

RESISTING ANTI-INTELLECTUALISM AND PROMOTING LEGAL LITERACY

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"I have never let my schooling interfere with my education." Mark Twain

More than a century ago, on November 7, 1907, philosopher and psychologist William James gave an address entitled '*The Social Value of the College-Bred*'¹ at Radcliffe College. James posed one simple question. "Of what use is a college training?"² That is, why go to college? And, in the context of early twentieth-century America, where a college education was, indeed, a very rare exception, James noted that "[w]e who have had [college training] seldom hear the question raised—we might be a little nonplussed to answer it offhand."³ Anyone involved with legal education (e.g., teachers, students, lawyers, judges) should ask about law school education what James asked about a college education. *Of what use is a law school education?*

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1. WILLIAM JAMES, "*The Social Value of the College-Bred, An Address Made at a Meeting of the Association of American Alumna at Radcliffe College, November 7, 1907*," reprinted in WRITINGS 1902–1910 at 1242 (1988).

2. *Id.* at 1242.

3. *Id.* at 1242. Is James caught up in, or reinforcing, a myth about college education? Or, did he simply not take into account 'class'?

The assumption that "a college degree" means something without the college name being specified is woven so deeply into the American myth that it dies very hard, even when confronted with the facts of the class system and its complicity with the hierarchies of the higher learning. For example: Vance Packard, in the *Status Seekers*, was persuaded as late as 1959 that the idea of "a college diploma" carried sufficient meaning to justify the class designation "the Diploma Elite." Quite wrong. To represent affairs accurately, you would have to designate an "Elite Diploma Elite," because having a degree from Amherst or Williams or Harvard or Yale should never be confused with having one from Eastern Kentucky University or Hawaii Pacific College or Arkansas State or Bob Jones. Packard obfuscates the facts when he says, "[a] college girl is six times as likely to marry a college man as a noncollege girl," which fatally ignores the flagrant unlikelihood of a man from Dartmouth marrying a girl from Nova College, Fort Lauderdale.

PAUL FUSSELL, *CLASS: A GUIDE THROUGH THE AMERICAN STATUS SYSTEM* 132–33 (1983). As with college degrees, does the same notion stand with respect to law school degrees?

I. THE UNINTENDED NEGATIVE CONSEQUENCES OF TRAINING STUDENTS JUST TO BE LAWYERS

Certainly law schools must educate their students in ways, in subjects, and in skills which will enable law school graduates to perform quality legal work, that is, assuming their students intend to practice law after graduation. Yet, some law students attend law school with little intention of practicing law or they begin law school with the idea of actually practicing law for a relatively short period of time. For example, law training may be beneficial to a budding legal historian or a legal philosopher. It may also be helpful to individuals who are planning on pursuing academic careers in subjects where general knowledge of law is helpful, but where the position doesn't require the ability to practice law. Some who pursue careers in journalism, politics, business, social services, or community organizing have found a legal education to be beneficial while others, though they may enter law school with plans of a career practicing law, find themselves walking, even running, away from practicing law as a career after law school graduation.

If the only purpose of a legal education is to train lawyers, then law school would have been wasted on these individuals. It is suspected that few, though not many, view law school as having been wasted on them. It is doubtful that anybody, including those graduates who may view law school as a waste, holds an absolutist view that the *only* purpose of law school is to train lawyers. However, there are a significant number of people, both within and outside of the legal academy and the legal profession, who view the dominant purpose, and primary function, of law school as training lawyers.⁴ This narrow

4. See Bethany Rubin Henderson, *Asking the Lost Question: What is the Purpose of Law School?*, 53 J. LEGAL EDUC. 48, 56–63 (2003) (positing that the primary purpose of legal education is to learn to think the way lawyers do). Also consider the following two descriptions of the purpose of law schools, by Debra Moss Curtis and Stephen Feldman, respectively.

One suggestion is that “the goal of legal education is to produce graduates who possess the skills, knowledge, and values necessary to be successful legal professionals.” Forty years ago, a chasm arose between legal educators and the practicing bar regarding the preparation of law students to be lawyers. Amid criticism from Chief Justice Burger and other visible critics, “[e]ducators responded that the role of the law schools was to train law students in the theories and substance of the law and ‘how to think like lawyers’” rather than functioning as trade schools. The proposal is that law school's purpose is, as has been asserted in the past, to teach people to “think like lawyers.” However, a more modern interpretation of that phrase conceives of not merely cultivating analytical reasoning, but also including or helping students to develop a variety of skills and knowledge. In addition, since that time, there has been a swing in the direction of more practical training being accepted as part of the law school curriculum. The practicing bar continues in its urging of such change.

view, it is suggested, seriously threatens legal education because it curtails the intellectual scope, intellectual depth and, more importantly, the intellectual vitality of legal education.⁵ And, having adopted the limited view that the dominant purpose of law school is merely to train lawyers, it falls short of truly educating students because it tends to limit their curriculum choices (both in terms of courses offered and the contents of those courses) to only approaches, subjects, and skills frequently encountered in actual law practice.

Visit the homepage websites of American law schools and after reading their mission statements (which can be classified as their “marketing

Debra Moss Curtis, *Teaching Law Office Management: Why Law Students Need to Know the Business of Being a Lawyer*, 71 ALB. L. REV. 201, 204–05 (2008) (citations omitted).

The purpose of law school, to a great degree, is to acculturate a student—a would-be lawyer—to the traditions of the legal profession so that the student is imbued with the proper expectations, interests, and prejudices. The student will (or should) have learned the methods (or know-how) appropriate to discussing and resolving legal issues. After a student finishes a course in constitutional law, for instance, the student will know that constitutional issues can be legitimately resolved by reference to, among other things, constitutional text, the framers' intentions, and governmental structures, but not by reference to the Sunday comics. A student who attends pharmacy school instead of law school, meanwhile, will not be equipped with the know-how appropriate to interpreting legal texts in accordance with professional norms (though the pharmacy student will possess the know-how to understand a doctor's instructions regarding pharmaceutical prescriptions). The pharmacy student might realize that reliance on the Sunday comics would be inappropriate, but might not know that reference to the framers' intentions or governmental structures would be legitimate.

Stephen M. Feldman, *Do Supreme Court Nominees Lie? The Politics of Adjudication*, 18 S. CAL. INTERDISC. L.J. 17, 29 (2008) (citations omitted).

5. Another way to characterize the state of affairs is in terms of *degrees of sophistication*, rather than in terms of degrees of intellectualism or anti-intellectualism. How sophisticated is a particular legal education offered to students? And, as a consequence, how sophisticated are a law school's graduates in terms of legal knowledge? How broad, deep, and nuanced is their understanding of the law? Two law school casebooks may contain many of the same cases, yet quite often, law professors choose and prefer one to the other based on, at least in part, a casebook's level of *sophistication*. Prospective and current law students might want to select and prefer one law school to another, one course over another, one professor over another, etc., based on degrees of sophistication. David Brooks, the astute political and social *New York Times* op-ed columnist, made the following observation:

The United States is divided between the wholesome Joe Sixpacks in the heartland and the oversophisticated, overeducated, oversecularized denizens of the coasts.

What had been a disdain for liberal intellectual slipped into a disdain for the educated class as a whole. The liberals had coastal condescension, so the conservatives developed their own anti-elitism, with mirror-image categories and mirror-image resentments, but with the same corrosive effect.

David Brooks, *The Class War Before Palin*, N.Y. TIMES, Oct. 10, 2008, <http://www.nytimes.com/2008/10/10/opinion/10iht-edbrooks.1.16847245.html>. Apart from the geographic coast versus heartland or liberal versus conservative dividing lines mentioned above, might not legal education also manifest its counterpart to the Joe Sixpacks versus sophisticated, educated, etc., divided?

statements”), glance at the course offerings. How many law school curriculums list courses aimed towards developing the students’ capacities for critical examination of themselves? While most law schools list courses in international law and comparative law, look closely and query how many aim toward developing the students’ sense of themselves as citizens of the world? Are there any intellectually serious and rigorous courses, not mere popular psychology and game playing courses, where students are encouraged to develop their capacity for compassion, their ability to see facts, events, life, etc., from another person’s perspective?

Is not impartiality a significant part of what makes public policy decisions generally, and legal policy decisions specifically, seem legitimate? Then, should not law schools encourage students to develop the capacity for impartial, unbiased reasoning and judgment, so as to nurture a capacity to think and act from an impartial perspective? Encouraging the developing of these capacities is what Martha Nussbaum refers to as “cultivating humanity.”⁶ Do law schools actively cultivate humanity, or do many law schools unconsciously, and almost exclusively, reinforce a biased American middle-class, middlebrow, and middle-of-the road view of the world? In short, all too many law students become contemporary versions of Sinclair Lewis’s George F. Babbitt.⁷ And, with what consequences? The significant likelihood that most law students graduate and enter the world of lawyering with nothing more than a mediocre understanding, rather than a sophisticated appreciation, of the world, of the law, and of lawyering.

Legal education is experiencing a growing insurgency within the narrow vision of the legal education purpose. It is the manifestation of a longstanding strain in legal education. This strain, which has, in essence, become a tradition, in legal education can be characterized as the anti-intellectual tradition in legal education. In legal education, this strain is not as severe as that described by the historian Richard Hofstadter: “The common strain that binds together the attitudes and ideas which I call anti-intellectual is a resentment and suspicion of the life of the mind and of those who are considered to represent it; and a disposition constantly to minimize the value

6. See MARTHA C. NUSSBAUM, *CULTIVATING HUMANITY: A CLASSICAL DEFENSE OF REFORM IN LIBERAL EDUCATION* 10–11 (1997).

7. “All of them agreed that the working classes must be kept in their place; and all of them perceived that American Democracy did not imply any equality of wealth, but did demand a wholesome sameness of thought, dress, painting, morals, and vocabulary.” SINCLAIR LEWIS, *BABBITT*, 391 (1992).

of that life.”⁸ For the anti-intellectual tradition in legal education, the benchmark is *not* resentment and suspicion of the life of the mind, though it is suspected there is a residue of suspicion. Rather, the benchmark is a questioning, or a doubting, of *the relevancy* of what is at the core of what intellectuals do. For the anti-intellectual traditionalists in legal education, the dominant purpose of law schools, and the nearly exclusive aim of legal education, is training law students to become practicing lawyers. This purpose falls within the realm of anti-intellectualism because it demonstrates hostility towards intellectual pursuits in legal education when such pursuits are not directly, and obviously, relevant and transferable to the task of lawyering. It is hostile to merely forego the encouragement of intellectual pursuits and intellectual cultures because these are not deemed relevant to law practice. In the context of legal education, the “attitudes that interest [us] most are those which would, to the extent that they become effective in our affairs, gravely inhibit or impoverish intellectual and cultural life.”⁹

The anti-intellectual tradition in legal education is appealing in many ways—it is realistic, pragmatic, focused, and efficient. The anti-intellectual traditionalists ask, ‘if most law students aim to be practicing lawyers, should not we funnel scarce educational resources into subjects, skills, programs, and services that will enable graduates to tackle the task actually encountered by real, practicing lawyers?’ Anti-intellectual traditionalists answer in the affirmative. As a consequence, anti-intellectual traditionalists tend to evaluate the quality or success of legal education principally on the basis of criteria ostensibly relating directly to recent law school graduates’ ability to function as full-fledged practicing lawyers on day one. Thus, for example, supposedly objective factors such as bar passage rates, job placement rates within several months of law school graduation, starting salaries, the extent of students’ involvement and success in student competitions (e.g., moot court, mock trial, negotiations, and mediations), clinics, externships, etc., are to be emphasized in ranking law schools themselves.¹⁰ Likewise, supposedly objective criteria

8. RICHARD HOFSTADTER, *ANTI-INTELLECTUALISM IN AMERICAN LIFE* 7 (1963). We are concerned about the expanding presence of anti-intellectualism in legal education because, as articulated by Bernard-Henri Lévy, “anti-intellectualism disgusts me and always seems to me to be (along with a few others) one of the surest signs of advancing stupidity or fascism.” BERNARD-HENRI LÉVY, *Foucault and Iran (Another Linked Note)*, in *WAR, EVIL, AND THE END OF HISTORY* 263, 263 (2004).

9. HOFSTADTER, *supra* note 8, at 9.

10. The anti-intellectual traditionalists tend, I think, to over-value law school rankings such as U.S. News & World Reports’ annual ranking of law schools. They may not like their school’s particular ranking, they may quibble about particular factors used in the rankings, or the weight given to certain factors, but the anti-intellectual traditionalists take comfort in the existence of supposedly objective criteria for evaluating the quality of the school, which may explain why a common complaint is the weight placed on certain ‘subjective factors,’ such as reputation among judges, law professors, etc. In the

such as a lawyer's ability to perform certain lawyer-tasks, including drafting letters, writing or negotiating contracts, drafting or arguing pleadings and motions, writing or arguing briefs, drafting legislation, conducting depositions, performing discovery, and handling motion calls are to be emphasized in evaluating entry-level applicants and hires, their law schools, and the quality of the legal education those students received. However, anti-intellectual traditionalists tend to de-emphasize, discount, and ignore a law school's success or failure in enhancing students' capacity for thinking and acquiring knowledge, particularly legal knowledge, and the cultivating of intellectual curiosity about the law.¹¹

Certainly the legal profession values intelligence and, to a certain degree, values the development and exercise of intellectual capacities. This is evidenced, first, by the emphasis law schools place on standardized tests and grade point averages in making admission decisions (thus, the higher ranked law schools tend to have students with higher average test scores and grade point averages, from better undergraduate schools with presumably more challenging curriculums). Second, law firms, judiciaries, government agencies, in-house corporate legal departments, investment banks, etc., often conduct their recruiting and hiring primarily, if not exclusively, on the basis of applicants' law school attended and class rank. Thus, the combination of standardized test scores, undergraduate grade point averages, law school attended, and class rank are a proxy for, or an indication of, students' capacities for thinking and acquiring knowledge, specifically legal knowledge.

However, though its valuing of the intellectual capacities is implicit, the anti-intellectual tradition does not place significant value upon, or explicitly acknowledge the value of, what actually goes into developing and nurturing those capacities as part of legal education. The anti-intellectual tradition fails to appreciate that law schools (at least the better ones) are engaged in the task of nurturing and developing students' intellectual capacities, reasoning capacities, and capacities for appreciating ideas and the pursuit of knowledge. They do not value intellectual curiosity as an end in itself, or as its being instrumental for the practice of law. Instead, the anti-intellectual traditionalists see law schools as engaged in the narrower pursuit of producing individuals capable of performing a range of specific lawyering tasks. Consequently, in

short term, for example, it is easy to improve the *quality* of a law school library when quality is measured by the volume of books it contains or the size of the library's budget. It is certainly easier to improve the quality of the law school's library than, for example, improve the law school's reputation among judges. We assume here that law schools would not attempt to improve their reputations by bribing judges.

11. At the individual level, this intellectual complacency and stagnation constricts an individual's ability to live a meaningful life.

its assessment of legal education, law schools, law students, and entry-level lawyers, the anti-intellectual tradition does not include the value of the study of jurisprudence, logic, philosophy, politics, sociology, history, literature, the classics, etc.¹² They ask, ‘how can exposure during law school to philosophy, history, literature, or the classics prepare law students Larry and Mary to be better tax lawyers, or bankruptcy lawyers, or family lawyers?’ The anti-intellectual traditionalists conclude that these subjects will not prepare Larry and Mary for the practice of law. ‘What practical skills will these provide Larry and Mary?’ The anti-intellectual traditionalists respond that these subjects provide no practical skills to Larry and Mary. The result? The creation of many *competent* practitioners perhaps,¹³ but few of whom are well-educated, well-rounded, and intellectually curious lawyers (and human beings).¹⁴ Law as a discipline, law as a profession, lawyers themselves, and society as a whole, suffer from being dominated by individuals and institutions devaluing the importance of being well-educated, well-rounded, and intellectually curious. We live in an increasingly complex world. Any profession dominated by people lacking the broader perspective, lacking the broader interdisciplinary knowledge base, and lacking the broader intellectual curiosity will be less able to identify and address the challenges and problems of such a world.

12. How often, one wonders, do hiring partners query applicants as to their reading habits or other intellectual pursuits? Do such habits and pursuits even matter to a majority of the bar?

13. The “perhaps” is appropriate here because, for instance, perhaps being a competent lawyer in certain areas requires a certain mastery of, or fluency in, the history of certain legal concepts. Philip Hamburger provides a good example where failure to understand a legal concept’s history may send judges, legal scholars and, one would think, even practicing lawyers off track:

The history of the ideals of law and judicial duty remains essential for understanding the authority and extent of judicial power. Too often, judicial review is said to be a development largely created or at least established by the judges—as if in the absence of any clear constitutional authorization, the judiciary lifted itself up by its own bootstraps and gave itself its own preeminent power. Welcoming the implications of this history, many scholars and judges candidly consider the scope and exercise of judicial review to be within judicial control. The historical evidence, however, points to other conclusions.

PHILIP HAMBURGER, LAW AND JUDICIAL DUTY 617 (2008).

14. Coming across lawyers who are unhappy in practicing law is a common, and often discussed, occurrence. What is not discussed, but which we suspect is also a common condition, are the practicing lawyers who have no real interest in legal ideas themselves. They can be analogized to librarians who have no interests in books or the content of books.

II. DO TODAY'S LAWYERS ASPIRE TO MEMBERSHIP IN THE CULTURAL ELITE?

Consider Thomas Augst's brief description of a requirement for membership in the "professional cultural elite" in nineteenth-century America. "Membership in the professional cultural elite is sanctioned by the ability to climb the meritocratic ladder of educational achievement—every stage of which demands ever more dexterous manipulations in the reading and composition of texts."¹⁵ Does the average late twentieth-century or early twenty-first-century lawyer aspire for membership in a *professional* and *cultural* elite? Law was once referred to as one of the *learned professions*. The question is whether it still is today?¹⁶ Is law a learned profession when so many law students and lawyers are narrowly and poorly educated, so narrowly and poorly read, so intellectually incurious?¹⁷ Curiosity may kill the cat, but an incurious cat would strike many as something less than a cat, it would seem to be a deficient cat. Are intellectually incurious law students deficient students and prospective lawyers? Are intellectually incurious law professors deficient

15. THOMAS AUGST, *THE CLERK'S TALE: YOUNG MEN AND MORAL LIFE IN NINETEENTH-CENTURY AMERICA* 251 (2003).

16. Consider Saul Bellow's rant:

In the old days there was still a considerable literary community in this country, and medicine and law were still 'the learned professions,' but in an American city today you can no longer count on doctors, lawyers, businessmen, journalists, politicians, television personalities, architects, or commodities traders to discuss Stendhal's novel or Thomas Hardy's poems.

SAUL BELLOW, *RAVELSTEIN* 46 (2000).

17. We borrow here from the moral philosopher Barbara Herman:

We talk of different literacies: learned capabilities or skills, having to do with the acquisition and use of knowledge. Becoming literate is not an organic process, like physical growth; nor is it, like speech, the natural outcome of social life. It is a culture-dependent, intentional process. To be literate in a domain is to have the capacity to recognize and perform at some specified level of competency. One can be "barely literate" or "semi-literate." One can belong to the literati.

We do not think a person is literate in a domain if all she has possession of is a set of facts. There are things you must be able to do with or because of the facts you have access to as a literate person. You are not musically literate if you can name and date the great nineteenth-century opera but cannot hear the difference between Mozart and Verdi. Regions of learning where it makes sense to talk of literacy tend not to be closed areas of knowledge. Indeed, to be literate is typically to have a skill that is connected to the possibility of enlarged competence. The degree of competency necessary to count as literate in a domain is disputable and may not be fixed. In talking of moral literacy, I mean to draw on this conceptual background: it is a basic, learned capacity to acquire and use moral knowledge in judgment and action.

BARBARA HERMAN, *Responsibility and Moral Competence*, in *MORAL LITERACY* 79–80 (2007).

teachers of law? As law students, as lawyers, and as law teachers we will be neither sufficiently critical nor sufficiently critically constructive if we fail to be intellectually curious and intellectually engaged. As a result we suffer, the legal profession suffers, legal institutions suffer, and society suffers. The anti-intellectual traditionalists fail to see this costly consequence of devaluing the importance of the intellectual in legal education¹⁸ and the legal profession.

The anti-intellectual tendency in legal education and the legal profession has put both legal education and the legal profession in a critical state of distress. Not only are both legal education and the legal profession dominated by people who lack the broader perspective, who lack the broader knowledge

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18. Throughout this paper we have resisted the use of the term ‘*legal schooling*,’ to capture the efforts to inculcate students with mere facts and skills which are thought generally or specifically useful to students in their eventful employment as lawyers, and, then, contrasting it with ‘*legal education*’ or ‘*legal educating*,’ to capture efforts to expose students with ideas, and nurturing the students capacity to appreciate and explore ever more complex ideas. Though different, legal *schooling* and legal *educating* would not be necessarily incompatible, and perhaps schooling and educating are just different points on one continuum, but placing the emphasis on one would tend to block out the other. We resist the introduction of these terms because the term ‘legal education’ is currently used to capture both what we would prefer to call legal schooling and what we would prefer to call legal education. However, most of what goes under the heading “legal education” today is really what we would classify as legal schooling and not legal educating.

In that context, read the following passage inserting the word “legal” *in front of* the words “education” and “schooling.”

I know that education is not the same thing as schooling, and that, in fact, not much of our education takes place in school. Schooling may be a subversive *or* a conservative activity, but it is certainly a circumscribed one. It has a late beginning and an early end and in between it pauses for summer vacations and holidays, and generously excuses us when we are ill. To the young, schooling seems relentless, but we know it is not. What is relentless is our education, which, for good or ill, gives us no rest. That is why poverty is a great educator. Having no boundaries and refusing to be ignored, it mostly teaches hopelessness. But not always. Politics is also a great educator. Mostly it teaches, I am afraid, cynicism. But not always. Television is a great educator as well. Mostly it teaches consumerism. But not always. . . .

It is the ‘not always’ that keeps the romantic spirit alive in those who write about schooling. The faith is that despite some of the more debilitating teachings of culture itself, something can be done in school that will alter the lenses through which one sees the world; which is to say, that nontrivial schooling can provide a point of view from which what *is* can be seen clearly, what *was* as a living present, and what *will be* as filled with possibility. . . .

What this means is that at its best, schooling can be about how to make a life, which is quite different from how to make a living. Such an enterprise is not easy to pursue, since our politicians rarely speak of it, our technology is indifferent to it, and our commerce despises it. Nonetheless, it is the weightiest and most important thing to write about.

NEIL POSTMAN, *THE END OF EDUCATION: REDEFINING THE VALUE OF SCHOOL ix-x* (1995).

base, and who lack broader intellectual curiosity,¹⁹ legal education and the legal profession are dominated by people who lack the broad perspectives in law, who lack broad knowledge in law, and who lack broad intellectual curiosity about law. Do law students even aspire to be, say, a modern day Alexander Hamilton? “As a lawyer, his comprehensive genius reached the principles of his profession; he compassed its extent, he fathomed its profound, perhaps even more familiarly and easily, than the ordinary rules of its practice. With most men law is a trade; with him it was a science.”²⁰ In short, the law is dominated by people who lack legal literacy,²¹ lack a mastery of the rich literature of American law, let alone, the longer tradition of Anglo-American law.²² Law students are not required to read Blackstone’s Commentaries or Story’s Commentaries. There is no expectation that law students explore, with more than a passing glance, the breadth of writings and opinions of Chief Justice John Marshall, Justice Oliver Wendell Holmes, or even a contemporary

19. One is reminded here of Stephen Carter’s eerie description of the career fates of his fictional elite law students.

I return to my dreary classroom, populated, it often seems, by undereducated but deeply committed Phi Beta Kappa ideologues—leftists who believe in class warfare but have never opened *Das Kapital* and certainly have never perused Werner Sombart, hard-line capitalists who accept the inerrancy of the invisible hand but have never studied Adam Smith, third-generation feminists who know that sex roles are a trap but have never read Betty Friedan, social Darwinists who propose leaving the poor to sink or swim but have never heard of Herbert Spencer or Will Sumner’s essay on *The Challenge of Facts*, black separatists who mutter bleakly about institutional racism but are unaware of the work of Carmichael and Hamilton, who invented the term—all of them our students, all of them hopelessly young and hopelessly smart and thus hopefully sure they alone are right, and nearly all of whom, whatever their espoused differences, will soon be espoused to huge corporate law firms, massive profit factories where they will bill clients at ridiculous rates for two thousand hours of work every year, quickly earning twice as much money as the best of their teachers, and at half the age, sacrificing all on the altar of career, moving relentlessly upward, as ideology and family life collapse equally around them, and at least arriving, a decade or two later, cynical and bitter, at their cherished career goals, partnerships, professorships, judgeships, whatever kind of ships they dream of sailing, and then looking around at the angry, empty waters and realizing that they have arrived with nothing, absolutely nothing, and wondering what to do with the rest of their wretched lives.

STEPHEN L. CARTER, *THE EMPEROR OF OCEAN PARK* 109 (2002).

20. FISHER AMES, *A Sketch of the Character of Alexander Hamilton*, in *WORKS OF FISHER AMES* 510, 514–15 (Indianapolis: Liberty Fund 1983) (1854).
21. We considered using the phrase ‘law literacy,’ but opted for ‘legal literacy’ because it fit better with the common phrase ‘legal education.’ Though one hears ‘training in law,’ ‘educated in law,’ ‘law degree,’ etc., one rarely hears the phrase “law education.” Also, ‘legal education’ plays better on the ear than does ‘law education.’
22. In an increasingly global economy and, perhaps, even an increasingly global culture, American legal education and the American legal profession is dominated by people lacking a sense of other legal traditions.

such as Judge Richard Posner. Law students are not encouraged to delve into the small, but impressive, body of work by the likes of the late Robert Cover, or the larger and, even more impressive body of work by the late Karl Llewellyn.²³ Or, for that matter, what about the works by the living Catherine MacKinnon, James Boyd White, Richard A. Epstein, Cass R. Sunstein, Ronald Dworkin, Lawrence M. Friedman, Richard A. Posner, or Lawrence Lessig? How many students can discuss the merits and demerits of the law and economics, law and literature, critical legal studies, natural rights law,²⁴ etc.? Does the name Wesley Newcomb Hohfeld mean anything to them?²⁵

As an intellectual enterprise, most American law schools deserve a “D” grade. Few law schools promote legal literacy among the students and, consequently, most law schools convey law degrees on students lacking legal literacy. Bar examiners do not require a mastery of the literature of American law and law firms hire law school graduates without proof of legal literacy. As a result, the legal profession is full of individuals who never made the effort to become literate in the law, who never committed themselves to read broadly in the law, and who never even viewed the failure to do so as a professional deficiency. The law students suffer. The legal profession suffers. The consumers of legal services suffer. Society suffers from this deficiency

23. Karl Llewellyn should be a demigod to law students who spend most of their law school career trying to figure out what the law is. Llewellyn provided an answer which most of their professors, as cynics, unconsciously embrace and inculcate their students. “What these officials [e.g. judges, police, lawyers] do about disputes is, to my mind, the law itself.” KARL N. LLEWELLYN, *THE BRAMBLE BUSH: ON OUR LAW AND ITS STUDY* 13 (1930).

24. One would think, given the *Declaration of Independence*’s clear expression of a philosophy of inalienable rights, that law students study some natural rights theories of law (even if to reject such theories).

25. Besides not being familiar with certain legal writers, there are important contemporary legal issues which are given little or no attention in most law school curriculums and, as a consequence, of which few law students are even aware. One such social problem and legal issue concerns modern day slavery.

Certain things we know to be true. We know that slavery is a bad thing, perpetrated by bad people. We also know that slavery not only exists throughout the world today but flourishes. With approximately twenty-seven million people in bondage, it is thought to be the third most profitable criminal enterprise of our time, following only drugs and guns. In fact, more than twice as many people are in bondage in the world today than were taken from Africa during the entire 350 years of the Atlantic slave trade. And we know that slavery is alive and more than well in the United States, thriving in the dark, and practiced in many forms in places where you’d least expect it.

KEVIN BALES & RON SOODALTER, *THE SLAVE NEXT DOOR: HUMAN TRAFFICKING AND SLAVERY IN AMERICA TODAY* 3 (2009). See generally, KEVIN BALES, *DISPOSABLE PEOPLE: NEW SLAVERY IN THE GLOBAL ECONOMY* (1999); KEVIN BALES, *ENDING SLAVERY: HOW WE FREE TODAY’S SLAVES* (2007); KEVIN BALES, *NEW SLAVERY: A REFERENCE HANDBOOK*, 2D. ED. (2004); and KEVIN BALES, *UNDERSTANDING GLOBAL SLAVERY: A READER* (2005).

in legal education. If the goal is merely to produce lawyers (i.e., so many lawyers, like so many widgets),²⁶ then law schools are very successful mass producers of widget-lawyers.²⁷ But if the objective is to prepare *excellent* lawyers, then law schools must promote legal literacy, and bar examiners must require bar applicants to demonstrate their legal literacy before awarding law licenses. Law students, law firms, consumers of legal services, and society as a whole would benefit from having a legal profession comprised and dominated by people who are literate in American law, its history, and its jurisprudence. But legal literacy is not promoted mainly because it is not viewed as necessary for the practice of law.²⁸ This is part of the anti-intellectual tradition in American law generally, and in American legal education specifically.

26. “. . . Can you think of a less romantic product? . . . A widget is the word economists use when we don’t want to think of a real example. It’s just a silly name for ‘thing.’ That’s how bland his product was.” RUSSELL ROBERTS, *THE PRICE OF EVERYTHING: A PARABLE OF POSSIBILITY AND PROSPERITY* 109 (2008).

27. A rather telling anecdote, of unknown origin, involves conflicting characterization of the relations between law students, on the one hand, and law teachers and law schools, on the other hand. In a confrontation between a law student and a law professor, the law student characterizes himself as *a consumer of legal education*, such that the law professor and the law school should yield to consumer demand. In short, the law students as consumers are always right; give the law students as consumers what they want. The law professor asserts that the student’s characterization of law students as consumers is incorrect. That law students are not consumers of legal education, rather law students are *the products, or outputs, of legal education*. If law students are characterized as the products and outputs of legal education, then the real *consumers* of legal education are not the law students themselves, but rather those who hire them as law school graduates or otherwise employ their services. Under the latter characterization, if pushed to its limits, law students are just glorified widgets. But is that not also true under the characterization of law students as consumers of legal education, especially if the exclusive aim of legal education is to prepare students to be practicing lawyers, i.e., make them fit and useful lawyers? So, even under the law student as consumer characterization, law students are products, outputs, and glorified widgets. In the anecdote then, where the law student and the law professor differ is about who is in the better position to determine what the end-users want, what law firms and other consumers of legal services want. The law student as consumer thinks he is in the better position, while the law professor as producer thinks he is in the better position. Though an interesting issue, it is not the focus of this essay. We are not arguing that law professors are in a better position than law students, lawyers, judges, or some other group, to make such a determination. We are not arguing about who is, or who should be, the decider on nature, aim, focus, etc., of legal education. What we are arguing is for a less anti-intellectual approach to legal education, and not a determination of who is in the better position to decide whether the less anti-intellectual approach or the anti-intellectual tradition is better for law students, lawyers, the profession, and society.

28. This is a misguided view, of course. Can students understand United States constitutional law without a basic grounding in American history? Or comprehend United States banking and the morass of banking regulation without a basic grounding in the history of banking and banking regulation? Glass-Steagall was enacted in a particular point in American economic and political history, and subsequently repealed at not just a later point, but a quite substantively different point in American economic and political history.

III. THE PROBLEMATIC CARNEGIE STUDY ON THE FUTURE OF LEGAL EDUCATION

The anti-intellectual insurgency in legal education finds its latest voice in a 2007 report printed in The Carnegie Foundation for the Advancement of Teaching's Preparation for the Professions series. The report, *Educating Lawyers: Preparation for the Profession of Law*,²⁹ though claiming to both acknowledge the importance of formal knowledge, and to aim toward "uniting, in a single educational framework, the two sides of legal knowledge . . . (1) formal knowledge and (2) the experience of practice,"³⁰ damns formal knowledge with faint praise.

The triumph of formal knowledge and the stance of objectivity in the university resonated with similar trends in the twentieth-century economy and society. It extended to American law an ordering and rationalizing process that was already far advanced in Europe. The unexpected (and certainly unintended) consequence of these efforts at modernizing, however, has been a recurrent complaint of loss of orientation and meaning. This shadow side of modern institutions has shown up in the professions as accusations of professional self-absorption and irresponsible disconnection from the public. Whatever the merits of 'value-free' knowledge, they do not transfer well to the idea of 'value-free professionals.'³¹

In sum, the report's authors believe that legal education suffers from some significant ills and, moreover, the cause of those ills may be attributed to unexpected and unintended consequences of the efforts to emphasize the acquisition of formal knowledge in legal education. Though unconvinced of a causal connection between emphasis on formal knowledge and the many ills of the legal professions, this is not the point to explore the merit of the report's allegation. This is also not the forum for debating the merits, either absolute or relative, of the two sides of legal education, formal knowledge versus the experience of practice. Yet, *Educating Lawyers: Preparation for the Profession of Law* is, nonetheless, a troubling report.

The notion of integrating the experience of legal practice into law school curriculums is very old news. In the early twentieth century, for example, legal education saw the adoption of the Functional-Approach, aptly described

29. WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).

30. *Id.* at 12.

31. *Id.* at 7.

by the late Robert Maynard Hutchins, former law professor, dean of the law school, and president of the University of Chicago,³² in a 1933 address delivered before the Association of American Law Schools. In *The Autobiography of an Ex-Law Student*,³³ President Hutchins wrote:

The Functional Approach was based on the Fact-Situation. The Fact-Situation became the center of our educational attention. We knew that we were supposed to train young people to practice law. We knew that cases do not present themselves to the lawyer labeled Torts, Contracts, Equity I, or Constitutional Law. The lawyer is faced with a Fact-Situation. The Fact-Situation may involve five or six of the traditional law school disciplines. We could see that this was wrong. We could see that if we could organize a curriculum of Fact-Situations we could by passing the young man through it prepare him to meet these facts or these situations in afterlife. He would recognize a familiar Fact-Situation that he had known in law school and could deal with it as an old friend. So we shifted our courses around and renamed them in the hope that we might sooner or later find out how to introduce the student to those Fact-Situations he was most likely to encounter in the practice.

The trouble with the Functional Approach was that it threatened us with a *reductio ad absurdum*. If the best way to prepare students for the practice was to put them through the experiences they would have in practice, clearly we should abolish law schools at once. . . . Even moot courts were probably a waste of time.³⁴ The place to get experience is in life. The place to get legal experience is in a law office. Since there were already too many law offices, we saw no reason for turning the law schools into law offices, too. The Functional Approach seemed likely to remove the last vestige or excuse for the maintenance of law schools in universities.³⁵

The call for integrating the experience of practice into law school curriculums ignores the simple notion that the place to get experience is by living life, not by sitting in a classroom. It ignores that the place to get legal experience is in a law office, or in the judge's chambers, or in the courtroom.

32. For more on Hutchins, see HARRY S. ASHMORE, UNSEASONABLE TRUTHS: THE LIFE OF ROBERT MAYNARD HUTCHINS (1989); MARY ANN DZUBACK, ROBERT M. HUTCHINS, PORTRAIT OF AN EDUCATOR (1991); ROBERT MAYNARD HUTCHINS, A MEMOIR (1993); & WILLIAM H. MCNEILL, HUTCHINS' UNIVERSITY: A MEMOIR OF THE UNIVERSITY OF CHICAGO, 1929-50 (1991).

33. Robert Maynard Hutchins, *The Autobiography of an Ex-Law Student*, 1 U. CHI. L. REV. 511, 513-14 (1934).

34. Today, might Hutchins have listed mock trial, mock mediation, and mock negotiation with moot court?

35. Hutchins, *supra* note 33, at 513-14.

And it ignores that it provides a justification for the elimination of legal education centered at law schools. The trouble with what, on its surface, is a call to integrate two sides of legal education, i.e., formal knowledge and experience of practice, is that it, like the Functional Approach, threatens a *reductio ad absurdum*; if accepted it leads to absurd or untenable conclusions. If the principal purpose of law school-based legal education is to provide law students with the training the students could obtain working for several years in a law office, then why have law schools? Why not have apprenticeships? If there is nothing to be gained from a law school-based legal education that cannot be gained from an apprenticeship or law firm-based legal education, then pull the plug on law school-based legal education altogether.³⁶

However, there is something that does occur, or used to occur, in law schools. The better colleges, universities, and law schools explore and pursue ideas for their own sake.³⁷ For the most part, law firms are in the business of providing legal services. Few law firms are in the business of pursuing ideas. And, there is something a law school-based legal education can and does do, or at least, used to do, that an apprenticeship or a law firm-based legal education cannot do. The better colleges, universities, and law schools strive to enhance their students' capacity for thinking, reasoning, and acquiring knowledge. And, in the case of the better law schools, they strive to enhance their students' capacity for legal thinking, reasoning, and acquiring legal knowledge. Law firms are in the business of making use of their lawyer-

36. Why not, for example, follow the English model for training lawyers? In England and Wales, what Americans call "lawyers" are separated into two main categories: solicitors and barristers. Solicitors are entitled to represent clients in the County (Civil) Courts and in Magistrates' Court (a lower court in the English court system), and they are the main legal representation for individuals and companies. For instance, one would engage a solicitor to advise one in a real estate transaction, to draft a will, or deal with a private or public dispute. Barristers, in contrast, are qualified to represent clients in Crown Court or the Higher Courts. Barristers are roughly the equivalent of American advocacy lawyers and, consequently, much of solicitors' training and abilities relate to courtroom skills. Barristers rarely deal directly with the clients, relying instead on having been briefed on the facts of the case by the client's solicitor.

The academic and training route to each of these two categories differs. To become solicitors law graduates (i.e., persons holding a bachelor degree in law) must first study a legal practice course and, *then*, spend two years in practice working as a trainee. To become barristers law graduates pursue a bar vocational course, which is followed by a pupillage. See Wikipedia, *Barristers in England and Wales*, http://en.wikipedia.org/wiki/Barristers_in_England_and_Wales (lasted visited July 12, 2009); *The Bar Council*, <http://www.barcouncil.org.uk/> (last visited July 12, 2009).

37. Several first-rate universities, including Princeton, Brown, Johns Hopkins, Rice, Tufts, and Brandeis do not have law schools. Princeton is an interesting case. It is a 'law school' without law students in the traditional sense. That is to say, it is not preparing students for the practice of law. See generally David A. Hollander, *An Unexpected Story: The History and Origins of Princeton's Long-Standing Tradition of Interdisciplinary Legal Scholarship*, 100 LAW LIBR. J. 279 (2008).

employees' capacity for legal thinking, reasoning, and acquiring legal knowledge, but they have little interest in developing their lawyer-employees' intellectual capacity.³⁸ Law-school-based legal education could de-emphasize those attributes which separate them from apprenticeships, they could de-emphasize formal knowledge, they could place greater emphasis on the experience of practice. However, doing so will be at the expense of ideas and the intellectual.³⁹ Prior to law school graduation, few law students are actually

38. James Boyd White sums up the approaches law firms have toward training newer lawyers as follows:

There seem to be two distinct ways in which law firms try to educate their younger lawyers: some firms establish detailed procedures for the treatment of problems, supervising young people very closely and assuring themselves that each step has been mastered completely before permitting the young lawyer to go on to the next. Typically this leads to rather narrow specialization. At its best, the system produces an institutional style of caution and assured competence. No mistakes: do it the way it has been done. The opposite technique is to encourage the development of individual characteristics and abilities, on the theory that a finely tooled training process stifles the ingenuity and the sense of confident individuality that are essential to first-rate legal practice. The assumption is that in any situation there is no single right response at which we would like every member of the firm to arrive by the same steps, but that there are a great many different right responses (depending upon the talents of the particular lawyer and what he intends to do next) to be arrived at in a great many different ways. One person can rightly run a risk—of litigation, say, or of antagonizing another lawyer or his client—that another would wisely avoid. This produces, at its best, not an institutional style but a cluster of individual styles. So viewed, the law is one of the few activities where you can recognize and live with your peculiarities of skills and weakness, and take pride in managing them, where your job is to find or create a style of your own, a way of doing things that seems right to you. And the activities in which a lawyer is given the opportunity to excel cover nearly the whole range of human experience, from the exercise of pure logic to sensitivity to the emotional qualities of a human relationship.

JAMES BOYD WHITE, *THE LEGAL IMAGINATION*, xxiv (1985). Would the situation be much better were law firms to replace law schools as the initial trainers of prospective lawyers? Would not it be worse? Does anyone doubt that were law firms to hire recent college graduates, rather than hire recent law school graduates, and begin the process of training them to be lawyers that the first of the two ways of educating lawyers described by White would dominate over the second way described? And, that the worst outcome of narrow specialization will be more evident than that of assured competence.

39. Some of the trade-offs between formal education and practical, or experiential, education are touched upon by economists Claudia Goldin and Lawrence Katz.

[Consider] the choice between engaging in *general* training, such as formal schooling, and engaging in *specific* training, such as an apprenticeship or on-the-job training. Investment in general schooling may be more costly than an apprenticeship, but it produces skills that are flexible and thus transferable across place, occupations, and industries. Thus formal education is more highly valued when geographic mobility and technical change are greater

Formal, school-based education enabled American youths to change occupations over their lifetimes Apprenticeships and highly specific training were more cost effective for individuals who expected to spend their lives in the same place and in the same industry and occupation

called upon to perform the following tasks: draft complaints or answers to complaints; draft interrogatories; depose a witness; conduct discovery; review trial transcripts for the purpose of establishing bases for possible appeal; draft appellate briefs or replies to appellate briefs; draft sophisticated memoranda of law; draft wills (or even consult with clients to ascertain their objectives regarding the disposition of their estates); negotiate or draft contracts (e.g., partnership agreements, prenuptial agreements, settlement agreement); draft legislation; draft an opinion letter; write a letter to a client, to opposing counsel, or to a governmental agency; use due diligence; form a corporation; draft articles of incorporation; draft a proxy statement; do a corporate restructuring; advise a member of a board of directors; do a bankruptcy filing; discuss the pros and cons of bankruptcy with a client; negotiate with the district attorney regarding reducing or dropping certain criminal charges against a client; perform real estate title searches; draft an Article 9 security agreement; do an Article 9 filing, et cetera, et cetera, et cetera.⁴⁰ No one would doubt that, all things being equal, it would be great were law students to gain the experience of doing all, most, or even a few of these tasks.

Yet, it is no surprise all these tasks are extremely labor intensive and time consuming, and not just for the students who are attempting to master these tasks, but for the lawyers, paralegals, and law professors who would be responsible for providing the legal training. Law schools are simply ill-equipped to provide such a wide array of real-life lawyering experiences for their students. The training would need to be outsourced to law firms, which begs the question of making law school itself more experiential. Moreover, since each and every student cannot have all these experiences during law school, how should law schools determine and prioritize which lawyering experiences students should be required to endure during law school?⁴¹ Will

CLAUDIA GOLDIN & LAWRENCE F. KATZ, *THE RACE BETWEEN EDUCATION AND TECHNOLOGY* 29 (2008). How might this apply to legal education? Well, were law students to know *ex ante* that they would obtain satisfactory, career-expanding jobs as practicing lawyers, specializing in a specific practice area, and that area would not experience radical innovations, then a legal education or an apprenticeship which trained them in specific areas and specific skills would be more valuable to them than a general or formal legal education. However, if flexibility and mobility are desirable because, *ex ante*, students cannot be certain that they will find a satisfactory career in law, that their interests will not change, that the law will not experience innovation rendering specific legal skills obsolete, that the legal profession will experience a contraction (threatening possible job loss), etc., then a general or formal legal education may be significantly more valuable than a concentrated, specific, or apprenticeship-based legal education.

40. Note how many of the listed experiences involve some form of legal writing. It would be interesting to ascertain how inclined law school administrators are to expand their school's legal writing programs beyond what is basically a formal first-year law school program supplemented by a more informal, sparse, mix and match, program in the second and third years.

41. Even after a long and successful career, few practicing lawyers actually have all these experiences.

aspiring trust and estate lawyers really find trial practice related experience to be all that valuable? Will aspiring securities lawyers be interested in drafting prenuptial agreements? Perhaps they should be, but most likely, they will not be. Will law schools need to become specialized in the lawyering experiences they provide for their students? And, if students are required to spend more time in experiential courses, what courses will they sacrifice?⁴² Will they have less time for economic analysis of law, or law and literature, or comparative law, or poverty law, or animal law, or feminist legal theory, or jurisprudence? Will they essentially have no time for the law courses which are primarily intended to broaden their perspectives and cultivate their humanity?

It is important to note that the divide between formal knowledge and the experience of practice is *not* a divide between doctrine and skills. Everyone would agree that Harvard Law School is, without a doubt, an elite and significant law school. Harvard Law School offers a course, *Analytical Methods*, which uses a textbook by the same name and which is co-authored principally by doctrinal faculty.⁴³ The course and the textbook are a living example of the intimate integration of doctrine and skills.

This text was created to accompany a course we have taught . . . at Harvard Law School. The course and the text grew out of our joint realization that the traditional law school curriculum, with its focus on the development of analogical reasoning skills and legal writing and research, left many law students inadequately prepared for upper-level course and, more importantly, for legal practice in the modern world. Lawyers, whether corporate counsel or public interest advocates, must work in settings where effective argumentation and the giving of sound legal advice often depend on mastery of language and techniques derived from disciplines such as economics, accounting, finance, and statistics, staples of modern business school curriculum, but notably absent, in introductory form, from law school classrooms.⁴⁴

42. Even with a drafting component added to various doctrinal courses, say, Trusts and Estates, would the course *expand* so as to include the drafting component, or would the doctrinal component of the course be reduced to offset the time devoted to the drafting? One or the other would be necessary to get the drafting component into an existing course. Stating a wish list of experiences one would add to a law school curriculum is relatively easy compared to determining the subjects to be taken away or given less coverage as a result.

43. See HOWELL E. JACKSON, LOUIS KAPLOW, STEVEN M. SHAVELL, W. KIP VISCUSI, & DAVID COPE, *ANALYTICAL METHODS FOR LAWYERS* (2003).

44. *Id.* at v.

Likewise, Professor Ward Farnsworth's book, *The Legal Analyst: A Toolkit for Thinking About the Law*,⁴⁵ underscores the interconnectedness between doctrine and skills. "This book is a collection of tools for thinking about legal questions."

[T]here are tools for thinking about legal problems—ideas such as the prisoner's dilemma, or the differences between rules and standards, or the notion of a baseline problem, or the problem of hindsight bias. Some of them are old matters of jurisprudence; a larger share have been imported into the law schools more recently from other disciplines, such as economics or psychology. . . . [These tools] enable you to see more deeply into all sorts of questions, old and new, and say better, more penetrating things about them.⁴⁶

Farnsworth is on the faculty of a 'top tier' law school, Boston University School of Law. And, at another 'top tier' law school, New York University Law School's Lawyering Program does teach practice in a law school in a manner which is satisfyingly intellectual.⁴⁷ In essence, the scope of doctrinal and formal knowledge education has expanded to include decision analysis, game theory, accounting, finance, microeconomics, statistics, psychology, and more. No thoughtful and responsible doctrinal law faculty advocates the elimination of skills from the curriculum, or even disintegration of doctrinal law and skills. Thoughtful and responsible faculties know the two are intimately linked. However, (a) integrating doctrine and skills, something that is imbedded in the acquisition of formal knowledge, is not the same as (b) integrating formal knowledge with experience of practice. The latter attempts to integrate two distinct philosophies of legal education. If fully implemented, experience of practice would render law school-based legal education as an apprenticeship to law practice and, again, remove the last excuse for the maintenance of law schools.

We do not doubt that formal knowledge and experience of practice can coexist, in theory, in law schools. Again, NYU's Lawyering Program is a case in point. Nor do we question the desirability of the presence of both in legal education. And, we do not hold that the pursuit of formal knowledge is always and necessarily intellectual, while the pursuit of experience of practice is always and necessarily anti-intellectual. However, is it realistic to expect an equal coexistence of the objectives of formal knowledge and experience in practice? The tendency will be for one or the other to dominate and, then,

45. WARD FARNSWORTH, *THE LEGAL ANALYST: A TOOLKIT FOR THINKING ABOUT THE LAW* (2007).

46. *Id.* at vii.

47. As Neal Feigenson, who recalled the NYU's Lawyer Program to our attention, says, "that's the genius of the NYU."

subordinate (if not eliminate) the other. It is the clash between law as an intellectual pursuit and law as a practical (i.e., anti-intellectual) pursuit.⁴⁸ At the wholesale level, but certainly at the retail level, of legal education, one will dominate while the other shrinks. They will not coexist in a sustained and stable equilibrium. Were we to make a prediction concerning the future of legal education, we see one of two outcomes. One, that the anti-intellectual, experience as practice, philosophy of legal education drives the intellectual, formal knowledge, philosophy of legal education from the field, with the proponents of the latter taking refuge in other academic departments or outside research and think tanks. Or, two, that individual law schools decide which of the two philosophies of legal education they want to pursue, such that there will be two distinct categories of law schools. Under the latter outcome, there will be law schools embracing the anti-intellectual, experience as practice, philosophy of legal education, on the one hand. And, there will be law schools embracing the intellectual, formal knowledge, philosophy of legal education, on the other hand. And, seldom, if ever, will the two competing philosophies of legal education meet. The former kind of law school will be dominated by the legal profession; that is, dominated by practicing lawyers, the legal bar, etc.⁴⁹ The latter kind of law school will be dominated by researchers and academicians. *Educating Lawyers: Preparation for the Profession of Law* is a political tract, a polemic on legal education. It is an offensive attack against the intellectual tradition in legal education. Though its authors, and those who embrace it, would reject this characterization, it advocates a return to the anti-intellectual tradition of legal education: “law school as apprenticeship to the profession of law.”⁵⁰

48. For a history of anti-intellectualism in the United States, see RICHARD HOFSTADTER, *ANTI-INTELLECTUALISM IN AMERICAN LIFE* (1963).

49. We suspect that the law schools embracing the anti-intellectual, practice as experience, apprenticeship model will be law schools at universities driven by a business model, where students are simply inputs and outputs at worst, and consumers at best. That is, at universities where so-called higher education is reduced to a commercial enterprise rather than primarily an educational enterprise. On aspects of the commercialization of higher education, see DEREK BOK, *UNIVERSITIES IN THE MARKETPLACE: THE COMMERCIALIZATION OF HIGHER EDUCATION* (2003). Also, consider this observation:

It was always a bit of a lie that universities were self-governing institutions. Nevertheless, what universities suffered during the 1980s and 1990s was pretty shameful, as under threat of having their funding cut they allowed themselves to be turned into business enterprises, in which professors who had previously carried on their enquires in sovereign freedom were transformed into harried employees required to fulfill quotas under the scrutiny of professional managers. Whether the old powers of the professoriate will ever be restored is much to be doubted.

J. M. COETZEE, *DIARY OF A BAD YEAR* 35 (2007). Universities, and the law schools there, have become business centers rather than educational and intellectual centers.

50. SULLIVAN ET AL., *supra* note 29, at 3.

IV. AN ALTERNATIVE TO ANTI-INTELLECTUAL TRADITION

Robert Hutchins embraced a certain understanding of law, one which, in an updated version, we too embrace.

[T]he law is a body of principles and rules developed in the light of the rational sciences of Ethics and Politics. The aim of Ethics and Politics is the good life. The aim of the Law is the same . . . The rules may be tested by their conformity to legal principles. The principles may be tested by their consistency with one another and with the principles of Ethics and Politics.⁵¹

Of greater interest is Hutchins' understanding of the role of the legal scholar. "The duty of the legal scholar . . . is to develop the principles and rules which constitute the law. It is in short to formulate legal theory. Cases, facts outside the cases, the data of the social sciences will illustrate and confirm this theoretical construct. . . . We can even see how to tell whether cases are 'sound'."⁵² Thus, "[t]he concern of the teacher and of the law student, as well as the legal scholar, is with principles."⁵³ This understanding of what the law is, and what law scholars, law teachers, and law students should concern themselves with, shaped Hutchins' understanding of the function of a university, or university-based, law school.

The leading philosopher in America, Alfred North Whitehead,⁵⁴ once addressed himself to the problem of the university school of business. His conclusions are applicable to the university law school, too. He said, "[t]he way in which a university should function in preparation for an intellectual career, such as modern business . . . , is by promoting the imaginative consideration of the various general principles underlying that career. Its students thus pass into their period of technical apprenticeship with their imaginations already practised in connecting details with general principles." The general principles of the law are derived from Politics and Ethics. The student and teacher should understand the principles of those sciences. Since they are concerned with ideas, they must read books that contain them. To assist in understanding them they should be trained in those intellectual techniques which have been developed to promote the comprehension and

51. Hutchins, *supra* note 33, at 517.

52. *Id.*

53. *Id.*

54. Alfred North Whitehead (1861–1947) was an English mathematician who became a philosopher, writing on algebra, logic, foundations of mathematics, philosophy of science, physics, metaphysics, and education.

statement of principles. They will not ignore the cases, the facts, or the social science. At last they will understand them. They will be educated.⁵⁵

Note the characterization of law school as something other than a technical apprenticeship, as Whitehead and Hutchins view that technical apprenticeship as a “period” that business students and law students “pass into” after their business school or law school studies. The university’s function is to get the students’ “imagination . . . practised in connecting details with general principles,” and training them in “intellectual techniques which have been developed to promote the comprehension and statement of principles.” And, at the end of business school or law school the students are to understand principles.⁵⁶ And ‘understanding principles’ is what constitutes ‘being educated.’ A legal education is an intellectual pursuit. It is the pursuit of principles and idea, and the development of the intellectual techniques for understanding and appreciating principles and idea.

I take it that an educated man⁵⁷ knows what he is doing and why. I believe that an educated lawyer will be more successful in practising law as well as in improving it than one who is merely habituated to Fact-Situations. His training will rest not on his recollection of a mass of specific items, but on a grasp of fundamental ideas.⁵⁸

55. Hutchins, *supra* note 33, at 517.

56. A recent book, RAKESH KHURANA, FROM HIGHER AIMS TO HIRED HANDS: THE SOCIAL TRANSFORMATION OF AMERICAN BUSINESS SCHOOLS AND THE UNFULFILLED PROMISE OF MANAGEMENT AS A PROFESSION (2007), captures a troubling trend in today’s business schools, and it may be of interest to those concerned about the current state and future state of legal education generally. It raises questions concerning what makes an MBA a professional education and MBA’s professionals, and what gives business schools their legitimacy. It argues, we think, that business schools are floundering and have misplaced their willingness or ability to self-regulate and, as a result, they find themselves responding to questionable external forces (i.e., market pressures) for their legitimacy. The rate of growth in the number of U.S. law schools has not been as dramatic as the growth in U.S. MBA programs: 131 law schools in 1955–1956, to 195 in 2003–2004; 138 MBA programs in 1955–1956, to 955 in 2003–2004; and 73 MD programs in 1955–1956, to 118 in 2003–2004. So, law schools have not experienced the same market pressures and competition as business schools. Yet, those within the legal academy know that law schools have begun to feel such pressures and challenges to their legitimacy (e.g., some state legislators are considering abandoning the J.D. requirement for admission to the bar). Though Professor Khurana’s book is not about law schools, we think those who are concerned about the continued legitimacy of law schools—in a world where it is difficult to establish even the appropriate criteria for evaluating the quality and worth of a legal education—will find it of interest and enlightenment.

57. Or, woman. Hutchins wrote at a time when few law schools admitted women, and those admitting women admitted a small number. Today, all law schools admit women, and it is not uncommon to find women outnumbering men in an entering class.

58. Hutchins, *supra* note 33, at 517–18.

An educated person's training rests on a grasp of fundamental ideas! If this is so, then law teachers and law students should assess the law school experience much less on the students' mastery of certain skills such as an ability to state the facts, procedural history, holdings, and reasoning of a case, or being able to identify the pertaining precedent, and more on their grasp of fundamental ideas.⁵⁹

Grasping fundamental ideas is a skill far distinct from the issue-spotting skill often tested on law school examinations. It might be noted that, since law school education builds on the foundation of a law student's undergraduate education, what occurs (or fails to occur) at the undergraduate level constrains what can reasonably happen at the law school level. For instance, if as undergraduates, law students had not already been exposed to complex ideas, or not been in an environment fostering the expectation that they must actively grapple with and come to terms with such ideas, then it will be more challenging for both law teachers and the law students to pursue the goal of transforming the law students into educated lawyers.⁶⁰ Many first-year law students are under-prepared to engage in critical and independent thinking and discourse about law. Since there are few, if any, undergraduate courses, undergraduate majors, minors, or concentrations required for admission to law school, students often enter law school with a narrow, shallow, and limited knowledge base. No matter how much raw intelligence law students have, the ability to grasp many fundamental legal ideas will be restricted if their undergraduate education is intellectually unchallenging and mediocre at best.⁶¹

And, where and how would undergraduate students, who have become law students, have been exposed to fundamental ideas and principles? Where and how would they explore and grasp fundamental ideas and principles? These would come primarily through reading. It is that simple. Go back to a

59. This is particularly so with respect to first-year students, since it is on the basis of first-year grades that all too many of the law school goodies are awarded: law review memberships, moot court societies, summer jobs, research positions with faculty, and even judicial clerkships.

60. For the majority of law students it is inaccurate to characterize law school as *graduate* education, except in the narrow sense of being post-undergraduate education because an undergraduate education is usually a prerequisite for admission. Substantively, however, in most instances law school is merely a second undergraduate education. And, historically, a law degree was a baccalaureate (i.e., the LL.B.), until an early instance of degree inflation changed it to a doctorate (i.e., the J.D.).

61. For a discussion of the state of undergraduate education, see DONALD N. LEVINE, *POWERS OF THE MIND: THE REINVENTION OF LIBERAL LEARNING IN AMERICA* (2006). For those viewing themselves primarily as law *teachers*, reading the book might suggest the need to seriously rethink the first-year curriculum such that, through learning law, some of the holes in students' liberal learning are filled in a bit. It is also a caution, suggesting, first, that many curricular changes proposed by faculty are *not* motivated by what is best for students but, rather, by what is best for the faculty. And, second, that there is a big difference between (a) giving students-*as-consumers* what they want and (b) giving students-*as-students* what they need to become better educated.

previously quoted passage from Hutchins's *The Autobiography of an Ex-Law Student*. "The general principles of the law are derived from Politics and Ethics. The student and teacher should understand the principles of those sciences. Since they are concerned with ideas, *they must read books that contain them.*"⁶² Law students must read books! In the words of political columnist George Will, "for all the fascination with new media, I believe that books remain the most important carriers of ideas, and ideas are always the most important news."⁶³

Carefully read *Educating Lawyers: Preparation for the Profession of Law*. If one reads it carefully, a significant feature of the report concerns something *absent* from the report. The author fails to mention, at any point throughout the more than two-hundred page report, legal literacy. That is to say, there is no discussion of the importance of law students gaining, and lawyers having and maintaining, mastery of law literature. There is no assertion that law students, or currently practicing lawyers, should be well-read in law. It is anti-legal literacy, anti-formal knowledge, anti-intellectual, and anti-idealistic. *Educating Lawyers: Preparation for the Profession of Law* has a lot to say to those who embrace law school as a vocational school, a glorified trade school, and who are concerned with improving the pedagogy of law schools as vocational schools. But it will not speak to those law students, law professors, law school administrators, judges, and practicing lawyers who view themselves as part of a republic of ideas, as part of a very long and ongoing conversation about the nature of law and its role in society. *Educating Lawyers: Preparation for the Profession of Law* will not speak to those who think an understanding of history, or politics, or ethics, or sociology, or literature, or economics, or any other similar topic, is important to understanding law. *Educating Lawyers: Preparation for the Profession of Law* will not speak to those who think an understanding of history, or politics, or ethics, or sociology, or literature, or economics is important to becoming, and remaining, an educated lawyer.⁶⁴

62. Hutchins, *supra* note 33, at 517 (emphasis added).

63. GEORGE F. WILL, ONE MAN'S AMERICA: THE PLEASURES AND PROVOCATIONS OF OUR SINGULAR NATION 3 (2008).

64. Consider this comment on point (which appears in the preface):

Forgotten Patriots is my attempt to take the story down from the shelf, dust it off, and see how it looks now, at the beginning of the twenty-first century. I have refrained from drawing parallels to contemporary events, but I will not be sorry if readers find themselves thinking about Abu Ghraib and Guantanamo Bay, about the evasion of habeas corpus, about official denials and cover-ups, about the arrogance and stupidity that can come with the exercise of great power. I hope they will also see that once upon a time, when the country was young, our own experience with prisoner abuse led us to believe that we are supposed to do better.

V. LAW STUDENTS SHOULD RECEIVE A LIBERAL
EDUCATION . . . AND BE WELL-READ

Roughly ten years ago, in an essay entitled “*Liberally Educating Law Students: Suggested Reading*,”⁶⁵ we expressed concern over the alleged reading habits of law students.⁶⁶ “[N]otwithstanding the average total pages in the students’ required reading, that required reading is normally quite narrow, . . . the typical law school curriculum . . . does not consist of a single course devoted to the aim of becoming a well-read lawyer (e.g., a directed reading course.)”⁶⁷ We acknowledged why this might be so. “[M]ost law schools are “*professional*” schools.⁶⁸ For the most part, law students are being trained to be practicing lawyers, not practicing scholars, not practicing intellectuals.”⁶⁹ “Yet,” as we questioned then, “is the aim of legal education merely to produce . . . mere legal technocrats?”⁷⁰

EDWIN G. BURROWS, *FORGOTTEN PATRIOTS: THE UNTOLD STORY OF AMERICAN PRISONERS DURING THE REVOLUTIONARY WAR* xii (2008). But are not those just the kind of parallels, or connection, between history and contemporary events that would be beneficial for law students to draw? Yet they will not draw those connections if they lack the history, or if informed that appreciating history is not all that relevant or important to lawyering.

65. Leonard J. Long, *Liberally Educating Law Students: Suggested Readings*, 18 QUINNIPIAC L. REV. 237 (1998).

66. However, we do not deem *surfing* the Internet as on par with real and substantive reading a book.

There is a school of thought that applauds the Internet as the Messiah coming to save print culture, but this hope of salvation rests on a fundamental confusion between the availability of texts and real reading and writing. The Internet surely does offer a text as well as video highway, open to anyone who can use Google, but text and intellectually substantive reading matter are hardly identical.

SUSAN JACOBY, *THE AGE OF AMERICAN UNREASON* 262–63 (2008). Law review articles and court cases are readily available on the Internet, but how often do those who access these online engage in intellectually substantive reading? Still, for the purpose of this essay, a distinction need not be drawn among the *formats* of substantive reading, that is, between whether the text is in paper, digital, audio, etc., format. In other words, this is not an old (or low) technologies versus new (high) technologies debate, older readers versus younger readers controversy, etc. Rather, this is a discussion about the importance of being well read, and of having legal literacy in particular.

67. Long, *supra* note 65, at 237–38.

68. *Id.* at 238.

69. A concern we have about the nature of legal education is that many law schools are not even professional schools. They have devolved into mere trade schools. However, this is not the place to discuss such concerns.

70. Long, *supra* note 65, at 238. Also, read the following passage substituting ‘law school’ for ‘high school and college’:

The constant multiplication of our high school and college enrollments has not had the effect of making us the most ‘intelligent’ nation, whether we measure intelligence in terms of social wisdom, aesthetic discrimination, spiritual serenity or any other basic human achievement. It may have made us technically the most proficient nation, thereby proving that technical efficiency is more easily achieved in purely

Our sentiment here is a small piece of a larger sentiment expressed by the novelist Doris Lessing. She is worth quoting at length.

Once upon a time, and it seems a long time ago, there was a respected figure, The Educated Person. He—it was usually he, but then increasing often she—was educated in a way that differed little from country to country—I am of course talking about Europe—but was different from what we know now. William Hazlitt,⁷¹ our great essayist, went to a school, in the late eighteenth century, whose curriculum was four times more comprehensive than that of a comparable school now, a mix of the bases of language, law, art, religion, mathematics. It was taken for granted that this already dense and deep education was only one aspect of development, for the pupils were expected to read, and they did.

This kind of education, the humanist education, is vanishing. Increasingly, governments . . . encourage citizens to acquire vocational skills, while education as a development of the whole person is not seen as useful to the modern society.

The older education would have had Greek and Latin literature and history, and the Bible, as a foundation for everything else. He—or she—read the classics of their own countries, perhaps one or two from Asia, and the best-known writers of other European countries, Goethe, Shakespeare, Cervantes, the great Russians, Rousseau. An educated person from Argentina would meet a similar person from Spain, one from St Petersburg meet his counterpart in Norway, a traveller from France spend time with one from Britain, and they would understand each other, they shared a culture, could refer to the same books, plays, poems, pictures, in a web of reference and information that was like a shared history of the best the human mind has thought, said, written.

This has gone.

There is a new kind of educated person, who may be at school and university for twenty, twenty-five years, who knows everything about a specialty, computers, the law, economics, politics, but knows about nothing else, no

quantitative terms than any other value of culture.

REINHOLD NIEBUHR, *THE IRONY OF AMERICAN HISTORY* 60 (1952).

71. William Hazlitt (1778–1830) was a prominent English literary critic, grammarian and philosopher, and considered one of the greatest critics and essayists in English.

literature, art, history, and may be heard enquiring, 'But what was the Renaissance then?' 'What was the French Revolution?'

Even fifty years ago this person would have been seen as a barbarian. To have acquired an education with nothing of the old humanist background—impossible. To call oneself educated without a background of reading—impossible.

Reading, books, the literary culture, was respected, desired, for centuries. Reading was and still is in what we call the Third World a kind of parallel education, which once everyone had, or aspired to. . . .

Perhaps there is no need to labour this point. . . , but I do feel we have not yet grasped that we are living in a fast fragmenting culture. Pockets of the old excellences remain, in a university, a school, the classroom of an old-fashioned teacher in love with books, perhaps a newspaper or a journal. But a culture that once united Europe and its overseas offshoots has gone.

We may get some idea of the speed with which cultures may change by looking at how languages change. English as spoken in America or the West Indies is not the English of England. Spanish is not the same in Argentina and in Spain. The Portuguese of Brazil is not the Portuguese of Portugal. Italian, Spanish, French, grew out of Latin not in thousands of years but in hundreds. It is a very short time since the Roman world disappeared, leaving behind its legacy of our languages.

So what is going to happen next in this tumultuously changing world? I think we are all of us fastening our seat belts and holding on tight.⁷²

72. DORIS LESSING, SPEECH AT VIRGO ON GETTING THE PRINCE OF ASTURIAS PRIZE 2002, *reprinted in* TIMES BITES: VIEWS AND REVIEWS 69–71(2004).

One interesting little irony about the present situation is that a lot of the criticism of the old culture was in the name of Elitism, but what is happening is that everywhere are enclaves, pockets, of the old kind or readers and it is easy to imagine one of the new barbarians walking by chance into a library of the old kind, in all its richness and variety, and understanding suddenly what has been lost, what he—or she—has been deprived of.

Id. at 70. We mention this passage from Doris Lessing because it reflects the current political and social climate in America. When we began thinking about writing the present essay, the United States was in the middle of a presidential election. One of the low points, but certainly not the lowest point, concerned assaults on the elites and elitism. The attacks were mainly against what was characterized as the liberal elites. However, under the shotgun approach taken, conservative and libertarian elites were targets as well. It got to the point where having expertise was considered a bad form of elitism.

Now, in advocating for legal literacy, we are not pursuing what Lessing says we have lost: the educated men and women. That is too grand a quest, or too formidable a windmill, for the likes of us. Rather, we will settle for encouraging law students to, at a minimum, be well-educated in a narrow sphere: the law. Thus, we settle for the pursuit of legal literacy.⁷³

We believed that lawyers in America do “wield a fair bit of political power and influence. . . . Lawyers are found to dominate all levels of government. . . . Lawyers are found in key positions in both the for-profit and the nonprofit business arenas. Lawyers . . . dominate the never-ending debates over healthcare reform, welfare reform, prison reform, school reform, gun control, the rights of children, etc.”⁷⁴ “Lawyers have long held prominent positions in American society. Indeed, it was clear from early in the nation’s history, as Alexis de Tocqueville famously observed, that lawyers would play a leading part in ordering its life, its government, business, political, and civil affairs.”⁷⁵ True, but have lawyers played a positive or constructive part in ordering American society’s life, government, business, political, and civil affairs? Chapter V of Herbert Croly’s *The Promise of American Life*, originally published in 1909, contains a section entitled “Government by Lawyers.” Though fully acknowledging the significant role that lawyers have played in American society from the country’s founding through the nineteenth century, he also makes the following observation: “A considerable

For a brief overview of the ironies of many of these assaults, see E. J. Dionne Jr., *Whose Elitism Problem Now?*, WASHINGTON POST, Sept. 16, 2008, at A21.

73. However, legal literacy may not be divorced from being generally well-read. As noted by Anthony Amsterdam and Jerome Bruner:

[T]hough we and our students read quite a few Supreme Court opinions as well as a good deal of anthropology, it often turns out that neither of these provides our most vivid insights into the law. The insights are just as likely to come from, say, a close reading of a play by Aeschylus, a novella by Melville, a West African folktale, or even the memorable scene on Mt. Moriah in Genesis 22 where God commands Abraham to kill his only son, Isaac. All in the provinces of Clio’s sisters. Reading these texts while reading law, we have found, has astonishing consciousness-retrieving effects.

ANTHONY G. AMSTERDAM & JEROME BRUNER, *MINDING THE LAW* 5 (2000). Also, see the body of work by James Boyd White, including JAMES BOYD WHITE, *THE EDGE OF MEANING* (2001); JAMES BOYD WHITE, *FROM EXPECTATION TO EXPERIENCE: ESSAYS ON LAW LEGAL EDUCATION* (1999); JAMES BOYD WHITE, *HERACLES’ BOW: ESSAYS ON THE RHETORIC AND POETICS OF THE LAW* (1985); JAMES BOYD WHITE, *JUSTICE AS TRANSLATION: AN ESSAY IN CULTURAL AND LEGAL CRITICISM* (1990); JAMES BOYD WHITE, *ACTS OF HOPE: CREATING AUTHORITY IN LITERATURE, LAW, AND POLITICS* (1994); JAMES BOYD WHITE, *THE LEGAL IMAGINATION, ABRIDGED EDITION* (1985); JAMES BOYD WHITE, *WHEN WORDS LOSE THEIR MEANING: CONSTITUTIONS AND RECONSTITUTIONS OF LANGUAGE, CHARACTER, AND COMMUNITY* (1984); and JAMES BOYD WHITE, *LIVING SPEECH: RESISTING THE EMPIRE OF FORCE* (2006).

74. Long, *supra* note 65, at 239.

75. SULLIVAN ET AL., *supra* note 29, at 1.

proportion of our legislators and executives continue to be lawyers, but the difference is that now they are more likely to be less successful lawyers.”⁷⁶ Thus, it may not necessarily be the brightest or the best lawyers who occupy the national, state, and local legislatures and executive offices, but rather, these positions may be filled by mediocre lawyers.

As we write this, the American and global financial markets and economies are in dire distress, and lawyers (as elected politicians, legislators and administrators, as hired lobbyists, as independent think-tankers, as judges and practitioners) will be among the key players in efforts to address these matters. For instance, there will certainly be significant changes to the regulation of the banking, securities, insurance, and mortgage industries, and lawyers, as well as economists, will be on the front line of proposing, debating, drafting, negotiating, and implementing the appropriate degree and forms of the regulations. Yet, here is Herbert Croly again:

It can be fairly asserted that the qualifications of the American lawyer for his traditional task as the official interpreter and guide of American constitutional democracy have been considerably impaired. Whatever his qualifications have been to the task (and they have, perhaps, been overestimated) they are no longer as substantial as they were. Not only has the average lawyer become a less representative citizen, but a strictly legal training has become a less desirable preparation for the candid consideration for contemporary political problems.

Since 1870, the lawyer has been traveling in the same path as the business man and the politician. He has tended to become a professional specialist, and to give all his time to his specialty. The greatest and most successful American lawyers no longer become legislators and statesmen as they did in the time of Daniel Webster. They no longer obtain the experience of men and affairs which an active political life brings with it. . . . Like nearly all other Americans they have found rigid specialization a condition for success.⁷⁷

“And,” as we wrote in 1998, “there will be some sad results if lawyers who dominate these debates lack a liberal education and are merely legal technocrats.”⁷⁸ In writing “*Liberally Educating Law Students*,” we did not

76. HERBERT CROLY, *THE PROMISE OF AMERICAN LIFE* 135 (1965).

77. *Id.* at 134–135.

78. Long, *supra* note 65, at 239. Apparently many practicing lawyers do not believe that law schools do a good job training law students to be lawyers. For instance, a week or so before we decided to write this essay a second-year law student, one who had taken our first-year Civil Procedure the previous year, related a comment made by his real estate lawyer. It is the old saw, familiar to all law

want only to encourage law students to read more, we wanted to encourage them to read more *broadly outside the law*.⁷⁹ Thus, the fifty-four titles of suggested readings, though containing some readings in law, e.g., Edward H. Levi, *An Introduction to Legal Reasoning*,⁸⁰ were predominantly non-law titles. The represented authors included philosophers, historians, poets, novelists, political scientists, radical political figures, and even a cartoonist, Garry B. Trudeau.

Now, we have not completely abandoned the notion of encouraging law students to read and to read broadly. However, we have become a bit more realistic in our expectations. It is highly unlikely that a law student who, lacking a longstanding and deeply rooted habit of reading and reading broadly, will enter law school in her early twenties and form the habit of reading, let alone reading broadly, while in law school. This is partly because avid readers are a minority within the larger society. As Wendy Griswold notes, “[r]eaders in most societies have almost always been a minority.”⁸¹ And, though not all readers are leaders, many if not most leaders are readers.

Only in a small portion of the world (northwest Europe, North America, and—somewhat later—Japan) and only for a brief period of time (mid-nineteenth to mid-twentieth century) was reading the standard pastime for the middle-class majority. The more typical situation is the one that is increasingly the case today: readers are an elite group that hold disproportionate political, economic, and cultural power. To recognize this as a fact is neither to decry the elitism nor to celebrate the avidity of committed readers, but it is to gain a clearer sense of where the practice of reading stands now and in the future.⁸²

Should not law students want to increase their chances of being among, to use Griswold’s terminology, such an “elite group that holds disproportionate political, economic, and cultural power”? Were they avid and committed

professors: a practicing lawyer telling a law student or a recent law graduate that he (and it is usually a male attorney), as the practicing lawyer, did not learn anything useful for law practice during law school. This essay is not a response to that point of view, though it likely causes us to reflect on some of the ideas contained here. What is clear to us, however, is the response we are always prompted to give, but always refrain from giving. That is, that the lawyer’s observation is probably true in this particular instance, but not true as a general matter.

79. However, we did not address *learning how to read*, that is, seeing and appreciating the important content of what is read and incorporating it into one’s own thoughts and one’s own life. If one’s readings are not in some manner incorporated into one’s thoughts and life, that is, if what one reads does not become part of who one is, then what one’s readings are, *at best*, just pretty words.

80. This classic work is included in the title listed in the appendix.

81. WENDY GRISWOLD, *REGIONALISM AND THE READING CLASS 2* (2008).

82. *Id.*

readers *before* law school, they should want to harden themselves to maintain and strengthen that commitment *during* law school. And, those students who were *not* avid and committed readers before law school should try to develop such a commitment to reading. To our knowledge, however, there is no evidence that the current generation of law students, or the baby boom generation of law students, or any generation of law students in between, has been well-read, let alone exceptionally well-educated. We can probably safely assume that law students and lawyers beat the national average in the amount of reading they do, but the national average is set fairly low, so surpassing the average is not an impressive feat.⁸³ William Osler, the imminent physician and medical educator, made the following observation about doctors: “It is astonishing with how little reading a doctor can practise medicine, but it is not astonishing how badly he may do it.”⁸⁴ Might such an observation be no less true of lawyers?

To that purpose, in the appendix we offer a new list of suggested readings. Unlike the titles offered in *Liberally Educating Law Students*, these suggested readings are almost exclusively law titles.⁸⁵ Why the more focused list of readings? The answer is simple. First, the goal of a large percentage of law students is to get a job practicing law, which is why they are in law school in the first place. So, if they are going to read seriously beyond the required reading, they are likely to read more law. Second, there is an increased tendency among law students to begin to specialize or concentrate *during* law school.⁸⁶ This tendency is driven by the desire to make themselves competitive in the job market. Consequently, students tend to concentrate their studies on a narrow range (e.g., taking every family law course, or every

83. For instance, we googled “average books read” and the first item found was from the *Guardian*. “A quarter of US adults say they read no books at all in the past year, according to an Associated Press-Ipsos poll. The typical person claimed to have read four books in the last year and, excluding those who had not read any books at all, the usual number of books read was seven.” Moreover, “[o]f those who did read, women and pensioners were most avid readers, and religious works and popular fiction were the top choices. The median figure for books read—with half reading more, half fewer—was nine books for women and five for men. The figures also indicated that those with college degrees read the most, and people aged 50 and over read more than those who are younger.” *One in Four Americans Read No Books Last Year*, www.guardian.co.uk/, Aug. 22, 2007, <http://www.guardian.co.uk/books/2007/aug/22/news> (last visited Nov. 20, 2008).

84. MICHAEL BLISS, WILLIAM OSLER: A LIFE IN MEDICINE 268 (1999).

85. Only a handful of titles on the previous list appear on the current list.

86. We do not address here issues concerning the nature and quality of the undergraduate education law students received. *See generally* DEREK BOK, OUR UNDERACHIEVING COLLEGES: A CANDID LOOK AT HOW MUCH STUDENTS LEARN AND WHY THEY SHOULD BE LEARNING MORE (2006); RICHARD H. HERSH, JOHN MERROW, eds., DECLINING BY DEGREES: HIGHER EDUCATION AT RISK (2005); and ANTHONY T. KRONMAN, EDUCATION’S END: WHY OUR COLLEGES AND UNIVERSITIES HAVE GIVEN UP ON THE MEANING OF LIFE (2007).

tax course, or every intellectual property course offered, but taking only the required business law courses). And, if law students read beyond what is required in their courses, they will read more tax if they are tax people, more constitutional law if they are constitutional law people, more health law if they are health law people, etc.

What students tend not to do is read outside their specific, narrow interests. Thus, the tax student reads little of constitutional law; the trust and estate student reads little about economic regulation in law, etc. There is little intellectual cross-fertilization. We do not deny the importance of lawyers having full mastery of the literature in their area(s) of practice, which, due to other commitments, may result in their becoming rather narrowly tailored. But there is a difference between, on the one hand, starting off with a broad range of general law knowledge and then, over time, narrowing one's focus and going deeper in a few areas only and, on the other hand, starting off with a narrow range of general law knowledge and steadily getting even narrower still. And that, the latter, is the direction we think many of today's law students, and their law professors, are leaning.

Though unfortunate, all of this is understandable. As noted by economist and Nobel Laureate Gary Becker, "[m]any workers increase their productivity by learning new skills and perfecting old ones while on the job."⁸⁷ But if law firms could more efficiently train and screen prospective lawyers than do law schools, there would be movement away from *law school-based* legal training (e.g., pre-job training) and toward on-the-job-based legal training, at least at the entry level. The state bars do not regulate law schools directly. They do regulate who will be admitted to the state bar, however. And admission to the bar usually requires graduation from a law school accredited by the American Bar Association.⁸⁸

The American Bar Association is not advocating for the replacement of basic law-school-based legal training with job-based training. This suggests one of two explanations. First, that lawyers think law schools are better *initial* screeners of potential lawyers than law firms. That is, law schools are not intended primarily as providers of legal training, in which case the specific substantive training students receive in law school may not be critical. Instead, perhaps, law schools serve to prune, classify, and rank the prospective job applicant pool, thereby reducing, though not eliminating, the risk of hiring error on the part of firms. In this context, specific substance training may

87. GARY S. BECKER, HUMAN CAPITAL: A THEORETICAL AND EMPIRICAL ANALYSIS, WITH SPECIAL REFERENCE TO EDUCATION 17 (2d ed. 1975).

88. The current standards for ABA-accreditation may be found at www.abanet.org/legaled/standards/standards.html.

matter more. But such training need not have any correlation with what these prospective lawyers will actually do as lawyers, only that the training is a good predictor of success as a lawyer. The LSAT scores, combined with undergraduate grade point averages, may be good predictors of law school success, and therefore, there may be a positive correlation between LSAT scores and success as a lawyer. Yet, no one argues that the *specific* training that goes into preparing to take the LSAT (i.e., those LSAT preparation courses) is of the same kind and purpose as the *specific* training required to be a successful practicing lawyer.⁸⁹

The second explanation for why the American Bar Association is not calling for replacing law school-based training with on the job-based training is that lawyers as a whole think law school-based legal education is more efficient than job-based legal training.

Presumably, future productivity can be improved only at a cost, for otherwise there would be an unlimited demand for training. Included in cost are the value placed on the time and effort of trainees, the ‘teaching’ provided by others, and the equipment and material used. These are costs in the sense that they could have been used in producing current output if they had not been used in raising future output. The amount spent and the duration of the training period depend partly on the type of training since more is spent for a longer time on say, an intern than a machine operator.⁹⁰

In short, if law firms thought that they could more efficiently train a small group of typical law students to be lawyers than does the average law school, then lawyers and their law firms would lobby the state bars to eliminate the bar admission requirement that applicants graduate from law school.⁹¹ In a sense,

89. On a side note, for an interesting discussion of what makes particular individuals successful, see MALCOLM GLADWELL, *OUTLIERS: THE STORY OF SUCCESS* (2008).

People don't rise from nothing. We do owe something to parentage and patronage. The people who stand before kings may look like they did it all by themselves. But in fact they are invariably the beneficiaries of hidden advantages and extraordinary opportunities and cultural legacies that allow them to learn and work hard and make sense of the world in ways others cannot. It makes a difference where and when we grew up. The culture we belong to and the legacies passed down by our forebears shape the patterns of our achievement in ways we cannot begin to imagine. It's not enough to ask what successful people are like, in other words. It is only by asking where they are *from* that we can unravel the logic behind who succeeds and who doesn't.

Id. at 19.

90. BECKER, *supra* note 87, at 17.

91. Interestingly, the State of Vermont does not require graduation from law school for admission to the bar:

(g) An applicant shall have pursued the study of law with special reference to the

modern law firms have outsourced the initial training of prospective hires to law schools.⁹²

A school can be defined as an institution specializing in the production of training, as distinct from a firm that offers training in conjunction with the production of goods. Some schools, like those for barbers, specialize in one skill, while others, like universities, offer a large and diverse set. School and firms are often substitute sources of particular skills. This substitution is evidenced by the shift over time, for instance, in law from apprenticeships in law firms to law schools and in engineering from on-the-job experience to engineering schools.⁹³

When asking a current law student why she is in law school, the typical response is likely to be “to get a legal job, to earn a living, and to make money.” Some students applied and came to law school by default. They likely did not know what they wanted to do with their lives and law school seemed as good an alternative as any (for, say, a twenty-one-year-old college

general practice of law: (1) for a period of not less than four years within this state under the supervision of an attorney in practice in the state who has been admitted to practice before this Court not less than three years prior to the commencement of that study, or (2) in any jurisdiction of the United States or common law jurisdiction in a law school approved by this Court which maintains a three-year course leading to a law degree.

VT. R. ADMISSION 6(g).

92. Students complain about high law school tuition thinking that they could avoid the expenditure for tuition if they were to apprentice at a law firm instead. They ignore the fact that the law firm would need to provide the training now provided by the law school and, more important, would pass on the cost of this training to the apprentice in the form of substantially lower entry level wages. We suspect that the average student would come out worse under the apprentice arrangement for at least two reasons. First, some students admitted to law school would not get apprenticeships in the first place, would not be able to find a law firm willing to invest in their training. And, second, any given firm will have fewer apprentices over whom to spread the fixed costs such that the average cost of job-based training may be higher than the average cost of law school-based training. That higher than average cost will be passed on to the apprentice in the form of lower wages during the apprenticeship.

Of course, if the firm does not pass on the costs of training to the apprentice in the form of lower wages, then the firm has risks associated with turnover. Should the apprentice quit after the firm has incurred the cost of the training, but before the firm is able to recapture the cost of training through the apprentice's productivity at the firm, then the firm is hurt by the departure of that apprentice unless (a) the firm can replace the departing employee with an equally trained new employee (and at the same wage as the departing employee would have earned), or (b) the firm is able to spread the cost of the departing employee's training to the firm's other non-parting employees in form of lower wages.

In short, as noted by Becker, “[t]urnover becomes important when costs are imposed on workers or firms. . . . Firms paying for specific training might take account of turnover merely by obtaining a sufficiently large return from those remaining to counterbalance the loss from the leaving.” BECKER, *supra* note 90, at 29.

93. *Id.* at 37.

graduate) when in doubt about long-term future plans.⁹⁴ “Unlike medical schools, which demand a specific set of ‘pre-med’ college courses, students enter law school from any number of paths.”⁹⁵ When asked why they are taking a particular non-required course or concentrating in a particular legal area, the answer is likely to be because they think “it will better enable them to get a law job generally or a law job in a particular practice area.” Thus, for most law students, law school and its courses have only instrumental value. Legal education is a means to some particular end: a job, a livelihood, and

94. From an economic perspective, a rational person would attend law school because, after informing himself or herself about law and other alternatives, after assessing his or her likelihood of success in both law and its alternatives, calculating the rewards of or return on a legal education relative to some other education (or no further education) to him or her, taking into account the opportunity costs of a legal education (i.e., that the time, effort, tuition money, etc., might be applied elsewhere), etc., such rational person concludes, *ex ante*, that pursuing a legal education will leave him or her better off, i.e., wealthier in a non-vulgar and economic sense than any other alternative he or she might pursue. Of course, *ex post*, the investment may turn out not to reap the anticipated benefits. For example, the person may die before obtaining the law degree. Or the person’s interests and goals may change. Or the market for lawyers may contract. Or the person may not be as good of a lawyer as he or she anticipated. These are risks. The first risk could be managed by life insurance policy, though such would obviously not directly benefit the deceased lawyer but only the lawyer’s beneficiaries. The other risks might be handled by what the economist Robert Shiller calls ‘livelihood insurance.’

Livelihood insurance policies would differ from existing insurance policies, such as disability insurance or life insurance, in that they would cover losses to livelihoods from all causes, not just a list of special disasters. A policyholder could collect on the policy based on evidence of decline in economic value; no evidence is required that the cause of the decline appears on a pre-agreed list.

ROBERT J. SHILLER, *THE NEW FINANCIAL ORDER: RISK IN THE 21ST CENTURY* 111 (2003).

95. SULLIVAN ET AL., *supra* note 29, at 2. Naturally, this raises the question as to why law schools do not require a better defined ‘path’ for entry into law school? There are, after all, pre-law programs at the undergraduate level which in their current structure, or a modified structure, would seem an appropriate path to law school. Yet, neither the American Bar Association, which is the primary accreditation body for law schools, nor any individual law schools, require a pre-law degree for admission to law school. Nor does the American Bar Association, or, to our knowledge, any law school, require entering law students to have taken any particular courses prior to enrollment. For instance, we are aware of one medical school, The University of New England College of Osteopathic Medicine (UNECOM), that requires students to have taken organic chemistry *before* enrollment.

An interesting thought process for a law faculty would be to discuss what, if any, courses they would like their students to have taken before law school; and, from that list, which of those courses they would in fact require before law school. For example, would not those teaching constitutional law want their students to have taken courses in American history, in political science, on the Federalist Papers, or on the various forms of government, or addressing various theory as to the proper function of government? Does not every teacher of antitrust law, regulations, and administrative law wish students had taken an appropriate course in economics, in cost-benefit analysis? Might tax students have an easier row to hoe had they previously taken a basic accounting course? Yet, such an exercise would be a purely academic one. Under the current market conditions, where there are nearly two hundred law schools, a unilateral decision to raise the requirement for admissions by adding pre-enrollment course requirements, would shrink a law school’s applicant pool. Perhaps only the elite law schools could act unilaterally in this fashion. Yet, should not a good liberal arts education be a prerequisite for the study of law?

nothing more. For most law students a legal education is not primarily viewed as having intrinsic value. We do not mean to be harsh, so let us rephrase this in the form of a question. If there were not the prospects of a job, a career,⁹⁶ or some tangible (mainly financial) rewards at the end of law school, what percentage of law students would be in a law school, or even take a law course? How many would still pursue a legal education if the prospects for a law related job were small? We suspect significantly fewer. (That is, of course, *unless the skills developed in law schools are readily and productively transferrable to some careers outside of law*. We suspect that, too, is the case.) Would they still marry their true love even knowing that they (or their true love) would die a year after the wedding? Probably most would.⁹⁷ The difference is that, on the one hand, what one obtains from law school, a certain knowledge base, is not valued for itself. While, on the other hand, what one gets from even a short relationship with one's true love is something valued in, of, and for itself. Does anyone doubt that the atmosphere and dynamics of legal education would be so much different were the acquisition of legal knowledge valued independent of its job, career, and livelihood utility? There is a difference in kind between marrying for money and marrying for love.

96. There is a nuanced difference between a job and a career.

In old English a "career" meant a well-laid road, whereas a "job" meant simply a lump of coal or pile of wood that could be moved around at will. The medieval goldsmith within a guild exemplified the roadway of "career" in work. His life path was well laid in time, the stages of his progress were clearly marked, even if the work itself was inexact. His was a linear story [T]he "skills society" is bulldozing the career path; jobs in the old sense of random movement now prevail; people are meant to deploy a portfolio of skills rather than nurture a single ability in the course of their working histories; this succession of projects or tasks erodes belief that one is meant to do just one thing well. Craftsmanship seems particularly vulnerable to this possibility, since craftsmanship is based on slow learning and on habit.

RICHARD SENNET, *THE CRAFTSMAN* 265 (2008). Today, putting aside the marketing rhetoric and puffery, does the typical law school experience launch students onto the career-road or merely the job-road?

97. Okay, contrasting these two scenarios is over the top. Let us rephrase them. First, assume that upon the law students' successful (very good grades, honor societies, etc.) completion of law school, the job market for entry-level lawyers shrinks such that their law job prospects approach zero. From that vantage point, will those graduates still view their legal education as a good investment or not? If a legal education's only, or dominant, value is that it prepares students to be lawyers, then it would seem that three years of law school turned out to have been a poor investment. Contrast our law students with persons who happily (that is, successfully) date someone for three years, with plans to marry that someone at the end of three years (say at the end of law school) but, due to some external factors or events, that someone is no longer able or willing to marry (e.g., that someone's job requires them to relocate to another country). Even though things did not work out on the marriage front, would these star crossed lovers view the last three happy years of dating as a poor investment and a waste? In some instances, yes; but in most instances, probably not.

Likewise, there is a categorical difference between the pursuit of legal education for pecuniary reasons and pursuing it for the love of knowledge. These are not necessarily incompatible reasons, but the two are in constant tension.⁹⁸ No doubt, it is much too high a standard for any law school, or any *professional* school, or perhaps *any* school, to have students who are in pursuit of knowledge and who are not there, at least in part, for financial and career purposes as well. After all, law students are in law school because it is the *only* entry way to the legal profession. Yet, what would the nature and quality of the law school experience be were a significant minority of the students there to pursue an intellectual life rather than simply to enter the legal world? The economist Frank Knight (1885–1972) warned of the high cost of reducing all values to money, where everyone is compelled to play the economic game.

However favorable an opinion one may hold of the business game, he must be very illiberal not to concede that others have a right to a different view and that large numbers of admirable people do not like the game at all. It is then justifiable at least to regard as unfortunate the dominance of the business game over life, the virtual identification of social living with it, to the extent that has come to pass in the modern world. In a social order where all values are reduced to the money measure in the degree that this is true of modern industrial nations, a considerable fraction of the most noble and sensitive characters will lead unhappy and even futile lives. Everyone is compelled to play the economic game and be judged by his success in playing it, whatever his field of activity or type of interest, and has to squeeze in as a side line any other competition, or non-competitive activity, which may have for him a greater intrinsic appeal.⁹⁹

Yes, how would legal education be different were it not reduced to a mere economic game?

From an economic perspective, a person decides to read a particular book, or to read, in general, when the utility expected from reading that particular book (or reading generally) exceeds that expected from not reading that particular book, or not reading, in general. If a law student lacks legal literacy when graduating from law school, it is because the student views the

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98. At one extreme, a student in a course for the purpose of acquiring knowledge for its own sake would not ask whether certain materials will or will not be on the examination because it is the knowledge and not the grade that will matter for that student. The student who is in the course, or in law school, for career advancement purposes, correctly understands that grades matter. Thus, at the other extreme, such a student would want to maximize the likelihood of a high grade by focusing on what will in fact be tested rather than what only might be tested, and not at all on what will not be tested.
99. FRANK H. KNIGHT, *The Ethics of Competition*, in FRANK KNIGHT 1, SELECTED ESSAYS BY FRANK H. KNIGHT: "WHAT IS TRUTH" IN ECONOMICS? 61, 82 (1999).

utility expected from acquiring legal literacy as less than that of not gaining legal literacy. Law teachers, law school administrators, and the law bar have failed to convince many law students of the utility of legal literacy, as demonstrated by the fact that a significant percentage of law school graduates lack legal literacy. If that is the case, the question becomes why have they failed to convince the students of the utility, the value, of legal literacy? These are empirical questions and issues worth addressing. We do not know the answers.

Perhaps we are mistaken about all of this. Perhaps most law students, recent law graduates, and seasoned lawyers are legal literates. Perhaps we are mistaken and most law students do view the expected utility of legal literacy as greater than legal illiteracy. Perhaps we are mistaken and law teachers, law school administrators, members of the law bar, etc., have proactively argued for the utility and value of legal literacy. But we do not think we are mistaken.

And, though we believe individual law students are ultimately responsible for their legal education, the law students need information to facilitate their making the “right” choices. Here is the bottom line. Too few law professors, law school administrators, and members of the law bar are providing law students with the information concerning the utility of legal literacy, let alone its intrinsic value. This is because, for the most part, they themselves do not value legal literacy. Why is that? In short, it is because many of them have embraced, consciously or not, the view that the principal purpose of a law school is to train students to become lawyers and little more. And for the shrinking few who do *not* embrace that narrow view of legal education, they are confronted with the reality that their institutional administrators (e.g., presidents, provosts, and deans) have.¹⁰⁰ These administrators, in turn, are channeling the law school’s limited resources into courses, programs, faculties, staff, technologies, etc., designed to enhance the training of lawyers and away from courses, programs, faculty, staff, technologies, library collections, etc., necessary to create and maintain an environment more conducive to the pursuit of ideas and knowledge that may not be of obvious or immediate use to lawyers. Except for the elite law schools at elite research universities, the true law scholar, and the true law scholar as a teacher, all others are under assault and being constantly required

100. As noted by Larry Kramer, the dean of Stanford Law School, “Deans at many schools today are less and less participants in the intellectual life of their institutions. The modern dean is more like a corporate manager, responsible for overseeing sprawling operations of which students and faculty have become only a part—and an increasingly small one at that.” Larry D. Kramer, *Building on Excellence*, STANFORD LAWYER # 70—FROM THE DEAN, http://www.law.stanford.edu/publications/stanford_lawyer/issues/70/fromthedean.html (last visited May 15, 2009).

to justify the pursuit of ideas in institutions where, ever more loudly voiced, they hear the constant refrain, ‘will this get our students jobs?’

There are, thankfully, a few alternative voices. They have not yet found their way to halls of legal academia, or the corridors of courts, or the offices of managing and hiring partners of law firms, but one can hear their whispers decrying the view that the primary aim of education is to prepare students for jobs.

But for all its widespread popularity, the god of Economic Utility is impotent to create satisfactory reasons for schooling. Putting aside its assumption that education and productivity go hand in hand, its promise of providing interesting employment is, like the rest of it, overdrawn. There is no strong evidence for believing that well-paying, stimulating jobs will be available to most students upon graduation . . . If we knew, for example, that all our students wished to be corporate executives, would we train them to be good readers of memos, quarterly reports, and stock quotations, and not bother their heads with poetry, science, history? I think not. Everyone who thinks, thinks not. Specialized competence can come only through a more generalized competence, which is to say that economic utility is a by-product of a good education. Any education that is mainly *about* economic utility is far too limited to be useful, and, in any case, so diminishes the world that it mocks one’s humanity. At the very least, it diminishes the idea of what a good learner is.¹⁰¹

Still, per Doris Lessing, “[p]ockets of the old excellences remain, in a university, a school, the classroom of an old-fashioned teacher in love with books, perhaps a newspaper or a journal. But a culture . . . has gone.”¹⁰² Thus, it is up to the few, and “[i]t’s up to you to choose a life that will keep expanding. It takes discipline to remain curious; it takes work to be open to the world—but . . . what noble and glorious work it is.”¹⁰³

So, we end where we began, with William James’s 1907 address to the American alumnae at Radcliffe College, “*The Social Value of the College-Bred*,” and the question he posed. *What is the value of a college training?* James answered as follows: “A certain amount of meditation has brought me to this as the pithiest reply which I myself can give: The best claim that a college education can possibly make on your respect, the best thing it can aspire to accomplish for you, is this: that it should *help you to know a good*

101. POSTMAN, *supra* note 18, at 30–31.

102. LESSING, *supra* note 72, at 70.

103. ANN PATCHETT, *WHAT NOW?* 77–78 (2008).

*man [or woman] when you see him [or her].*¹⁰⁴ James gets it just about right. Much of his sentiment on the value of a college education applies, *or should apply*, to the education offered by law school. An important claim that a law school education ought to make on the law students', and our, respect, a crucial aim it can aspire to accomplish for them, and us, is this: that it should help the law students, and us, know *a better* man or woman when they, or we, see him or her. And such cannot be achieved unless legal education again infuses itself, reinvigorates itself, with greater emphasis on the humane, and the humanities.

Legal education is not just about getting a job, making money, acquiring social status, power, or influence. The true value of a legal education is the extent to which it nurtures the students' ability to *better* address complex social and legal problems affecting real people living real lives. And, it will be necessary for the students to *better* know and appreciate a good, the better and the best of man and woman, of society, when they see one. Fortunately or unfortunately, the person upon whom the students' eyes will glance most frequently is their individual self. The real, unanswered next question is, at the end of law school and looking inward, will the law student see a better man or woman? If the answer is *no*, then, notwithstanding all the legal rules and principles the student has memorized, they will have failed to reap the real benefits of a legal education. Yet, *whose failures* would that be? The failures will rest largely on law school faculties if, first, they fail to envision law schools as more than a training grounds for lawyers and, second, they fail to create and nurture an environment fostering intellectual curiosity about not only law, but also about ideas and about life. In closing, perhaps the words of two economic development economists, Eric Hanushek and Ludger Woessmann,¹⁰⁵ are applicable here. "For educational investments to translate into student learning, all the people involved in the education process have to have the right incentives that make them act in ways that advance student performance."¹⁰⁶ Do all, or even most, of the people involved in legal education have the right incentives? We leave that for you, the reader, to ponder.

104. JAMES, *supra* note 1, at 1242.

105. Eric A. Hanushek & Ludger Woessmann, *The Role of Cognitive Skills in Economic Development*, 46 J. OF ECON. LITERATURE 607 (2008).

106. *Id.* at 659.

APPENDIX

SOME SUGGESTED READING FOR PROMOTING LEGAL LITERACY

The titles gathered here are not intended as an exhaustive list or even a “best of” list. The selected titles are merely an attempt at a broad, representative sampling of readings. There are no law review article or essays (except where such are contained in one of the listed books). Articles and essays tend to be highly focused, and often presume readers have general familiarity with the subject. This selection makes no such assumption, and invites readers to pick and choose. Its one unifying principle is captured by the following:

In the work of Siger¹⁰⁷ we find the sentence: “you shall wake, study, and read that out of the remaining doubt you are driven to further studying and reading, for life without letters (*vivere sine litteris*) is death and the grave of the vulgar.”¹⁰⁸

Wake! Study! Read!

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- Ackerman, Frank and Lisa Heinzerling. *Priceless: On Knowing the Price of Everything and the Value of Nothing*. New York: The New Press, 2004.
- Ackerman, Kenneth D. *Young J. Edgar: Hoover, The Red Scare, and The Assault on Civil Liberties*. New York: Carroll & Graf, 2007.
- Adler, Matthew D., and Eric A. Posner. *New Foundations of Cost-Benefit Analysis*. Cambridge & London: Harvard Univ. Press, 2006.
- Alexander, Gregory S. *The Global Debate Over Constitutional Property: Lessons for American Takings Jurisprudence*. Chicago: Univ. of Chicago Press, 2006.
- Amar, Akhil Reed. *America’s Constitution: A Biography*. New York: Random House, 2005.
- Amsterdam, Anthony G. and Jerome Bruner. *Minding the Law*. Cambridge: Harvard Univ. Press, 2000.

107. Siger de Brabant was a thirteenth-century philosopher.

108. ERIC VOEGELIN, THE COLLECTED WORKS OF ERIC VOEGELIN, VOLUME 20: HISTORY OF POLITICAL IDEAS, VOLUME II: THE MIDDLE AGES TO AQUINAS *edited with an introduction by Peter von Sivers* 190–91 (1997).

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- Beveridge, Albert J. *The Life of John Marshall, Volume III: Conflict and Construction 1800–1815*. Boston: Houghton Mifflin, 1919.
- Beveridge, Albert J. *The Life of John Marshall, Volume IV: The Building of the Nation 1815–1735*. Boston: Houghton Mifflin, 1919.
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- Bobbitt, Philip. *The Shield of Achilles: War, Peace, and the Course of History*. New York: Knopf, 2002.

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