

WHAT THE LAW SCHOOLS CAN CONTRIBUTE TO THE MAKING OF LAWYERS *

LON L. FULLER †

There are four competing conceptions of the objectives of legal education. The purpose of this paper is to examine the virtues, limitations, and dangers of each of these conceptions.

The four conceptions are:

First Conception. The object of legal education is to give the student *knowledge*. The faculty should study carefully what branches of law are most important today and arrange the curriculum so as to impart the knowledge most needed in modern law practice.

Second Conception. The object of legal education is to impart *skills*. We should survey the aptitudes and techniques demanded by modern law practice and devise teaching methods that will give the student these aptitudes and techniques. In terms of industrial management, we should conduct a job analysis or "skill-breakdown" of the legal profession, and then put our students through a conditioning process that will implant in their nervous systems the aptitudes that will make them successful lawyers.

Third Conception. True education, in law as in every other calling, consists in exposing the student to *Great Minds*.

Fourth Conception. The object of legal education should be to give the student an understanding of, and an insight into, the *processes* in which the lawyer participates.

Nothing compels us to treat any of these conceptions as an exclusive standard for the organization of legal education. Each could be viewed as supplementing the others. In actual discussions of educational policy this seldom happens. The polemical spirit generated by attempts to define ultimate aims tends to throw every point of view into polar opposition to every other point of view. Perhaps the present paper will illustrate this tendency in its advocacy of the fourth conception. In any event, in what follows each of the four conceptions will be analyzed both in terms of its capacity to furnish an exclusive standard and in terms of its capacity to furnish a corrective for the other points of view.

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† Carter Professor of Jurisprudence, Harvard University.

FIRST CONCEPTION

"Give the Student the Knowledge He Needs to be a Lawyer"

As a general standard for the organization of the curriculum, this conception enjoys a diminishing popularity. There are many reasons for this decline in favor. The changing demands of modern law practice make it impossible to predict what the student will need to know after his graduation. Successful attorneys generally ascribe a secondary importance to the content of the curriculum, and assert that the real service of the law school is to teach men to think like lawyers. A curricular organization directed toward conveying the most generally useful information would exclude highly specialized seminar courses of proved educational value.

The current preference for method over content should not blind us to the fact that those who talk content often have something important to say. Methodism, even in the non-ecclesiastical sense, can be carried to excess. There is need to recall that the slogan, "We teach men to think," has been the last refuge of every dying discipline from Latin and Greek to Mechanical Drawing and Common-Law Pleading.

It is a serious pedagogical error to select materials purely in terms of their capacity to inculcate method. Effective instruction in method cannot take place unless instructor and student believe (or share the delusion) that the problems they are considering are important and vital in the world as it exists today. If either pierces the veil of pretense and sees (or admits) that the game is being played for cardboard counters, instruction in method will fail of its own self-consciously formulated objective.

Content is important, not so much for itself as for its significance in the attainment of other objectives.

SECOND CONCEPTION

"Job Analysis or Skill-Breakdown"

This is probably the most fashionable conception today. The slogans are: skills, techniques, the art of advocacy, the art of counseling.

The conception that legal education should aim at imparting skills and techniques has performed a valuable service in opening the way for a reexamination of the traditional curriculum. It has stimulated proper doubts as to the real importance of some of the supposedly fundamental courses in private law. More usefully still, it has challenged the educational validity of the lines of division that conventionally separate the various law-school subjects—lines that actually had their origin not

in educational considerations, but in the analytical needs of the text-writer.

Yet valuable as this conception has been in the razing of outworn structures, I believe that the greatest danger now confronting American legal education is that this conception will be taken too seriously and applied too literally. For so soon as an attempt is made to employ the skills-and-techniques conception as the exclusive standard for organizing legal education, the whole educational process is disoriented and cheapened.

When it is examined critically, it becomes apparent that the skills-and-techniques conception furnishes no real test of what or how men ought to be taught. Lawyers need every skill and aptitude that affects man's intellectual and moral life. They need to be able to reason logically, to reject irrelevancies, to detect unstated premises, to read and listen with understanding, to argue persuasively, to fathom motives, to write and speak good English—the list could be expanded indefinitely. There is nothing in the command, "Teach skills," that answers the inescapable problem of priorities, or that gives form and direction to the curriculum.

Not only does the skills-and-techniques conception fail to furnish any intelligible guide for organizing legal education, but the attempt to apply it seriously threatens to forfeit the most valuable feature of the American case method of instruction, namely, an impersonal absorption in problems. It converts what ought to be a disinterested exploration of issues into an exercise in self-improvement. It abandons the university tradition in legal training for something that smacks of Dale Carnegie or Charles Atlas.

Woodrow Wilson once observed that the man who sets about to achieve "character" makes himself ridiculous. Character is the by-product of a quest for other goals. In the same way, skills and techniques should be the by-product of an educational system that concentrates on problems rather than men.

THIRD CONCEPTION

"Exposure to Great Minds"

No juggling of courses, no curricular manipulations can take the place of good teaching. Nor is good teaching of any value if it is employed to convey trivialities. We must have good teachers, and teachers who have something good to teach. Beside these twin imperatives, all else is secondary. Those who speak of exposure to great minds perform a service in reminding us that this is so.

They do a disservice, however, when—as so often happens—they overstate their case to the point of asserting that the organization of the curriculum is of no importance at all. Indeed, the Mark-Hopkinson-a-log theory is often advanced in a way which implies that in properly run law schools there has never been any conscious attention to the organization of the curriculum. This is of course fantasy. In American legal education we have inherited a curricular organization that was worked out through cooperative effort a good many decades ago. This constituted a coordinated program when it was devised. It is conceivable that it still constitutes the best way of arranging legal education. The conservatives who believe this should, however, assume the responsibilities appropriate to their position. They are not entitled to say, "Only little minds concern themselves with organizational problems," when what they mean is, "The inherited curriculum is right and should be preserved."

Anticipating the argument of the next heading, we may say that if specific knowledge and specific skills are relatively unimportant, an understanding of the lawyer's actual and potential contribution to society is not. The curriculum should be so arranged as to give the student that understanding in such broad terms that he will be able to perceive and relate to one another the various facets of the lawyer's work. This will not just happen; it must be planned.

FOURTH CONCEPTION

"The Object of Legal Education is to Convey an Understanding of the Processes in which the Lawyer Participates"

The lawyer is a participant, and usually the most active and responsible participant, in two basic social processes: adjudication and legislation. Both terms are here used in a somewhat broader sense than is customary.

The adjudicative process has to do with the case-arguing and dispute-deciding aspect of the lawyer's work. As I use the term, it refers to all forensic methods of deciding disputes, including informal arbitration and the work of administrative tribunals as well as the traditional processes of our courts. Adjudication presents the lawyer in his rôle as advocate, or judge, or office counselor advising a client of the likely decision of a cause. All of these activities center about a single process, that by which controversies are argued and decided.

The legislative process, on the other hand, presents the lawyer in his rule-creating, structure-giving rôle. It presents him as a planner, negotiator, and draftsman. As I use the term "legislation" it refers not

merely to the planning and drafting of statutes, but includes the negotiation and drafting of contracts and other private documents. Thus, the drafting of a will is, in this sense, legislation, since it establishes a legal framework within which the estate of the testator is administered after his death.

It is my contention that the purpose of legal education should be that of conveying an understanding of these two basic processes. If we take these processes as our point of orientation, I think we shall be able to make some progress toward solving the following problems of educational policy:

1. Is our present system of legal education satisfactory?
2. What branches of law should we include in the three-year course?
3. Where should the student's instruction begin?
4. How can we relate law to the life and theory beyond law without losing the sharp focus on specific issues that has been a cardinal virtue of traditional legal education?
5. How can we inculcate in our students a proper sense of professional responsibility toward client and public?

I shall begin with the first of these questions:

1. *Is our present system of legal education satisfactory?*

If we test our system by asking whether it conveys a sufficient insight into the two basic legal processes, I think the answer to this question is obvious. For reasons partly historical, and partly connected with the relative availability of materials, legal education in this country has almost totally neglected the legislative process, and has dealt with only one aspect of the adjudicative process, that of our appellate courts.

The isolation of a single phase of the adjudicative process from the process as a whole not only leaves many things untaught, but distorts and falsifies what it teaches. It conveys to the student almost no insight into the subtle issues involved in the proof of facts, for example. The appellate report usually presents a parched skeleton of the facts which lawyers connected with the case sometimes have difficulty in recognizing as a description of the situation with which they struggled for so many months. One of the permanent problems of the law and of advocacy has to do with that most perilous of human operations: attempting to transmit intact a set of facts from one human head to another. The appellate-case method gives little inkling of the existence of that problem, much less any understanding of the measures that may be taken toward solving it.

The almost total neglect of the legislative process is a more serious defect, which once again not merely leaves many things untaught, but

distorts what it teaches, for the two processes of adjudication and legislation are themselves interrelated, so that neither can be fully understood without the other.

Legislation always looks forward in some degree toward adjudication. The careful draftsman legislating into existence the terms of a contract takes into account the possibility of trouble and seeks ways of protecting his client's interests in the event of litigation. On the other hand, most adjudication bears in some degree on someone's legislation. An understanding of the process by which contracts are negotiated and drafted is essential to the sound interpretation of a contract of disputed meaning. I have found in teaching Contracts that those of my students who have had some practical experience in what may be called generally "negotiation" bring to problems of interpretation a much more mature insight than those who lack this experience. Recently I tried the experiment of beginning my course with an exercise in negotiation and draftsmanship. My object was to convey, by a kind of vicarious or staged experience, the insight that comes from participation in the act of bringing an agreement into existence. While this educational venture has not been wholly successful, it demonstrates the close interrelation of the processes of legislation and adjudication. Students do actually draw on their experience in the drafting exercise in discussing judicial decisions that interpret agreements. The observable improvement in their insight and judgment tends to confirm a prejudice I have entertained for some time, namely, that no judge should sit on the interpretation of a contract who has himself never negotiated one.

Many law teachers affirm that what I have called the legislative process is taught as a natural by-product of ordinary case-method instruction. They point with pride to the fact that they frequently ask their students how the contract or testament involved in a particular case might have been drawn to avoid the difficulty that gave rise to the litigation, or how a statute should be amended to preserve the purpose of its draftsmen after a restrictive judicial interpretation.

I believe that this patchwork treatment of the problem is quite inadequate. Though, as I have said, the legislative and adjudicative processes are closely related, each of them represents a distinct set of problems and a distinct set of postures of the mind, so that neither can be taught as an unplanned by-product of teaching the other. The essential distinction between the two processes can be seen if we consider the different way each views facts.

Adjudication has to do with forensic facts. If we are dealing with appellate decisions, the facts reported have been filtered through the

rules of evidence and purged of their natural ambiguities by presumptions and rules about the burden of proof. Even in the most informal administrative hearing or arbitration, however, facts assume a new character when presented in a context of litigation, being conveyed by self-conscious witnesses who—no matter how honest they may be—despair of conveying to the tribunal a full understanding of the situation as it appears to one living in it, and who, therefore, content themselves by relating only a segment of the truth, a segment which they think, more often wrongly than correctly, is the only aspect relevant to the decision.

Legislation, on the other hand, deals not with forensic facts, but with what may be called managerial facts. It is not the task of the lawyer acting as planner, negotiator, and draftsman to reduce the facts to a neat pattern, but to see them whole, in all their disorder, in all their ambiguity. He must gear his decision to a range of factual probability, and must devise a plan that will anticipate, and absorb without disruption, future changes in the facts.

Other differences between the processes of legislation and adjudication may be brought out by such a simple inquiry as: What is a contract? For the lawyer concerned with the adjudicative process a contract is a legally enforceable agreement, and its meaning is that which a court will give to it in the event of litigation. For the lawyer bringing a contract into existence it may be primarily a framework for cooperative effort, which performs its function without regard to its enforceability or the interpretations a judge would give to it. Often in phrasing the terms of an agreement the lawyer has to balance two desiderata against each other: (1) that of placing his client in a position to win any lawsuit that may grow out of the contract, and (2) that of creating an instrument of collaboration that will function effectively and not produce lawsuits. If he cannot have both these things, he may properly favor the second at some cost to the first, since his rôle as practical legislator for the situation may be more important than his rôle as advocate in a hypothetical future adjudication.

This analysis of the fundamental differences in the two processes might be continued, but I believe enough has been said to show how dangerous it is to assume that either teaches itself automatically when the other is taught.

I submit, therefore, that traditional legal education is not merely defective in detail, but in basic orientation, and that we must assume a responsibility for conveying to the student an understanding of both of the basic processes with which he will be concerned as a lawyer.

2. *What branches of law should we include in the three-year course?*

The remarks just concluded may suggest that I am proposing an impossible reform. A curriculum that deals by and large with only one phase of the adjudicative process is already dangerously overloaded. To add another whole facet of the lawyer's work would be not the straw, but the haystack that broke the camel's back.

On the contrary, I believe that the prescription I am urging would simplify the task of bringing our instruction within the limits of three school years.

Take, for example, the different ways in which a lawyer participates in the process of adjudication: as advocate, as judge, and as office counselor advising his client "what the law is"—that is, how real or hypothetical cases would probably be decided if they were litigated. In terms of a legal job analysis, these three tasks demand very different, almost antithetical skills and techniques. If our educational system is to be organized in terms of a skill "breakdown" then we are indeed on the verge of a curricular breakdown.

But I suggest that we need not take, as an explicit educational goal, teaching advocacy, or how to decide cases, or how to advise clients about what judges will decide. Rather, our task is to saturate the student with the adjudicative process, and let the skills and techniques develop as a by-product.

There are many things to learn about the adjudicative process. I have already spoken of the influence of a litigational context on facts. A full understanding of this influence can be obtained only by viewing adjudication as a process that makes its own peculiar demands on men's minds and attitudes, as a social relationship possessing unique qualities. Similarly, the tension that always exists between paper rules and the actual administration of justice is something that can be comprehended only if the student is immersed in the process of adjudication so that he comes to see its inherent limitations. All of this takes time, but it takes less time, and it uses time more effectively, than an attempt to train the student for each of the concrete tasks he may later be called upon to perform in connection with adjudication.

Again, the concept of the legislative process seems to me to furnish a standard that will simplify our problem of what to teach. As I have defined that process it covers a multitude of apparently disrelated activities—all the way from drafting a will in the quiet recesses of a five-name firm on State Street in Boston to negotiating a labor contract under threat of strike on the Galveston waterfront. And what a disparate set of skills and aptitudes this process demands of those who

participate in it! The negotiator must have tact, an insight into others' motives, a sense of timing, a capacity for what may be called visceral decisions. The draftsman must have the capacity for painstaking logical analysis and clear, orderly English—and a horror of visceral decisions. Unless some common core can be found in these skills and activities we must despair of educating a lawyer in less than ten years.

But I believe there is such a common core, which I would define as the accommodation of opposed interests and the reduction of the pattern of that accommodation to clear verbal expression. I think we may even say that the man drafting a will is learning negotiation. He is considering how the interests of the widow can be accommodated to those of the children, and how the testator's desire to be generous toward his alma mater can be reconciled with his obligations toward his family. Such a draftsman is not like a man playing solitaire, but more like a player who plays in turn each of the hands in a bridge game. So that even the task of drafting a will may convey an insight useful in negotiating a contract. By the same token, negotiating and drafting a contract compels a man to perceive the demands contained in the task of drafting a statute and securing its passage.

I conclude that we do not need, and should not attempt, to teach men all the separate skills they will require to be successful negotiators, draftsmen, and planners. What we need to do is to convey to them, through selected problems, the core of the process by which conflicting interests are accommodated to one another. If we do that, we may trust the specific skills to develop, in those God intended to have them, as an unplanned by-product of insight.

In a similar way, I believe a focus on the two basic processes will simplify the problem of priority as to subject matter. We should not worry too much about turning the student out with a command over a particular set of legal rules. Rather, we should concentrate on the major ways in which legislation and adjudication function in our modern society, and let knowledge of rules become an unplanned by-product.

3. *Where should the student's instruction begin?*

This question may seem on a different level from those discussed so far and may appear as a descent to petty curricular details. I believe, however, that this matter of where you start is a fundamental problem, with premises that go to the root of educational policy.

I submit that we have had no defensible philosophy about how to open up a subject. There are a number of principles. One is to present legal doctrine historically, and some of the early casebooks presented the cases in an order corresponding to the years in which they were decided.

Another is to apply the test of chronology to the transaction under study. In Contracts, for example, you start with offers, because an offer is the first step toward making a contract. I submit that neither of these solutions is anything more than a default before the problem of a rational planning of the student's progress.

Another principle is to start with what is "simple and familiar." In Torts you begin with plain cases of *A* striking *B*, or of *A* striking at *B*; and the search in all courses is for the homely and commonplace as a starting point. This conception seems to offer a rational principle for opening up a subject, but in fact contains a serious fallacy. The simplicity of a legal problem is by no means guaranteed by the circumstance that its facts would make a good genre painting. One might almost assert the contrary. A neighborhood quarrel may seem a homely incident, yet one can hardly imagine a more subtle psychological process than that involved in determining legal liability for an event arising out of such a quarrel. On the other hand, proof in court of an elaborate legal document may be a very simple and routine matter. Nor is the fallacy of starting with the familiar merely a matter of procedural law. One reason for taking up early in the course in Contracts the question whether a posted acceptance is effective on dispatch or receipt is that this is supposed to be a problem that falls within the student's experience. Yet I know of no more difficult question of deciding what the substantive rule ought to be, if all of the implications of the problem are explored.

The prescription I am proposing would start not necessarily with simple facts, but with the processes of adjudication and legislation in their simplest form.

To illustrate: Courses in introductory procedure are generally organized on one of the principles I have previously described or a combination of them. You start historically with the common-law forms of action, or you start with the plaintiff's complaint because that is the first step in a lawsuit, or you start with lawsuits arising out of quarrels about the location of a fence, or some other allegedly "simple" controversy.

I believe the place to start is, rather, with the adjudicative process itself, presented in a context that reduces it to its most elementary form. I suggest that arbitration is, in modern times, that context. Here we have virtually no rules of pleading and usually no formal rules of substantive law at all. Yet we have problems—problems that pervade the whole adjudicative process.

One might start with a case in which the parties agree to submit an issue to arbitration, and where the award goes slightly outside the terms

of the submission agreement. A labor arbitrator, for example, is asked to adjudicate five specified job rates, and sets a sixth rate because he considers it closely related to the rates submitted for his determination. The losing party refuses to accept the award as it affects the sixth job. I would discuss with the student whether anything was wrong with the procedure followed in this case. If the arbitrator, whose primary function is to bring peace between the parties, sees some tag-end that needs cleaning up, why should he be bound strictly by the agreement submitting the dispute to him? When the student has seen that there is another side to this question, he will have gained a fundamental insight into the purpose of pleadings.

The next series of cases would involve arbitration awards where the arbitrator, after hearing the arguments, makes an independent investigation of the facts. A labor arbitration involves the proper rate of pay for operating a particular machine, and neither party shows the machine to the arbitrator or even displays a picture of it. Discontent with abstract descriptions, the arbitrator visits the factory unaccompanied by the parties, looks at the machine, and then makes his award. Is there any legitimate objection to this course of action? If the losing party complains of this procedure, shall we treat him as an enemy of truth who wants cases decided in ignorance? Once again, when the student has seen what can be said on both sides of this question, he will have gained a fundamental insight into the whole adversary system, with its merits and its defects.

So, my suggestion is: teach processes, and start with the process in its most elementary form.

4. *How can we relate law to the life and theory beyond law without losing the sharp focus on specific issues that has been a cardinal virtue of traditional legal education?*

This is the issue suggested by the now fashionable question (too narrowly phrased, I think): How shall we bring about a synthesis of law with the related social sciences, such as economics, psychology, and sociology?

There are two schools of thought about this. One says, "Stick to law. You can't teach the student to be a lawyer in three years, so obviously you can't teach him also to be an economist, psychologist, accountant, sociologist, and personnel manager."

The other school says, "Law is related to these other subjects, so they must be brought somehow into the curriculum. We will assign extensive readings in psychology and economics. We will add psychologists and economists to our law faculties. It is true that we don't know now

just what we will do with them, but their physical presence in the building will be a stimulus, and in time we shall work out together a program for using their special competences effectively."

I hold with neither of these views. As for the first, of course we haven't time in three years to make a man a lawyer. But that is not our task. Our task is to start him on a program of self-education, and to give him the fundamental insights and ways of thought that will enable him to draw the maximum profit from his later education in the school of experience.

If there is no time for economics in law school, you may be quite sure that the busy and successful lawyer will have no time for it. This does not mean that he will not make economic decisions. On the contrary, it is certain that he will participate in the making of many of them. It will merely mean that he will not understand as well as he should what it is that he and his fellow counselors are deciding.

The other school finds time in the curriculum for non-legal studies, but fails to integrate them effectively with instruction in law. Having been able to discover no other way to use the non-legal expert, it puts him to work teaching the student "skills and techniques." An outstanding example of this default is, to my mind, offered by a course given jointly by a psychologist and a group of lawyers which, in the words of its sponsors, is intended "to train the student more effectively to use his personality."¹ In this course it is the function of the psychologist (with the assistance of a Soundsciber) to teach the student the psychology of persuasion and to train him to use words that will evoke sympathetic responses on the part of judges and other "policy makers." With all deference to the able and imaginative men who conceived this course, in this aspect it seems to me the academic equivalent of boondoggling.

For about twenty years now American professors of law have been agreeing with one another that we ought to do something about the integration of law with the other social sciences. In view of this general agreement, it is remarkable how little of real significance has actually been accomplished in this direction. The explanation lies, I believe, in a failure to work out a conception of legal education that will make the integration something real and that will put it to work on tasks worthy of a university law school.

¹ James, *An Arbitration Laboratory in Law School*, 2 *ARB. J.* (N.S.) 79, 80 (1947). This reference is not intended as an unqualified condemnation of the course described in Professor James' article. The notion of trying the same moot case twice, first as an informal arbitration and then as a regular lawsuit, seems to me most ingenious and worth while. Indeed, I could hardly ask for a better practical application of the conceptions I am attempting to expound in this paper.

I suggest that we should take our orientation from the following considerations: The lawyer is today compelled to participate in decisions that represent a synthesis of many factors, of which legal rules are often only a part, and sometimes a very subsidiary part. This is obviously true of the lawyer in government service. Lawyers in private practice have put up a sort of rear-guard action against making what they call "business decisions," but they have lost the battle. Today nearly all lawyers have to make "business decisions," if for no other reason, in order to stay in business, for they have discovered that this is what clients demand.

These decisions are not arrived at by the lawyer independently, but in consultation with men of different training, who bring to the conference table distinct contributions that must somehow or other be fused into the final solution. Often, the lawyer is the man who presides over that process of fusion. Here, then, is a process into which he must be initiated and started off right in law school. He must learn what is involved in deciding not what legally can be done, or what action will be legally effective, but what should be done, all things considered, when all points of view have been drawn into account.

It is apparent that this process of synthesizing considerations that lie in different realms of human competence is one aspect of the larger process I have called legislation. Every important decision in some measure acts to impose pattern and structure, to create rules and precedents, to furnish a framework within which future decisions will be made.

I suggest that we take as our goal, therefore, not training the lawyer to be an economist, but training him to participate in a process of decision that brings law and economics into a common crucible. This means that he must know enough economics, and must have that kind of economic learning, that will enable him to utilize the economist effectively and appraise his contribution intelligently.

In more concrete educational terms, this means that an important part of the student's training in law school should be directed toward the solution of problems that involve a synthesis of legal and "extra-legal" considerations. Except in a few courses, problems suited to this purpose cannot be obtained directly from reported appellate cases. Something like the "cases" used in the Harvard Graduate School of Business Administration would seem to be in order. It is also in order to draw on the resources of the university as a whole and to enlist, wherever possible, the assistance of trained economists, psychologists, and other experts in fields outside the law, preferably those with some background of participation in practical affairs.

Experience in my own and other law schools indicates that the key to the successful use of experts in fields outside the law lies in the selection of problems for study that will give direction and legal relevance to the contributions of these experts. The devising or collecting of such problems is the primary responsibility of the law faculty. If the law faculty is unable to discharge this responsibility, it is a safe assumption that it will not profit greatly from the physical presence of an economist or psychologist on the law-school premises.

5. *How can we inculcate in our students a proper sense of professional responsibility toward client and public?*

The title of this conference expresses the widely held conviction that professional education has not been sufficiently conscious of the social responsibilities of the professions. In all of the lay callings—in law, engineering, medicine, and business administration—we are training men to make a good living for themselves, but we are not, it is said, doing enough to train them to advance the Good Life for all men.

Deeply as we may agree with this criticism, there arises the practical question of what to do about it. The problem of social and public responsibility has deep roots, that strike to the most intimate moral decisions a man may be called upon to make.

Merely telling students from time to time that they have undefined social responsibilities will accomplish little. Moral exhortation without content or direction is a futile thing. Indulged in widely enough, it is certain to arouse an irritation that will defeat its own end. On the other hand, shall we set about indoctrinating our students with the notion that they must advance certain definite social goals? If so, shall each teacher employ classroom time for the advancement of his personal political and ideological convictions? Or, to avoid the general canceling out that might result if this were done, shall the faculty agree on certain fundamental "values" and then seek to inculcate these in its students? The notion of a whole law faculty dedicated to a particular ideology is by no means unheard of in American educational history.² Yet for most of us there is something basically uncongenial about this kind of intellectual freemasonry.

I believe that the way out of this dilemma is to be found in a return to the Socratic conception that men find virtue best, not through

² CENTRALIZATION AND THE LAW; SCIENTIFIC LEGAL EDUCATION, a collection of essays by various authors published by Little, Brown and Company in 1906. To avoid misunderstanding, I should say that, so far as I can see, no trace of the ideological program outlined in this book is observable in the present administration of the school that once made it a matter of corporate adherence. The school today presents the wholesome variety of points of view characteristic of American law schools generally.

faith or exhortation, but through understanding. Because his paper seems to me to exemplify this conception, I believe we in law might well take Dr. Romano's³ treatment of the physician's responsibility to his patient as a model for our own profession.

Dr. Romano sets about to explore the ethics of the physician-patient relationship. He finds that this relationship has its own peculiar demands, that cannot be met merely by good intentions or a sound upbringing. These demands require real understanding and insight before the physician can respond to them adequately, and it is the task of the medical school to convey this understanding and insight.

So I believe that we in the law schools should explore with our students the demands of the lawyer-client relationship as it arises in the two basic processes I have described in this paper. Certainly there is much here to study and understand. The successful negotiator almost inevitably finds himself from time to time cast in the rôle of mediator, a rôle that raises delicate questions of fidelity to client. The advocate finds himself under pressure to litigate cases that in his judgment ought to be settled out of court, and he must weigh in his own conscience the value of litigation as a release for bottled-up animosities against its wastes and hazards.

In this, as in other aspects of the student's education, I would begin with relationships or processes in their most elementary form. This means that attention should first be directed to the ethics of the lawyer-client relationship where the client is a single individual and no special problem is involved of the overlapping of the client's interests with those of the opponent. From there I would work gradually into more complex situations, until the lawyer has as his client the public as a whole, or where he can, without any question of propriety, regard himself, in Brandeis' words, as "attorney for the situation." The most effective way of placing the student in this kind of rôle would be to direct a substantial portion of his education toward legislative problems, in which his task would be to devise a scheme of statutory regulation that will adequately meet the public need, or that will achieve the most workable and just compromise of a complex set of overlapping and opposed interests.

I believe that this instruction should be conducted in the spirit of the case method, as an exploration of problems and an analysis of relevant factors, rather than with a view to securing open-and-shut answers. If this spirit is observed, I think it will be possible to discuss profitably

³ John Romano, Professor of Psychiatry, University of Rochester School of Medicine and Dentistry; Psychiatrist in Chief, Strong Memorial Hospital, Rochester, New York, who spoke on "The Physician as a Comprehensive Human Biologist."

issues of "policy" that would otherwise be intractable to satisfactory treatment in class discussions.

For example, in questions like those of the reform of the divorce law, or of laws relating to contraception, it would be very difficult to obtain in any American law school a satisfactory and objective discussion of what the statutory rules ought to be. Here there are basic differences in men's conceptions of value, reinforced by the emotions of religious faith. On the other hand, we may take this very division itself as a problem. How can we in a democratic society arrive at satisfactory and just decisions about issues on which men are sharply divided by emotional and religious convictions? What processes or procedures are open to us? Here is a problem that men of different faiths and different philosophies of life can with profit study together. The secret is, in other words, to concentrate on the process, and not to try to determine in advance what results should emerge from the process in the form of specific solutions.

So in the field of labor law, we can discuss profitably such questions as: What are the respective merits of the following procedures for settling labor disputes: compelled negotiation, mediation, arbitration, administrative control, legislation, and court action? To be sure, since the results are going foreseeably to be influenced in some degree by our choice of method, some of the emotions and prejudices that plague this field will inevitably get into the discussion of procedures. But they will not usurp the discussion, as they are likely to do if we discuss such questions as what ought to be the minimum wage, or whether legislation should be passed to limit the amount of dues that can be assessed by unions.

I do not suggest a focus on process and procedures merely as a way of drawing off the fire. Rather, I believe, if I may say so, that this focus is metaphysically sound. Life is itself a process, and by making process the center of our attention we are getting closer to the most enduring part of reality. For that reason I believe that the recommended emphasis on procedures for solving conflicts will not tend simply to suppress those conflicts, but will promote their just solution. If we do things the right way, we are likely to do the right thing.