Mercer Law Review

Volume 28
Number 2 *Brainerd Currie Memorial Edition*

Article 8

3-1977

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By Francis A. Allen*

I

Legal education in the United States is passing through its winter of discontent. Those who are new to the law schools—students and young instructors—are likely to be unaware of how recently and precipitously the present mood developed. Even those who have known the law schools longer may by now have forgotten the confidence and euphoria that were characteristic attributes of the schools until no more than a decade ago.[1]

Legal education, of course, has never lacked criticism, and the most searching and pointed complaints were those generated within the schools themselves. The "explosion" of interest in interdisciplinary studies at Columbia in the 1920's,[2] narrated by Brainerd Currie in his well known study;[3] the realist movement; efforts to enlarge the scope of law school curricula, such as the foundation-nurtured movement to institutionalize international legal studies after World War II—each reflected significant dissatisfactions with the law schools at various intervals in this century. The dissatisfactions so expressed, however, rarely implied a loss of confidence in the capacity of legal education to make large and indispensable contributions to our public life. On the contrary, these movements of reform affirmed the importance and potential of law teaching and research; the frustrations stemmed largely from a conviction that the capacities of legal education were being underutilized. It need not be asserted that today this

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1. Actually, the present mood probably did not fully reveal itself until considerably later. Professor Robert Stevens in 1971 could still summon "two cheers" for traditional legal education. Stevens, *Two Cheers for 1870: The American Law School,* 5 PERSPECTIVES IN AMERICAN HISTORY 405 (1971). His study begins with the following observation: "If one ignores the increasing student rumblings of the last five years, there is much to justify the satisfaction felt by many with the American contribution to legal education. Almost every other aspect of the indigenous legal system has been subjected to severe criticism and unfavorable comparisons. In contrast, American legal education has received a favorable press." It is possible that Professor Stevens underestimated the strength of the critical current.

2. The description was that of Karl Llewellyn. See Allen, *History, Empirical Research, and Law Reform,* 9 J. LEGAL EDUC. 335 (1956).

3. Currie, *The Materials of Law Study,* Parts I and II, 3 J. LEGAL EDUC. 331 (1951); Part III, 8 J. LEGAL EDUC. 1 (1955).

confidence has been wholly destroyed or is incapable of reinvigoration; but it surely has been weakened.

Brainerd Currie, who among his other distinctions became a leading commentator on American legal education, left a body of writings that provides a convenient bench mark to measure how far the present malaise has proceeded.[4] In a sprightly essay published just twenty years ago, Professor Currie predicted that there would be no dramatic changes in law school training in the half-century following 1956.[5] The changes, he thought, would be "molecular" rather than "molar;" they would be the cumulative product of individual efforts, not the results of institutional upheaval. Professor Currie could contemplate his prognostication "without dismay,"[6] not because this most critical of men was complacent about the achievements of law schools in the 1950's,[7] but because he believed that the essential conditions and assumptions of American legal education were sound and sufficient to sustain a process of constructive development. Such was also the conviction of most other thoughtful persons in the law schools at the time.

The modern discontents with legal education differ from those of even the recent past, both in degree and in kind. It is well to identify the sources of contemporary dissatisfactions and to be aware of dangers implicit in them. Although it requires some hardihood to say so in the present climate of opinion, nothing in the historical record justifies the assumption of abject failure that today is frequently brought to discussions of legal education. On the contrary, the record includes remarkable successes. During this century, legal scholarship, first through the compilation of great treatises and the production of a law review literature and later through efforts at legislative codification and restatement, went far to rationalize and systematize disorderly common-law doctrine in the private-law fields. It would be difficult to identify any other university department concerned with the social disciplines that achieved a more palpable and far-reaching social impact than that of the law schools in this particular. At least equally important and even more surprising was the influence of the law schools on our public law. It is not easy to name an important development in these areas during the past two generations that was not first advanced or cultivated in a law school classroom or a law review article. During this period a steady stream of young people fresh from the law schools entered the legal profession. If it is true, as is frequently asserted, that lawyers create problems as well as solve them, it is

4. In addition to the study cited in the previous note, Professor Currie's writings on legal education include the following: *The Place of Law in the Liberal Arts Curriculum*, 5 J. LEGAL EDUC. 428 (1953); *Law and the Future: Legal Education*, 51 NW. U.L. REV. 258 (1956); *Book Review*, 62 HARV. L. REV. 1252 (1949).

5. Currie, *Law and the Future: Legal Education*, 51 NW. U.L. REV. 258, 263 (1956).

6. *Id.*

7. *Id.* at 271.

also true that in the succession of crises that have shaken American society in the twentieth century, lawyers of intelligence, flexibility, technical skill and wisdom came forward to serve and advance the public interest. If failures of professional responsibility are to be laid at the door of the law schools, the qualities of mind and character revealed in these more inspiring performances ought also to be seen, in part, as the fruits of the law school experience.

These observations are not advanced in a spirit of complacent satisfaction. Failures have abounded. Each observer will frame his own indictment. The law schools have contributed all too little to the avoidance of an impending breakdown of American judicial administration and have, indeed, sometimes revealed little awareness that such a crisis exists. Until recently, legal scholarship has been insufficiently concerned with improving the delivery of legal services, not only to the impoverished but also to the great bulk of the population. Some believe that not enough is being done in the schools to develop that educated compassion necessary, at least in some areas of practice, for the lawyer to serve fully the interests of his clients.[8] This and much more may be counted as liabilities. Nevertheless, the achievements of American legal education are real and substantial. This patent fact gives rise to the suspicion that the precipitous loss of confidence may be the product of something more than failures in educational performance. Social facts can alter rapidly in these times, but moods and ideology may alter even more rapidly. If the present deflated views of American legal education are in significant degree the product of factors other than the actual performance of the law schools, it is well that we know it. Knowing it, we may be able to evaluate more intelligently proposals brought forward in these times for the future of legal education.

Contemporary attitudes toward American legal education are being expressed at a time of endemic loss of confidence in our social and political institutions. This loss of security extends to virtually all aspects of our collective life. In the opening lines of a recent book, Robert Nesbit has written: "Periodically in Western history twilight ages make their appearance. Processes of decline and erosion of institutions are more evident than those of genesis and development."[9] Shadows become exaggerated at twilight, and appraisals made at such a time may be distorted by a malaise that has deeper causes than the performance of the particular institution under scrutiny.

Perhaps the primary danger for legal education in this twilight interval is that we may be induced to abandon our higher purposes and accept aspirations that are too modest,[10] whether viewed from the perspective of

8. Shaffer and Redmount, *Lessons Law Schools Don't Teach*, CHANGE 50 (September, 1976).

9. R. NESBIT, TWILIGHT OF AUTHORITY v (1975).

10. Compare: "Retreat from the major to the minor, the communal to the personal, and from the objective to the subjective is commonplace." *Id.*

student capacities and commitments, the more effective practice of the profession, the acquiring of socially useful knowledge, or the more effective criticism and reconstruction of institutional practices.The loss of confidence in intellectually and humanistically motivated law training prepared the way for the rise of a new anti-intellectualism in legal education, new not in kind or quality, but in the breadth and intensity of its expression both in and out of the law schools. The new anti-intellectualism insists on what my colleague, Paul Carrington, has described as "instantaneous practicality;" it is impatient with any educational activity that does not promise an immediate and discernable payoff in private law practice. It is concerned primarily with the "how," not the "why." It displays small interest in the substantive issues that confront this society. It reveals a narcissistic fixation on the techniques of the law office and the courts. It views askance the role of the law schools as critics of the law and as sources of new law. It gives short shrift to the obligation of the law school, as an integral part of the university, to discover and communicate new knowledge. It scoffs at "philosophy" as wasting students' time or as incapacitating them for practical affairs. It is not an interest in improved "skills" training in legal education that identifies the new anti-intellectualism; nor is it the desire to equip students for a more humane and effective career at the bar. The essence of the new anti-intellectualism is, rather, the narrowing of interests, the rejection of intellectual and humanistic concerns, the militant assumption that the test of an educational endeavor is its impact on the law firm's ledger. It is characterized by confident but wholly unsubstantiated judgments about the contributions of particular educational experiences to professional proficiency.[11]

The attack on intellect is in no way confined to the law schools in these times. Indeed, a weakening of faith in the power of intellect might well be regarded as one of the distinguishing characteristics of the modern era. The rise of sciences of human behavior has attacked the primacy of reason as a determinant of human activity and has given precedence to feeling, habit, social structure, unconscious drives and manifold other noncognitive factors in human existence. In the political arena, intellect is required to bear a heavy burden of condemnation. Reason, it is said, has produced a science that threatens humanity and an industrialism that erodes the physical bases of human survival. It has stunted human development by neglecting those aspects of personality that require the cultivation of emotion and aesthetic enjoyment.[12] So thorough-going has been the

11. *Cf. New Admission Rules Proposed for Federal District Courts,* 61 A.B.A.J. 945 (1975); Givan, *Indiana's Rule 13: It Doesn't Invite Conformity. It Compels Competency,* 3 LEARN. AND LAW 16 (Summer, 1976). And see AALS SPECIAL COMM. ON ADMISSIONS TO THE BAR, REPORT ON THE CLARE COMMITTEE PROPOSAL FOR RULES OF ADMISSION TO THE FEDERAL DISTRICT COURTS IN THE SECOND CIRCUIT (1976).

12. Allen, *Mr. Justice Holmes and "The Life of the Mind,"* 52 BOST. U.L. REV. 229, 233 (1972).

assault on "the life of the mind" that those who value it have sought such comfort as can be drived from Justice Holmes' plaintive observation: "[T]o know is not less than to feel."[13]

One of the more remarkable aspects of the current assault on intellect is that it perhaps derives more significantly from within the universities than from without. Certainly the most eloquent denunciations have been launched from college campuses. In the confusions of the late 1960's, a group of younger faculty members and students at a middle-western university came together under the proud banner, "Brains Distrust." Similar movements rose and flourished for a season on other campuses. The phenomenon had its hilarious aspects. Rarely has there been launched such a syllogistic attack on reason. Some of the adherents were seriously engaged in scholarly undertakings and, presumably, were dedicated to the devices of rationality in their scientific and professional lives. Their hostility to disciplined intelligence was confined largely to their public statements (the more public the better). The effort to have one's cake and eat it too has not been restricted, of course, to such groups; and one cannot positively assert that this dalliance with schizophrenia resulted in lasting harm to those who indulged in it. The effects on their students are more problematic. The students heard the uncompromising attacks on the life of the mind, but their teachers did not disclose—certainly they did not defend—the values that they routinely embraced and employed in the library and the laboratory.

The point being made is that, in significant part, the origins of the malaise now being experienced in the law schools are to be found, not in legal education's sins of omission and commission, but in events and cultural movements that typify our entire social life. Perceiving that is necessary if one is to make realistic appraisal of the present status and needs of legal education, and it in no way challenges the necessity for intelligent innovation in the circumstances of the late twentieth-century world. Further analysis of the broad social influences affecting the rise of the new anti-intellectualism in legal education will be left to those better equipped to identify and evaluate them.[14] Not all the origins of this phenomenon,

13. From a lecture entitled "The Profession of the Law" delivered February 17, 1866, *reprinted in* M. LERNER, THE MIND AND FAITH OF JUSTICE HOLMES 31 (1943).

14. There is another broad social phenomenom that one is tempted to associate with the new anti-intellectualism. In his classic study, Professor Currie pointed to the devastating impact of Jacksonian egalitarianism in the second quarter of the last century on an emerging American tradition of unviersity learning in law training. *See* Currie, *The Materials of Law Study*, 3 J. LEGAL EDUC. 331, 359-361 (1951). In 1830 Judge Tayloe Lomax lamented the decline in quality of legal education at the University of Virginia: "Their [the students'] demand for the law is as for a trade—the means the most expeditious and convenient, for their future livelihood." *Quoted id.* at 361. Modern egalitarianism has similarly confronted the universities. Impatience has been expressed whenever standards inaccessible to the poorly qualified are advanced. Insistence on such standards has been interpreted as evidence of unworthy exclusionary purposes. It is interesting that Theodore Dwight of Columbia Univer-

however, require such analysis; some are closer to home. Origins of the new anti-intellectualism also reside in the legal profession, in the law faculties and among law students.

II

In 1886 Christopher Columbus Langdell proclaimed: "If law be not a science, a university will best consult its own dignity in declining to teach it. If it be not a science, it is a species of handicraft, and may best be learned by serving an apprenticeship to one who practices."[15] Thirty-five years later, Thorsten Veblen, apparently unimpressed by the Langdellean claim to scientific status for the law, observed that "law schools belong in the modern university no more than a school of fencing or dancing."[16]

From the time that responsibility for professional legal training in the United States became predominantly that of the universities, a state of tension has characterized the relations between the law schools and the practicing bar. There is nothing surprising or necessarily alarming about this fact. What is surprising is that, for the most part, this inevitable tension has proved creative and beneficial to the interests of both the law schools and the profession.

The advantages of the division of functions between the law schools and the profession, characteristic of American legal education, have been apparent both to the parties involved and also to foreign observers of American law training.[17] For the profession, the schools have provided battalions of graduates adept in at least certain professional skills—young persons of sufficient attractiveness to have induced vigorous competition among lawyers and law firms to retain their services. However lacking the graduates may have been in technical proficiency, they, for the most part, have shown considerable facility in acquiring the necessary skills when placed in the arena of private practice. Many lawyers left their schools imbued with motivations for public service, and much of the constructive achievement of the profession can fairly be attributed to the interests and examples of great law teachers as perceived by embryo lawyers. However dubious some lawyers may at times have felt about certain interests of law faculties, legal research emanating from the schools has served the profession well.[18]

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sity offered strenuous objections to the introduction of the case method, in part on the ground that it was unsuited to the "great and important class of men of average ability which exists and will always exist in the profession." *Quoted in* Stevens, *supra* note 1, at 425.

15. Address delivered November 5, 1866, 3 L.Q. REV. 123, 124 (1887).

16. *Quoted in* Stevens, *supra* note 1, at 427, n.12.

17. As early as 1895, Lord James Bryce stated that he did "not know if there is anything in which America has advanced more beyond the mother country than in the provision she makes for legal education." 2 THE AMERICAN COMMONWEALTH (3d ed. 1887), *quoted in* Stevens, *supra* note 1, at 405.

18. Indeed, there is ground for complaint that law school research has been too much

This symbiotic relationship between the schools and theprofession has also served the interests of legal education. However constricting the influence of bar examinations and of alumni scrutiny, the schools have enjoyed a significant freedom in curriculum planning, experimentation with teaching methods and research objectives.[19] This freedom is the envy of many who teach law in other countries that adhere to the Anglo-American legal system, and it is the condition indispensable to the continued health and vigor of the relationship between university and profession. There are other contributions that the relationship has made to the schools. Contacts with a functioning profession, the testing of ideas (however unsystematically) against the actuality of an on-going system, provide the law schools with a kind of "reality principle," an advantage apparently lacking at times in some other departments of the university that are involved in the study of social processes.

Yet it would be unrealistic and unwise to ignore the tension. Stress is an inherent feature of university-based professional training. This is true in part because, as an integral segment of a university, the law school assumes obligations and commitments that extend beyond the pragmatic interests of the practicing profession and that at times may conflict with them. The university law school inherits a knowledge-finding function and a critical function. The objects of criticism will on occasion be the law and lawyers. The focus of concern must encompass areas of social interest that have great importance but that sometimes are far removed from the practical concerns of the practicing bar. These facts are well understood by many lawyers, and this conception of legal education has received not only the tolerance but also the aggressive support of enlightened members of the bar. The support has been based both on an appreciation of the social importance of having law schools perform these broad functions and on the calculation that such schools are most likely to produce the best qualified lawyers.

There is evidence that the tolerance on which this enlarged conception

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dominated by professional concerns and too much viewed by law faculties as a secondary adjunct to classroom teaching. The consequences are a still largely undeveloped potential in socio-legal fact inquiry and a continuing tendency toward bad conscience when the research undertaken does not directly enrich teaching, however socially important it may prove to be.

19. The constricting influence of fiscal stringency, however, now as in the past, has seriously impinged on the freedom of the schools and limited their educational capacities and aspirations. Although many individual lawyers have provided splendid financial support for their alma maters, the legal profession as a whole has done little to provide a rational system of support for the schools. Brainerd Currie wrote: "On what grounds, however, can the profession justify a demand that the public assume the whole cost of preparing young men to perform work which, whatever its societal implications, has as its immediate object the production of income for themselves and the firms that employ them? My hope for the future is that the profession will continue to provide all that training which it can provide more efficiently than the universities, and to bear the cost of doing so." Currie, *Law and the Future: Legal Education*, 51 NW. U.L. REV. 258, 268 (1956).

of legal education depends is eroding in some segments of the bar and the bench. The evidence does not consist of the criticism of traditional educational methods and the pressure for reforms. Many lawyers, like many law teachers, favor a more clinically oriented training and believe that movement by the schools in that direction will contribute to an enhanced professional competence and responsibility. Such criticism creates a dialogue of the kind that is indispensable to the processes of evaluation and adaptation essential to the survival of any social institution. The evidence of eroding tolerance may be found in the note of acrid hostility being sounded in the public statements of some lawyers, the rejection of dialogue, and a view of legal education largely confined to the narrowest of professional interests. It is not clear what fraction of the bar and bench share these attitudes, but the attitudes appear to be gaining increasing support among the practicing bar. There has always been a current of similar feeling within the bar. Not for many years, however, has it been so widely and uninhibitedly expressed as in the period since the late 1960's.

The last decade has been a period of discontent for the bar as well as for the schools. The bar has felt the lash of public criticism, and there has been a typically American tendency on the part of some of its members to attribute its difficulties to educational failures. The apparent revolution in the attitudes of the younger generation caused deep anxiety, and some lawyers associated the behavior of the young with the influence of the universities and university law schools. The staggering burdens imposed on the courts raised concerns about the courtroom competence of many lawyers, even though the assumption that the problems faced by the courts are created primarily by the incompetence of young lawyers has never been validated. Some lawyers believe that an increasing distance is developing between the interests and sympathies of some law professors and the practicing bar. A few lawyers resent the leadership of legal scholars in the movements that produced "no-fault" legislation in the fields of personal injury and domestic relations and the reform of probate procedures.[20]

Whatever the causes, the dissatisfactions with university-based law training have been animated and given new and caustic expression. The thrust of these expressions is toward legal education of constricted scope and lowered aspirations.

III

Sources of the new anti-intellectualism in legal education are also to be found in the law schools themselves. Law teachers, like members of other university faculties, are sensitive to those characteristics of Professor Nes-

20. A fuller discussion of these matters may be found in Allen, *The Causes of Popular Dissatisfaction with Legal Education*, 62 A.B.A.J. 447 (1976).

bit's "twilight age" that produce uncertainty and tentativeness in the pursuit of intellectual goals. Some have had their confidence in the traditional methodologies of legal education shaken but have as yet been unable to devise alternative techniques that are comparably successful in achieving the intellectual and humanistic ends of law teaching. It is, however, student attitudes that have most profoundly affected the practices and assumptions of their teachers. At no time will a teacher worthy of the name be indifferent to the expectations of his students; and in an age of consumerism, student demands and dissatisfactions are likely to be given even greater attention.[21] Law teachers have reacted in different ways to the anti-intellectualism that pervades many students' attitudes. Some have found the student demands to be consistent with their own vision of law school training. Others have succumbed after token resistance. Still others continue to resist. Some of those who adhere to the values of intellectually rigorous and humanistically oriented law teaching have encountered exceptional difficulties in achieving effective communication with their students—difficulties that leave both them and their students bemused and dissatisfied.

However these dynamics are to be weighed, certain consequences are clear. One is that intellectual demands on students in some law school classrooms today are less stringent than they were a decade ago. This is not because of a decline in the intellectual quality of American law faculties; on the contrary, there has never been another time in which so many persons of exceptional ability occupied positions in the law schools. Nor is the issue the decline of the "case method" or of "socratic" dialogue. Whatever the teaching method, however, there must be intellectual dialogue of some sort if intellectual skills are to be honed. Moreover, the diaglogue must be sustained and intense. Few will mourn the passing of the savagery that sometimes defaced the teaching of the past, but little can be said for a pedagogical exercise that permits a student to leave the classroom believing that a slovenly effort at analysis or generalization satisfies professional and intellectual standards. Involved in the question of intellectual rigor is the problem of value analysis. Analyzing values is the essence of humanistic education in any discipline, but a classroom discussion of values unaccompanied by demands for clear and responsible thought may quickly degenerate into propaganda or sentimentalism.

Consideration needs to be given also to the relations, if any, between the movement for enlarged clinical and "skills" training and the rise of anti-intellectualism in American legal education. As Dean Roger C. Cramton has rightly pointed out, the impact of the clinical movement on the law schools is not adequately reflected by the numbers of students enrolled at any one time in courses designated as "clinical."[22] The fraction of graduat-

21. Cramton, *Competency for What?*, 3 LEARN. AND LAW 64, 67 (Summer, 1976).
22. *Id.* at 66.

ing students who have had some substantial contact with courtroom litigation, for example, whether in courses, extracurricular activities or part-time employment, has grown enormously in the course of the last generation. No doubt, the clinical perspective has also influenced the teaching of traditional classroom courses.[23] The issues raised by the new anti-intellectualism cannot be characterized as a conflict between clinical and classroom instruction. The incontestable fact is that both clinical training and traditional instruction can be trivial or profound, can serve broad social and humanistic goals or the narrowest of ends. Indeed, properly conceived and executed, clinical programs advance the higher educational aspirations and support the objectives of classroom instruction. The student is given, among other things, an opportunity under field conditions to test his command of analytical skills and a broader experience with which to evaluate the legal norms and the values expressed in the administration of justice.[24]

Nevertheless, candor requires it to be said that certain aspects of the clinical movement have contributed to the rise of the new anti-intellectualism. Not surprisingly, the movement to introduce clinical experiences into legal education has encountered opposition and inertia; understandably, the clinicians have felt frustration and disappointment. It is probably true that the greatest obstacle before the clinical movement has not been the opposition of the law teachers who object to it on basic intellectual or pedagogical grounds. More important have been the doubts of other established faculty members, who are by no means unsympathetic to the asserted ends of clinical training but who are bewildered about how to evaluate the quality of clinical programs and instructors, how to determine what features of traditional education should be sacrificed to make way for it and how to pay for it.

The resistance to clinical proposals encountered by their supporters and the difficulties of law faculties in fitting these programs into prevailing assumptions about the measures of academic quality, tenure, promotion of clinical personnel and the like have produced a spate of unhappy consequences. Many clinical instructors, naturally enough, are resentful, and some have felt themselves to be pariahs in the law school environment.[25] Some clinical instructors, believing that clinical education in the law schools does not afford a promising career line, have left these programs, and often their leaving has reduced the quality of the clinical training. Others have made strident public statements that not only proclaim the virtues of clinical training but also appear to attack the values of intellectually and humanistically based legal education. Some of the statements

23. *Id.*

24. Pepe, *The Clinical Law Experiment: Goals, Methods, and Problems*, 20 LAW QUAD. NOTES 12 (Spring, 1976).

25. Oliphant, *When Will Clinicians Be Allowed to Join the Club?*, 3 LEARN. AND LAW 34 (Summer, 1976).

reinforce the less thoughtful attacks emanating from the bar in recent years, and, indeed, often can hardly be distinguished in content from them. This similarity is doubly unfortunate because it tends to give academic respectability to the least defensible criticisms of the law schools, and also because the kind, quality and motivation of clinical training espoused by the academic clinicians are likely to be very different from that contemplated by the less responsible critics in the profession.

And then there is the problem of money. Among the most attractive features of clinical education is the promise of close personal contact between instructor and student; but it is this characteristic that, because of costs, seriously limits the availability and growth of these programs. In the last decade, more than one American law school, caught up in the enthusiasm for clinical training but unable or unwilling to allocate enough resources to support it, has nevertheless placed programs in operation. In a few cases academic credit was given for "field experiences" that were unsupervised by the schools and about which the faculties were almost totally ignorant. Ironically, such abdications of responsibility have been publicly represented as giant steps forward in the training of young lawyers.

Finally, there are certain features of the clinical education movement as it has evolved that give rise to serious, though more problematic, concerns. One feature is the lack of hospitality shown by some clinicians toward the systematic use of empirical inquiry designed to place the policy of the law on a firmer factual basis. To be sure, leaders of the clinical movement have displayed interest in utilizing those trained in the psychological disciplines to assist in defining and measuring the various aspects of lawyer "competence." One misses, however, a comparable concern for the substantive issues that our civilization, and hence the law, must encounter in the years immediately ahead. The clinical movement grew out of a reformist tradition, and that tradition encompassed concerns that go beyond the methodologies of legal education or the techniques of private law practice, important as these matters are. The apparent isolation of many in clinical education from interdisciplinary inquiry directed to great issues soon to challenge the law may contribute to one of two possible postures. To the extent that reformist zeal in the movement encompasses more than the problems of law practice narrowly conceived, the movement may be founded on an ideology and policy imperatives that are fallible and that remain unexamined or, indeed, undisclosed. A second possibility is that concern with substantive social problems may decline further or disappear, and the movement may be largely confined to the niceties of lawyer techniques. Either consummation would represent a loss of educational opportunity and quality.

IV

In his remarkably prescient lectures entitled *The Law in Quest of Itself,* Lon Fuller wrote over a generation ago:

> The problem addresses itself finally to the law student . . . . Shall he search out the professor who can expound "the existing law" . . . ? Or shall his preference lie for the man who can impart an insight into the shifting ethical background of the law, a background against which "the law as it is" appears as an accidental configuration without lasting importance? A similar problem of choice confronts him in directing his own studies. The way in which the law student decides these questions transcends in importance its effects on his own career, for, through the subtle pressures he exerts on his instructors to teach him what he thinks he ought to be taught, he exercises an influence on legal education—and indirectly on the law—much greater than he has any conception of.[26]

Consideration of the contribution of modern student attitudes to the new anti-intellectualism in American legal education requires that several preliminary observations be made. First, none of the attitudes are unique to students. Without exception, the attitudes originate in the larger society and constitute evidence of broad cultural trends. When expressed by students, however, they acquire a particular importance in the educational process; they condition the communication between teachers and students and effectively influence the goals and achievements of legal education. Next, it is by no means true that these tendencies of thought were unheard of in previous student generations. What is distinctive about the present stituation is the intensity of their widespread expression in recent years. Finally, it needs always to be borne in mind that many of the attitudes are closely related to other student characteristics that often reveal a generosity of spirit and humanitarian concern—characteristics that are both attractive and of great social value. Nevertheless, as Professor Fuller's comment suggests, the expectations and proclivities of the students require candid consideration, for they constitute a major dimension in any appraisal of the modern status of American legal education and its likely future evolution.

In the early 1960's, a motion picture entitled *Morgan* enjoyed a vogue with American young people. It appeared to capture a sense of the predicament in which they found themselves. At one point in the film occurred an exchange, which, according to best recollection, went something as follows:

> "Morgan, you'd better watch it!"
> "I would, but I can't find it."

Young people growing to maturity in that era experienced just such insecurity. Whatever "it" was that could provide a secure basis upon which to construct lives or could even advance understanding of the terrible perils that lurked on all sides, "it" could not be found. Nor, since older persons were experiencing similar uncertainties, was it possible to condemn the

26. L. FULLER, THE LAW IN QUEST OF ITSELF 14-15 (1940).

young for their confusion. They had grown to maturity in the cold war with the possibility of atomic holocaust never far from consciousness, and the rapidly intensifying struggle in Vietnam was raising somber premonitions.

Confused uncertainty experienced at such a pitch breeds tensions that cannot be endured for long. So as the 1960's progressed, it was perhaps inevitable that the youthful style should alter and become characterized by the militant assertion of certitudes. Many people in a position to observe the student generations in the closing years of the decade were able to detect an unfulfilled "quest for certainty" going forward under the cloak of rhetoric and dogmatism. One observer asserted that the students were expressing "panic disguised as moral superiority."[27] It is not a necessary conclusion that, for these reasons, the student critique of American institutions and of adult leadership wholly lacked point and validity. What can be said is that the student attitudes were antithetical to an intellectually and humanistically based legal education; for these attitudes, or many of them, required the closing of minds.

The quest for certainty at the height of student activism most frequently expressed itself in the insistence that teaching should proceed from certain given political premises, assumptions completely understood in advance and admitting of no challenge. Acquiring the practical techniques necessary to implement those premises was seen as the principal purpose of university education.

As the sixties made way for the new decade, the insistence on political orthodoxy considerably abated, and a new openness became evident in the classroom. Yet the demands for certainty continue to be expressed in other ways. There is nothing new about the appetite of many students for propositions in black-letter print. Nor can it be intimated that students' demands for more practice-oriented training represent nothing more than the lack of intellectual fortitude. Nevertheless, the insistence of many students on "instantaneous practicality" often seems more strident today than at many times in the past. Conversations with students frequently reveal acute discomfort with the notion that practice itself is a learning experience and that some things can be better learned in the period following graduation than in the law school. These insecurities have provided and continue to provide resistance to a conception of legal education sufficiently broad to satisfy the manifold obligations of a university law school.

A second set of student attitudes, springing from the hedonism of modern life, has had an even clearer impact on university education. There has developed a widely held conviction in our culture that individuals possess a kind of natural right not to experience pain. When pain is felt, the reactions are often indignation and bewilderment. These assumptions manifest themselves in student reactions to the phenomenon of tension in

27. Attributed to Tom Kahn by Daniel P. Moynihan in an address to the Harvard alumni, June 17, 1976. HARVARD TODAY 6 (July, 1976).

law school education. Tensions can be painful, and they abound in professional training. Many modern students, having been denied the knowledge that tensions may be normal and inevitable incidents of the educational experience, conclude that the pain they feel is abnormal. Pain creates self-doubts, because it is seen as evidence of personal deficiency or of illness. It also produces resentment against the institution and the educational process that engender it.

Closely related is the invincible conviction of many students that learning under pressure is not only inefficient and difficult but also impossible. Perhaps this conviction underlies the feeling of some students that being called on in class and subjected to challenge by the instructor and classmates is somehow undignified and demeaning. If it is assumed that the tensions of classroom interrogation disqualify the exchange from serving as a learning experience, it may well be seen simply as aggression against personality and comfort. These beliefs are so deeply entrenched that they withstand convincing demonstration to the contrary. Surely not only history but contemporary experience reveal that profound learning is possible in conditions of considerable pressure and that this is so much the normal mode that pressures at some level, whether engendered internally or externally, may be seen as indispensable conditions of the learning process. When Dr. Samuel Johnson was asked how he came to acquire his command of Latin, he replied: "My master whipped me very well. Without that, Sir, I should have done nothing."[28]

One scarcely needs to espouse the revival of corporal punishment as a teaching device to protest the educational ideology that has pervaded the lives of many university students. The "learning is fun" ideologues have slain their tens of thousands. Learning, in fact, is pain, at least in those aspects of it concerned with the indispensable discipline of basic drill. Paradoxically, learning confers profound satisfactions, and the intellectual life is a kind of play. The pleasures, however, cannot be achieved without experiencing the pains. Modern technology has not discovered a short-cut to Parnassus.

Like many other tendencies that do not withstand analysis, students' attitudes nevertheless point to problems that are real. It is true that since the inundation of law schools with applications for admission, competitive pressures have escalated, and student insecurity produced by an apparently declining job market have added further to their intensity. These pressures have reached seriously counter-productive levels in some institutions. The situation challenges the ingenuity and compassion of law faculties. Given the difficulty of the challenge, it is not surprising that the

28. *Quoted by* J. WAIN, SAMUEL JOHNSON 24 (1974). The author adds: "It is quite arguable that this is true; a subject like Latin, which requires endless attention to detail and continual effort of memory, was probably never learned without coercion of some kind; certainly the disappearance of Latin and Greek from English schools has exactly kept pace with the obsolescence of the cane."

ingenuity of faculties has sometimes proved insufficient and that measures that have been adopted compromise the essentials of sound education.

The relations of law faculties to their students in these times cannot be characterized in a word. The student attitudes described above do not characterize all students and probably do not characterize any students all the time. Most people who have taught in the present decade will testify to the presence of many students of the highest capacities and the most attractive personal characteristics. Yet there are periods—and the present appears to be one—in which the cultural climate is not propitious for the cultivation of intellectual and humanistic values. At such a time, teachers, if they are to serve their important function, have the uncomfortable obligation of resisting, in some measure, the main tendencies of the age.[29] Resisting creates dissonance in their relations with some students, and dissonance is particularly distressing to conscientious teachers who have always relied on a sympathetic bond with their students as an avenue of communication and as a means for mutual learning. Happily, there are indications that the dissonance is lessening. In any event, the only alternative available to the instructor is default and capitulation.

V

The preservation and extension of an intellectually-based and humanistically-motivated legal education is the greatest challenge facing American law schools. Although attaining this objective will require resolving a host of subsidiary issues—methods of instruction, the length of law school training, new systems of funding the research and educational programs—we should not permit debate of these issues to distract us from the primary concern. In seeking this objective it would be highly imprudent and irresponsible to ignore the felt needs now being given vigorous expression by students and practicing lawyers. It seems inevitable that more systematic attention will be given to skills training in the future than in the past. It seems equally clear that the evolution of legal specialties and the demand for continuing post-graduate education will add to the scope and complexity of the American system of professional legal training.

These new demands raise questions of method and allocation of functions between school and profession. They will not constitute a threat to the mission of university-based legal education unless they lead to the sacrifice of other vital functions and lower aspirations for intellectual quality and for service to the larger society. What we have to fear is a narrowing of minds and concerns. We can accept, with only slight emendation, the proposition formulated by John Stuart Mill over a century ago: "As often as a study is cultivated by narrow minds, they will draw narrow conclu-

29. The essay of the late Jerome Frank, *On Holding Abe Lincoln's Hat*, may be relevant in this context. B. FRANK, A MAN'S REACH 3 (1965).

sions. . . . The only security against narrowness is a liberal mental cultivation, and all it proves is that a person is not likely to be a good political economist who is nothing else."[30] For the phrase "good political economist" let the sentence read "good lawyer."

30. J.S. MILL, AUGUSTE COMTE AND POSITIVISM 82-83 (1961 ed.).