhaps as symbols, to stress the importance to a discipline of the conscious attempt to draw upon and reformulate concepts and distinctions—which the study of law in the United States certainly does—and also to emphasize the importance of the continuing endeavor to make these concepts and distinctions basic, transcending the compartmentalization within the subject, while at the same time relating the approaches of the moment to recorded experience. The point, then, is that not only must the problems with which the profession deals be seen free from the confining structures of prevailing practice, but also there must be, to justify university professional training, the reality of an intellectual discipline which can draw upon itself, has the ability to build upon and modify ideas, and is capable of pro-

viding learning and insight. Not everything which calls itself a profession has an intellectual discipline to draw upon, and even if it does have this history and structure, ways of preparing for a profession may be adopted which belittle and fail to draw upon that intellectual discipline. And if this happens within a university, the disservice has consequences not only for that segment, but for the institution as a whole.

When the professions through professional education come to the university, the terms upon which they come should include a commitment to the intellectual process and the pursuit of truth. There are special reasons for this. The intellectual process is the central means of communication within the university. It is the chief means for the university's contribution to the society. It is, indeed, the university's way of exploring the role of the non-rational experience, the place and meaning of the fundamental presuppositions which ultimately provide the basis for institutions and values, and for attempting to understand the relationships between the known and the unknown. One does not have to argue that the non-rational is an important part of life. There is nothing strange or unexpected in the continuation or reappearance of various movements which find exaltation or fulfillment in ways other than intellectual discourse or inquiry. Moreover, no one need contend the intellect exists by itself—a conception which is only a mockery. Nevertheless, the essence of a university is in the belief in the importance of ideas, the necessity to rethink them, to create them through understanding and invention, a willingness to respond to criticism and to the results of experiments—in short, a truth-finding process of a particular kind. There is an analogy here to the ideal of the objective rule of law and to constitutional protections, which are protections mainly because they require a sober second thought. The question is not the emphasis to be given to the mysteries or certainties for the good of individuals and societies, but only the role of the universities. The odd thing about these days, as Sir Isaiah Berlin has written, is that general movements of irrationality, always to be expected, have been joined by the popularized and distorted slogans taken out of science. The combined emphasis is upon the irrational, the unconscious, and the automaticity of scientific laws which control all things, including words and thoughts, and control the process of reasoning. While all this can be a useful caution and, as it has been, part of the intellectual process itself, the effect has been to downgrade the possibility and ideal of reason, and to disparage the ideal of objective truth. A strange aspect of this joining of movements is that, in part, it reflects an interest in but also an attack upon the social sciences by the natural sciences. The movements are also marked by hostility to those areas of the social sciences which have more structures and, therefore, more independence of their own, including economics and law. It is as though the problems of the natural sciences were to be regarded as suitable subjects for in-

quiry, to be investigated through the rational process, but in the social sciences, the problems and thoughts about them—the subjects of inquiry and the process of inquiry—were to be viewed as predetermined, where reason makes no independent contribution. In this context, ideas are less important than the personality and style of those who originate them; ideas are viewed only as good as popular acceptance makes them, either now or by someone's judgment of what wins in the future. The influence of the popular is more marked because of the impact of television and immediate communication, tending to make a one-dimensional society. These movements highlight the vulnerability of the universities. The denigration of the truth-finding process, which is probably never intended in its full sweep, gives to the universities little reason for existence other than as power mechanisms. But viewed as power mechanisms, they have, in fact, little power to defend themselves from pressures from without, and little basis for standards of achievement within. This kind of power not only corrupts the universities; it removes the basis for the only kind of power which ultimately supports their influence.

This setting has relevance to the study of law as a professional subject in the universities. The training of a lawyer is necessarily concerned with the mastery of the means which produce acquiescence or agreement. Then law as a responsive instrument within the society continually borrows and incorporates doctrines, popular as of the moment, taken from many disciplines, reflecting over-simplification and distortion. There are many examples of this in the academic legal literature and in the opinions of judges. The ability to borrow doctrines and to use them is an important part of the lawyer's training; again the emphasis can be more on persuasion than on correctness. In times of heightened social conflict, the temptation is strong not to view law as an intellectual discipline which can be drawn upon and is capable of providing insight and learning, but solely as a reflection of other forces as to which law and law study have little to add, and to view the training of a lawyer as basically the training of agents in participation. Doctrines and legal institutions are not regarded as providing illumination of proposed remedies, but solely as devices for leaping to solutions or impediments to be viewed with impatience. This impatience is reflected at various levels within the profession and also in the schools. Such a view of law does not remove the necessity for and perhaps the importance of a profession which represents others, advances causes, and accomplishes accepted solutions. But it does raise questions as to the place and subject matter of law study, not unlike those which might be asked about schools of speech, within a university. It has been recently written in description of many law students: "They do not want to understand themselves or others if that means being less emotionally involved with their clients and their causes. They cultivate the sense of a deeply

felt commitment; it is something to be lived and not analyzed. Thus in a sense they resent what has been the guiding principle of legal education; learning to take either side of the argument."¹ Yet in some form or another, learning to take both sides of the argument, whether it arises out of the adversary nature of law or not, is essential to understanding and knowing. It is not paradoxical, but it may seem so, that the adversary nature of law, frequently foolishly criticized as hostile to truth and commitment, has made available to law study the imprint of the truth-finding process which most scholars would understand to be essential if scientific doctrines were not to be accepted or rejected simply as articles of faith.

The important and desirable characteristic of the study of law as a university discipline is the necessity to go beyond stated rules to a consideration of basic values, and to use these values and their relationships in a continuing critique of the impact of those social institutions which have the backing or coercive power of the state upon the lives of individuals. Traditions among legal systems vary—and within these traditions there are cycles of stability and change—but the drive to see more basic principles, or the law beyond the law (present both within the hierarchy of a legal system and outside of it), reflects a moral purpose and endows the study of law with a seriousness and centrality which makes it a liberal arts subject and helps to make law a profession. A driving force within professional law study is the effort to come to terms with the relationship between commitment, disciplined inquiry, and craftsmanship. If the moral purpose is seriously held, and the nature of the subject understood, craftsmanship will be highly valued. Max Weber characterized the desire of the lawyer to be seen as dealing with more than set rules as arising, in part, from an attempt to increase his sense of power. "The more the impression grows that legal orders as such are no more than 'technical tools,' the more violently will such degradation be rejected by the lawyers." This may be true. If so, it is fortunate. The subject matter, whether in the hands of lawyers, political scientists, or sociologists, requires more than a rule book. Even in those terms, one has to know how to work the rules with a purpose if one is to understand them. For what is at issue is the basis of government, the idea of a covenant which joins people, the concepts of legitimacy, authority and control of participation, the essential attributes of fairness, problems of intention and act, the characteristics by which human actions are to be judged; such as, motive, intent, expectations, and the role of ambiguity, since it is "a hard thing in great affairs to satisfy all sides"—in short, the ingredients of a jurisprudence. The central concern of law for the distribution and control of powers within the society, the impact of these powers upon movements and persons, the status of law itself as a responsive instrument, and the curious isolation and

¹ Stone, *Review of Psychiatry for Lawyers*, 83 HARV. L. REV. 1737, 1742 (1970).

interrelationship which law has to other disciplines, give to the study of law special opportunities and heavy responsibilities within the university.

But it is difficult to say, despite the obvious virtues of legal education in the United States, that this responsibility is now being carried adequately. The most important fact about the study of law in the United States is that the study of law is almost totally absent from the undergraduate curriculum. The absence is, in large part, due to the growth of professional education, and the placing of professional education outside the standard four-year program. The development has been helped by the belief that the longest education is the best, and that those who are serious about a subject will gain mastery of it in the later graduate or professional years. This pre-emption of mastery over basic subjects related to human action and choice by the graduate and professional schools has helped to create, in the midst of more efforts at education than the world has ever known, an uneducated society which does not know where it stands on the basic issues of our time, and does not know how to approach or think about these issues. One needs to remind oneself of the initial thrust and importance of professional education within a university, with the ingredients of moral purpose and the seriousness of learning as mastery for doing. The graduate departments and professional schools include the major areas of knowledge. The pre-emption of the subject matter is, of course, not always complete. Law happens to be a startling example where a combination of circumstances has resulted in an almost complete withdrawal of the subject matter from the undergraduate. The result is that liberal or general education, always viewed as important for citizenship, avoids the hard questions and the learning of civilizations concerning the relationships between the individual and the state. The importance of a liberal education for every citizen is greatly diminished when the basic subjects relating to man in society are either not taught at all or are taught only as a preliminary exploration, free from the challenge (which the attempt to gain mastery sets) that the student may have to act upon what he has learned. In many areas, and particularly in the humanities and in the social sciences, the mastery of a discipline at the undergraduate level has vanished.

Admittedly, this set of problems has great complexity. The undergraduate four-year college believes it is protected from the encroachment of the graduate and professional schools by the undergraduate college's insistence that there be a large block of time in which the student has the freedom to think and explore, free from the pressures of mastery or the ability to do. But the results have been somewhat different from that which was intended. There is a sense in which education can and should be endless. It suffers if it is aimless. Undergraduate education, having no particular structure, other than the contours of large subject matters

within which there can be, in effect, distribution requirements, is particularly vulnerable to divisions of subject matter, reflecting the compartmentalization of departments and courses at the graduate level and following from the organization of faculties into guilds. Whatever may be said about this organization, it loses much of its persuasiveness when the student is not confronted with the problems to be solved, the craft to be achieved, the purposes to be served. The undergraduate program is caught in the dilemma of unfocused general courses, or small units which, even when sequential, do not have the insistence of problem-solving or wholeness, unless viewed in terms of work which will come years later. The original professional thrust of undergraduate study helped to organize the work around problems and mastery. It had the advantage of the purpose of the professions which helped to organize the disciplines. It is that kind of organization of work around problems and responsibility which is needed to give the undergraduate program its own integrity and freedom. This does not require the undergraduate program to pretend to a mastery which it cannot give. Stages of specialization are properly reserved for graduate work. But we should not be so easily convinced that a considerable amount of mastery is not possible at the undergraduate level. Law is a good example. Not only should some law be taught seriously to every undergraduate, but the fact is that there is no reason at all why the minimum university training of a lawyer cannot be accomplished through two years of professional training in the undergraduate years. I note in passing that placing some of the professional training of the lawyer into the undergraduate years will have an advantage if it enables the law student to continue the taking of non-law undergraduate courses in related fields. Perhaps the greatest argument against this drastic shortening of years may be the lack of attention which this may suggest will be given to cultural history. Yet the present system does not seem to have effectively provided this dimension.

I have used law as an example of the distortions which now exist in higher education—a subject which should be taught in some form to every undergraduate is hardly taught at all at the undergraduate level, professional training which could be accomplished in four years now takes seven. There are other examples. The training of a physician now occupies so many years as to constitute a national scandal if the delivery of health care is important. There is no reason, other than status, that schools of business or engineering must seek to be completely graduate. Nor is the frequent separation between teaching at the undergraduate level and research at the graduate true to the requirements of good teaching or effective learning. Beyond all this, we should not accept the professions as given. The professions themselves suffer not only because they have become vertically fragmented, but there has been a failure to acknowledge stages of mastery

which could be extremely important, for example, in medicine and law. On these matters, there has been a defeating interaction between the universities and the professions. The universities have accepted the professions as they are, and the professions have encouraged the universities to continually lengthen the period of academic training required for all.

The length of time is a serious matter. If there is to be higher education for all who can qualify, then the costs of higher education will not only continue to increase but will be magnified. There is a problem of the allocation of educational resources among the various levels of education. And there is also a cost to the student, not only in monetary terms. More than that, it is a serious matter for a society to remove from the doing of the community, and to shield from the choices which independent citizens must make, a large segment of the population for a longer period than is necessary.

In our present inflexible system, there is much room for greater flexibility. We need a period of experimentation. Many of the pressures of the past now appear to have been mistaken as, for example, the pressures against the night law school. We ought to try to have a period where there will be a suspension of the cartelized rules of associations and accreditation, so that we can see the benefits which might come from a variety of different forms. The two-year law school at the professional level, as an alternative, is surely a possibility. The three-year school, joined to three years of college, is hardly adventuresome. The award of a junior degree in law or a new kind of degree for training in public service, including law and economics and other subjects, might help to reorganize undergraduate education, and if accomplished at the undergraduate level, might carry the opportunity for preparing the student, even in the face of the likelihood that specialized training would be later required.

Those who are interested in professional education within the universities cannot be comforted with the thought that undergraduate education comes first and can take care of itself. Much of the organization of knowledge and the sense of purpose required for professional education should come at the undergraduate level. The failure to see professional education in this setting has harmed the organization of knowledge, contributed to the delaying years, and reduced the level of public discussion and understanding. They should not be comforted either because the organization of the professions has been such as to force the universities and the professional schools to undertake more and more activities, without thought as to what the new functions may be doing to the university, whether the society is better served thereby, whether the activities could not be better handled by the professions themselves. The rigidities within the professions, the failure of new forms to emerge, to some extent are a criticism of the universities and of the professional schools. Those who are inter-

ested in professional education cannot help but be concerned by the lengthening of the years required, including the years at the graduate level. There is some reason to suggest that lawyers who should be interested in educational forces within the society and the shape of the society should be most concerned about this trend. Of course, those who are involved in professional education can take pride in what has been developed; that pride must be matched with concern and inventiveness for the changes which should come.