

CAN LAW SCHOOLS TEACH STUDENTS TO DO GOOD? LEGAL EDUCATION AND THE FUTURE OF LEGAL SERVICES FOR THE POOR

Stephen Wiznert†

I. INTRODUCTION

Is it possible for law schools to teach students to do good? Should they try? Do law schools have a role to play in addressing the crisis in legal services for the poor? If so, what role?

Our society is one in which the great majority of citizens of modest means cannot afford the services of a lawyer in resolving their legal problems.¹ A decade ago a national survey found that approximately eighty percent of the legal problems of the poor were handled without legal assistance.² Surely, recent reductions and restrictions in government-funded legal services³ can only have made the situation worse. Only a small handful of law school graduates seek and accept legal services jobs upon graduation. Very few of the graduates who enter private practice provide significant pro bono legal services to the poor or substantial financial support for legal services programs.

Law schools devote substantial economic and intellectual resources to teaching students the knowledge and skills necessary to function effectively in the legal system. Most law school graduates do not utilize what they have learned to provide legal assistance to those who cannot afford it. Legal educators have failed to instill in their students the obligation to assist in the provision of legal services to the poor as a professional responsibility.

This observation is true even of clinical teachers. Nearly every law school offers students the experience of supervised law practice on behalf of low income clients coupled with opportunities for critical reflection on poverty and the legal problems of the poor. Clinic students cannot avoid seeing that, but for their efforts, most

† William O. Douglas Clinical Professor of Law, Yale Law School.

¹ See Albert H. Cantril, *Agenda for Access: The American People and Civil Justice*, A.B.A. FINAL REPORT ON THE IMPLICATIONS OF THE COMPREHENSIVE LEGAL NEEDS STUDY, May 1996.

² See *Two Nationwide Surveys: 1989 Pilot Assessments of the Unmet Legal Needs of the Poor and of the Public Generally*, A.B.A. CONSORTIUM ON LEGAL SERVICES AND THE PUBLIC, Sept. 1989 at 37.

³ The restrictions are codified in the regulations of the Legal Services Corporation, 45 C.F.R. §§ 1600-1699 (1998).

of their clients would not have legal representation. And yet only a very small percentage of students who have participated in law school clinics seek or accept legal services jobs or provide significant pro bono legal services to the poor when they are in private practice.⁴

One might conclude that nothing law schools do can affect the values and behavior of their students who are, after all, adults by the time they enter law school. It simply may not be possible to develop an effective pedagogy that will teach students to do good if they have not already developed the idealism, the willingness to forego financial rewards and social respectability, and the commitment to social justice that motivate and sustain lawyers who do provide legal services to the poor.

But both logic and experience should lead us to question that conclusion. Law schools do succeed in teaching legal knowledge, skills, and professional values to their students. And they do so through a combination of classroom pedagogy, clinical practice, and institutional "culture," including extracurricular student activities, law school pro bono programs, professional activities of the faculty, visiting speakers, and career planning and placement services.

What is needed is a strategy for teaching and inculcating in law students a sense of personal obligation for the provision of legal services to the poor as an essential component of their professional identity.

II. LAW SCHOOLS AND THE "REAL WORLD"

Outside of a relatively small number of academic purists, the majority of law teachers would subscribe to the idea that they have at least some responsibility to attempt to influence what their students do with what they learn in law school and what they understand to be their professional obligation.

One need not fully accept Justice Felix Frankfurter's observation that "the law and lawyers are what the law schools make them"⁵ in order to recognize that law schools do play a role, not only in training students to be lawyers, but by inculcating values in students that will guide their professional behavior. This being so, it is not enough for law professors to engage in academic research

⁴ See PHILIP G. SCHRAG & MICHAEL MELTSNER, REFLECTIONS ON CLINICAL LEGAL EDUCATION 314-16 (1998).

⁵ JEROLD S. AUERBACH, UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA 149 (1976).

and writing and to teach students to “think like lawyers.”⁶ Law school graduates become practitioners, leaders of the bar, judges, government bureaucrats, politicians, teachers and scholars. In those roles they implement, interpret, challenge, justify, and help create the legal rules through which power is defined, allocated, exercised and denied in the real world. The practice of law is as much about power as it is about legal knowledge and skills. Accordingly, law schools have a responsibility to teach their students about their social responsibilities in exercising the power of law.

In his 1988 address to the Association of American Law Schools, entitled *The Role of Legal Education in Shaping the Profession*,⁷ Judge Harry T. Edwards of the Court of Appeals for the District of Columbia, a former law professor, lamented the existence of two legal “cultures” – the law schools and the legal profession. “[L]aw schools,” he observed, “[have become] isolated, in a world of their own.” Too many law professors “are either indifferent to or hopelessly naïve about the problems of legal practice” and about flaws in the administration of justice.⁸

Judge Edwards described much of current legal scholarship as having almost no relevance to the real world of law, to the actual problems encountered in legislatures, courts and law offices, and to those in need of legal services who are unable to obtain them. “If the law schools do not really know (or even care) what is going on in practice,” he asked, “is it fair to assume that law students are really prepared to *serve justice* (as opposed to simply ‘making a buck’) upon graduation?”⁹

In the real world, to which Judge Edwards referred, the demand for legal assistance by those unable to afford it is increasing while government funding for legal services has decreased. The private bar has not provided sufficient financial support, pro bono services, or political advocacy to ameliorate this malfunction in the legal system. As a consequence, the legal system is failing low and moderate income citizens, and rendering the ideal of equal justice an empty promise.

⁶ See Stephen Wizner, *Is Learning to “Think Like a Lawyer” Enough?*, 17 YALE L. & POL’Y REV. 583 (1998).

⁷ Harry T. Edwards, *The Role of Legal Education in Shaping the Profession*, in 33 LAW QUADRANGLE NOTES 1988, at 20 [hereinafter Edwards, *Role of Legal Education*]. See also Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992); Harry T. Edwards, *A New Vision for the Legal Profession*, 72 N.Y.U. L. REV. 567 (1997).

⁸ Edwards, *Role of Legal Education*, *supra* note 7, at 21.

⁹ Edwards, *Role of Legal Education*, *supra* note 7, at 23.

Law schools have, on the whole, simply ignored this malfunction in the legal system. They have failed to commit intellectual and financial resources to teaching, research, writing and clinical practice aimed at exposing, analyzing and addressing social justice issues. With few exceptions, law schools have failed to play a critical role in examining the state of the justice system and what needs to be done to fix it, in teaching students about this, and in proposing and advocating the necessary reforms.

Professor Milner Ball of the University of Georgia has recently transformed his jurisprudence course into a "Public Interest Practicum," in which he and his students provide counseling to individuals of modest financial means in the community of Athens, Georgia. Ball's stated reasons for making this fieldwork an integral part of his jurisprudence course are "to identify people's needs and the existing services for meeting them, to discover what lawyers can do to help make connections between needs and services, to recognize gaps and what lawyers can do to help fill them, and to determine what systemic changes are in order and how lawyers can initiate them."¹⁰ The course does not fit the description of what is commonly understood to be a "clinical" course. Ball's pedagogical objective is for fieldwork to generate answers to some basic questions in jurisprudence: What is law? What functions can it serve in society? What is the role of the lawyer?

Ball has also changed what students read in the course. Instead of limiting the reading list to classics of jurisprudence, Ball has his students read the Hebrew bible, Greek tragedies, Icelandic sagas, Shakespeare, Neihardt's *Black Elk Speaks*, and Melville's *Billy Budd*. He encourages his students to discover connections between the large moral issues raised in these works and those they encounter in working with the poor. Ball says that the goal of his teaching is to press students to ask "as appropriately jurisprudential questions . . . 'Who am I as a lawyer?' and 'What am I doing when I practice law?'"¹¹

Lawyers are trustees of justice. A special moral responsibility rests on law teachers. Legal educators should join Milner Ball in taking upon themselves the "special moral responsibility" of striving, through their teaching, research, and writing to democratize the legal culture.¹²

¹⁰ Milner S. Ball, *Jurisprudence from Below: First Notes*, 61 TENN. L. REV. 747, 753 (1994).

¹¹ *Id.*

¹² As Jane Harris Aiken has expressed it:

III. LEGAL EDUCATION AND SOCIAL JUSTICE

There are three components of an educational agenda for exposing law students to the crisis in legal services¹³ and for inspiring them to take part in addressing the problem. First, law schools must make students aware of and sensitive to injustices in society and malfunctions in the legal system.¹⁴ Second, law schools must show students how law can be used to reform existing social arrangements and legal practice.¹⁵ Third, law schools must teach and motivate students to participate in the struggle for economic and social justice.¹⁶

Law schools can teach students to “do good” if they develop an instrumental approach to the teaching of virtue: first, identify the “good” sought to be attained; then, develop a means for achieving that “good.” There are two related “goods” to be pursued:

(1) To make the justice system more accessible to the “legally underprivileged”;¹⁷

(2) To teach and inspire law students to participate in and support the provision of free or affordable legal services to the legally underprivileged.

To realize these “goods,” law schools will have to reform curriculum, career planning and placement services, and the institutional culture. Curricular changes will require a goal beyond the teaching of new information or new skills if they are to succeed in inculcating the desired professional values. Changing the curriculum will not achieve the desired end unless its purpose is to transform the law school culture by imbuing the curriculum with an intellectual and moral concern for social and economic justice. Students need to learn and embrace the professional and moral rewards of providing and supporting legal services to the poor, the

If all I can do in law school is to teach students skills ungrounded in a sense of justice then at best there is no meaning to my work, and at worst, I am contributing to the distress in the world. I am sending more people into the community armed with legal training but without a sense of responsibility for others or for the delivery of justice in our society.

Jane Harris Aiken, *Striving to Teach Justice, Fairness and Morality*, 4 CLINICAL L. REV. 1, 6, n.10 (1997).

¹³ See Stephen Wizner, *Rationing Justice*, in Symposium, *Crisis in the Legal Profession: Rationing Legal Services for the Poor*, 4 ANN. SURV. AM. L., 1019, 1025 (1997).

¹⁴ *Id.* at 1026.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ John Bradway, *The Legally Underprivileged*, 10 CAL. W. L. REV. 228 (1974).

vulnerable, and the disempowered, and work for the democratization of the legal system.

Information, properly presented, can be transformative. Therefore, law students should learn about the legal needs of the public, especially of low income individuals and communities; the maldistribution of legal services; strategies for addressing the distribution problem, such as increased public and private funding for legal services, pro bono programs, and legal insurance plans; the organization, economics, and culture of the private bar; and reconceived legal ethics that promote affirmative professional obligations, such as the provision of legal services to the poor.¹⁸ This information can be provided through visiting speakers, but its importance ought to be recognized by incorporating it into the law school curriculum. This can be accomplished in existing courses as well as by creating new ones.

Incorporation of public interest issues into academic courses throughout the curriculum is the "pervasive method"¹⁹ of "mainstreaming values."²⁰ The City University of New York School of Law is the only school currently employing the pervasive method, with a special emphasis on the provision of legal services to persons of modest means. The strength, as well as the weakness, of the pervasive method as a strategy for teaching values is that it treats professional responsibility issues with equal importance to other issues addressed in standard courses.

The other approach is to create new courses that focus specifically on the legal needs of the public, the distribution of legal services, the politics and economics of legal services delivery systems, and the ethical and professional dimensions of the maldistribution of legal services. An example of this type of curricular reform is a new course being offered at the Yale Law School entitled "Professionalism in the Public Interest."

Professor Dennis Curtis and the author, inspired by a course offered by Professor Gary Palm at the University of Chicago, co-teach a seminar designed to encourage and assist law students to prepare pro bono plans to be carried out during their first few years in private practice. In Palm's words, developing a pro bono

¹⁸ See Tanina Rostain, *Ethics Lost: Limitations of Current Approaches to Lawyer Regulation*, 71 S. CAL. L. REV. 1273, 1274 (1998).

¹⁹ See DEBORAH L. RHODE, *PROFESSIONAL RESPONSIBILITY: ETHICS BY THE PERVASIVE METHOD* (2d ed. 1998).

²⁰ The author acknowledges Michael Millemann's creation of the term "mainstreaming values" to characterize the incorporation of professional responsibility issues throughout the law school curriculum.

plan before graduation from law school can “make it easier for a young law firm lawyer to follow through with a commitment to public service at a time when she is trying to adjust to a new career and is likely to be expected to work extremely long hours.”²¹

The topics covered in the Yale course include: legal ethics and professional responsibility; the public service obligation of the bar; access to justice; and mandatory pro bono. Assigned readings for class discussions include the recently published American Bar Association report on the maldistribution of legal services,²² writings by David Luban,²³ Deborah Rhode,²⁴ and materials that lay out the debate around mandatory pro bono.²⁵

The instructors invite practicing lawyers from the private and public interest sectors to attend seminar meetings to share with the students their experiences with pro bono legal representation, to discuss strategies for carrying out pro bono work while in private practice, to describe the economics and culture of private firm practice, and to provide specific information and advice about particular areas of pro bono practice.

The instructors conceive of this seminar as an “advanced legal ethics” course, with pro bono plans as the “term paper.” Students are required to research the particular field in which they propose to offer pro bono services to low income clients. Before graduation, students must also contact legal aid and other public interest programs in the geographical area where they plan to practice to arrange for referral of pro bono clients and to negotiate with their prospective law firms for time, credit toward billable hours, and financial support for their projects.

“Professionalism in the Public Interest” is not a clinical course. It is primarily a course about legal ethics, professional responsibility and the legal profession, with a specific focus on the provision of legal services to the poor. But it does have the “practical” objective of focusing student attention on the maldistribution of legal

²¹ Gary Palm, A MAPPPP [Major Anti-Poverty Pro Bono Project Plan] to Ease the Transition Between the Law School and a Satisfying Legal Career (unpublished manuscript, on file with the author).

²² Cantril, *supra* note 1.

²³ See, e.g., DAVID LUBAN, *LAWYERS AND JUSTICE: AN ETHICAL STUDY* 237-92 (1988).

²⁴ See, e.g., Deborah L. Rhode, *The Professionalism Problem*, 38 WM. & MARY L. REV. 283 (1998); see also, Deborah L. Rhode, *Cultures of Commitment: Pro Bono for Lawyers and Law Students*, 67 FORDHAM L. REV. 2415 (1999) [hereinafter Rhode, *Cultures of Commitment*].

²⁵ See, e.g., David Shapiro, *The Enigma of the Lawyer's Duty to Serve*, 55 N.Y.U. L. REV. 735; see also, LUBAN, *supra* note 23 at 267-89.

services and on their ability and responsibility to do something about it.

IV. CONCLUSION

The majority of law school graduates will not become full-time public interest lawyers. Whether because of large educational debts or a desire for financial security and social respectability, most law students intend to enter private practice upon graduation. These students must be taught to feel and act on the professional obligation to offer and support legal services for the poor.

Law schools can and should break down the divisions that exist between hardcore "public interest" students and those who have decided on private practice by working to create a culture of professionalism within the school.²⁶ Placement and career planning services can encourage and assist students to obtain legal services jobs, and also encourage and assist students to plan, inquire about and demand pro bono opportunities in private practice. Law school faculty and administration can organize, encourage, participate in and support extracurricular pro bono and other social justice activities that are open to all students. Law school alumni who are full-time public interest lawyers and those who are private practitioners making significant pro bono contributions should be brought back to the law school to meet and network with students and faculty.

A comprehensive strategy that includes reforming the curriculum, career planning and placement services, and institutional culture has the potential to transform legal education to achieve real world results and bring law schools into the legal profession.

²⁶ See Rhode, *Cultures of Commitment*, *supra* note 24, at 2435.