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The Goal Of Legal Education:  
Promoting Logical Analysis at the Expense of Moral Development

by Julia Kingsley Evans

What effect does legal education have in shaping the legal profession? Does legal education over-emphasize the role of the advocate, leaving the primary moral objective to the workings of the judicial system? Only a few studies have measured the impact of legal training on individual attitudes as a reflection of the nature and adequacy of professional training. Much of the material is anecdotal in nature and not supported by objective findings. Nevertheless, this article will examine the limited contribution that legal education has provided to the moral development of future professionals.

Legal education prepares students to engage in legal analysis, construct legal arguments, and understand legal doctrines, but it does not train students to examine moral positions. Students are taught the necessary skills and knowledge to further a client's interests, provided that as lawyers they do not do what the law prohibits lawyers from doing for clients.

Legal education operates with a number of working assumptions. One of these assumptions is that the essence of legal education is to teach "legal thinking" and the better such thinking, the better the lawyer. Another assumption is that moral disposition is a fixed characteristic, the development of which occurs early in life, substantially predating law school. Additionally, it is assumed that once a sound moral disposition is acquired it remains constant without any reinforcement. Thus, the examination or reinforcement of moral sensitivities is not regarded as a necessary subject for legal education.

Yet there are influences in legal education that undermine a student's sound moral disposition. Robert Redmount noted that when a student enters law school, her moral disposition is generally untested by "the morally relevant challenge of coping with substantial power and making critical decisions in real life." Upon entering law school, students expect certainty and predictability from the study of law. But during the first year, many students find themselves frustrated by the "Socratic method" and ill-equipped for the emphasis placed upon analytical reasoning. The late professor Karl Llewellyn told students, "the hardest job of the first year is to lop off your common sense, to knock your ethics into temporary anesthesia. Your view of social policy, your sense of justice - to knock these out of you along with woozy thinking...." The law student learns that it is necessary to set morals aside while developing analytical skills in law school. Thus, in legal education, "whether this discipline is a matter of philosophy or merely an educational device, morals are deemed irrelevant, therefore morals become irrelevant." Robert Redmount wrote:

In law school, the student learns that moral considerations are not decisive either in the analysis or result that attends legal reasoning or thinking like a lawyer. The attitude is reinforced by the cultivation of a learning experience in which the student's personal reactions are deemed irrelevant to the essential character of legal decision making and legal education. Legal education is concerned solely with the student's intellectual capacity rather than his emotional or moral capacities. Additionally, there is the universal commitment in law to an adversary process, which is not without moral consequence for the practitioner.

Law school teaches students how to push the law to its extreme, as well as emphasizing that one's responsibility is to the client and not to morality. After all, it is winning that counts. Other factors which encroach on the sense of morality are the adversary systems which dictate that you find any way to win for your client; the threat of malpractice suits which dictates that a lawyer must do everything within the law for his client; the pressure of corporate work and its search for legal loopholes; and the ability of lawyers to rationalize their own unethical behavior. One student was surprised that more attorneys have not been disbarred.

One reason for the lack of ethical inquires in law school is that the focus is on teaching students to "think like lawyers" through extensive use of the case and Socratic methods. The Socratic method of teaching law was originally adopted to help students discover the proper ethical posture through an examination of a series of complex fact situations, each arguably calling for a different professional and ethical response. The traditionalist view, still representative of current thinking, is to emphasize the process rather than substantive goals: "The secret is, in other words, to concentrate on the process, and not try to determine in advance what results should emerge from the process in the form of specific solutions. If we do things the right way, we are likely to do the right thing." Thus, as analytical skills emerge from the Socratic dialectic, so will moral teachings.

Through the routine of the Socratic method, the law professor constructs an everyday reality for the law student that "blunts the students' ability to invest the learning experience with personal and social meaning. The students go from one day to the next without thinking, without recognizing the power and influence they have given the structure of their daily lives." Socratic teaching can be considered a form of ritualization. Psychologist Eric Erikson suggests that ritualization in man consists of "an agreed upon interplay between at least two persons who repeat it at meaningful intervals and in recurring contexts; and that this interplay should have adaptive value for the respective egos of both participants." Absent hard data to this effect, one can only speculate that students do not find that the Socratic
method is ego enhancing. A sample of student responses at Harvard Law School in the 1970's concerning the Socratic method:

(a) "The Socratic method is terribly abused, particularly when the professor obviously knows where he is going and you're like a trained porpoise, trying to catch the bait."

(b) "You get sick of it and lots of kids stop going to class."

(c) "The Socratic method is great for a couple of hours, but then you begin to tune out, it's just too exhausting."

(d) "The Socratic method is excellent, it means humiliation, but I think it is great."

(e) "Sometimes perfectly good answers are not accepted."

(f) "The scary aspect of the Socratic method is that it's not really like being a lawyer; it's like being on the witness stand—you can be led into a position that makes you feel intimidated. I'm sure the intention is to disillusion you, to put you down, to get you down where you should be."

(g) "I wonder if the Socratic method is good for me: I often don't know after class which are the relevant points. I've been so scared in class I'd rather give a bad answer than an answer that may lead to further discussion." 26

Student values and moral assumptions are attacked in the classroom through the Socratic method, so that the process of critical analysis is not just an intellectual exercise, but more of an ideological assault. 21 "Even the average law school professor can be a very persuasive critic, the student who relies on this defense mechanism is in fact attempting to silence "the powerful and primitive conscience by separating his feeling from his ideas." 26

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Watson notes, it is my contention that law school education explicitly shapes the character development of law students in certain ways which are detrimental to efficient professional performance. The character adaptation is necessary in order to resolve and escape the tensions of the classroom. The principal characterological development change is to become "unemotional." In addition to being told that this is a desirable attribute to develop, it is also a reaction to classroom anxiety. . . . Marked stoicism and emotional unresponsiveness may be regarded as characterological defenses against underlying emotions. Intellectual means in the form of cynicism about the human aspects of the lawyer's role may also be used to accomplish this purpose. This cynicism is a kind of characterological defense which enables a person to avoid the necessity of caring about people with its intrinsic capacity to stir up anxiety. 27

Watson recommends "sensitizing" the classroom learning experience. 28 For example,  

...cynicism or excessive casualness about important legal problems should never be overlooked by the instructor. To do so is to run the risk of reinforcing the defenses evidenced by these manifestations through tacit approval. Likewise, evidence of psychological avoidance of conflict issues should be explored rigorously and brought out in class discussion. This is best done in an atmosphere of acceptance rather than in the context of moralizing. 29

Watson further notes that moralizing tends to increase the camouflage about cynical attitudes. 30

One study indicated that second and third year students felt that they had become more cynical, less humanitarian, and more hardened, during their law school experience. 31 The author noted that students' comments reflected a struggle with one particular socialization demand: "the demand that the student represent the interests of a client, even if those interests were antithetical to the student's personal values and his identifications." 32

Another commentator noted,

If one gets a client whom he knows is guilty, the question [is] whether that man deserves the best defense. Legal ethics [may] justify that - but what ethics is it to get a child murderer off? or to prepare a defense for [Nixon]? The ethics course in law school seems to be aimed at telling you how close to the edge you can get. All is justified on the basis of doing the best for one's client. Commented one [student], 'I hope I do not get to the point where I will do anything'. 33

The student must confront the conflict presented between performance expected in the lawyer role and performance congruent with the sense of self. 34 This type of conflict produces student "cynicism" and "hardness." 35 Likewise, the process of learning to argue both sides of an issue produces similar results; some second year students maintain that they no longer have strong convictions about anything. 36

One would assume that the student with a solid moral disposition will survive all the risks and temptations associated with the rigors of law school. 37 Redmount, however, proffers that moral dispositions may not survive well when left unattended and un nurtured. 38 He suggests that there are measures that can serve to secure sound moral dispositions:

Judgements of value that recognize the legitimacy of moral concerns, provide the means for moral analysis, and accept the validity and even the primacy of moral experience and judgements need to be developed in legal education. The answer here calls for something more substantial than modest intellectual inquiry into the ethical rules that are posited to govern professional conduct . . . . Student learning must be
attended by moral questions that temper the purely intellectual character of law learning. Extrinsic rewards in learning need to be based on consciousness of issues and judgements that are not largely confined to intellectual analysis alone.\(^\text{39}\)

Redmount also relies on the teacher-student relationship as a necessary conduit to increasing the moral and ethical dimensions of the learning experience. Coupled with the Socratic and adversary method of the classroom, there is a real or implied one-up-ness in the role of the professor.\(^\text{40}\) Moreover, professors strive to maintain a value-neutral arena because they fear that bringing their own ideological commitments into the classroom will destroy the structured fabric of legal education.\(^\text{41}\) Redmount, however, notes that by emphasizing Hohfeldian concepts\(^\text{42}\) of duties, rights, privileges, powers, no-duties, and no-rights, professors can raise the consciousness of moral and ethical considerations in the classroom.\(^\text{43}\)

Additionally, Redmount suggests three conditions in the teacher-student relationship which are necessary for effective learning:

1. **Unconditional Positive Regard** - where the teacher, in a kind of acceptance without conditions or demands, expresses an accepting and caring attitude toward the student.
2. **Empathic Understanding** - where the teacher puts himself in the students' shoes.
3. **Congruence** - where the feeling, understanding and exhibited behavior between the student and teacher are consistent.\(^\text{44}\)

Although somewhat emotionally oriented, Redmount notes that the moral dimension is not entirely separate from emotional and rational considerations.\(^\text{45}\)

In *Legal Education and the Good Lawyer*, Richard Wasserstrom writes that the concept of the "good lawyer" - one who is technically proficient in the law and will do "anything" for a client short of violating the rules of professional responsibility - is consistently reflected in the content and design of the law school curriculum, in the way courses are taught and in the evaluation of students.\(^\text{46}\) Although legal education may be doing a reasonably good job of realizing educational goals, Wasserstrom maintains that there are problems with this concept of the good lawyer.\(^\text{47}\)

First, the prevailing view of a lawyer as an amoral facilitator of others' ends seems to endorse indifference. It is in general irresponsible and often, as a result, wrong for one person knowingly, to say nothing of enthusiastically, to assist another in securing some end or objective without seriously considering the moral worth - the goodness or badness - of that objective. The moral problem is increased, not lessened, when the assistance is provided for money rather than friendship or compassion.\(^\text{48}\)

Second, this conception of the good lawyer's role places him or her in a simplified, largely amoral world of thought and action in which ordinary concerns and demands of morality no longer matter or have weight.\(^\text{49}\) This invites the risk of immorality on the part of the lawyer.\(^\text{50}\)

Third, the attributes cultivated in the adversarial role, such as competitiveness, aggressiveness and ruthlessness on behalf of the client, are acquired at the expense of cooperativeness and compassion.\(^\text{51}\) This creates a moral problem because the behavior and thinking one utilizes in his or her career is not easily detachable during the remainder of his or her life.\(^\text{52}\)

Wasserstrom maintains that a sound legal education should include a deep attachment to and concerns for moral worthiness and rightness and a corresponding sense of responsibility for the justness of the legal system. Wasserstrom's concept of the good lawyer would, therefore, include:

1. **Care always to assure just and decent treatment of clients and all other persons affected by the client:**
2. **Concern always manifested about the justness and goodness of the choices made concerning the claims vindicated and defended:**
3. **Interest and concern for the justness and goodness of the existing system of law, seen as one of significant responsibilities of all those who have been trained for the practice of law:**

Shaffer offers the following anecdotes: (1) the late Dean William Prosser noted that the owner of a dog is not liable to the person the dog bites, unless he knows the dog's propensity to bite people, thus the law permits one free bite; (2) Prosser also examined a case where a man was held not liable for making a lewd proposition to a woman and concluded that the law finds no harm in the asking; (3) Justice Holmes stated that in deciding whether to sterilize a mentally deficient person, deference should be given to a state legislature because it may well decide that three generations of imbeciles are enough.\(^\text{53}\)

One difficulty Shaffer finds with the attempt to teach both ethics and legal analysis is that law professors would reasonably be expected to show familiarity with both approaches: "It is not enough to deal with moral assertions by legal logic or wit, one must know something about Aristotle, Kant, Niebuhr, and the Bible."\(^\text{54}\)

Another problem is that since law students are learning a "cultural disrespect for principles," it would be difficult to examine moral assertions at the same time.\(^\text{55}\) Shaffer suggests that students may lack respect for moral principles or be afraid to develop respect for them.\(^\text{56}\) However, this disrespect for principles is necessary for students to develop, because as lawyers and judges they must not be awed by legal principles.\(^\text{57}\) "Legal principles are explanations for results. They are not the stuff of the law, and one who proposes to deal with the stuff of the law has to go through principles to fact and results. A lawyer has to write new principles to fit the needs of his clients."\(^\text{58}\)

During the 1988 Annual Meeting of the Association of American Law Schools, the Honorable Harry Edwards, Circuit Judge for the United States Court of Appeals for the District of Columbia, addressed the topic of "The Role of Legal Education in Shaping the Profession."\(^\text{59}\) Judge Edwards cited a 1986 ABA report which criticized legal education in the areas of ethics and professionalism. The report suggests that law schools confront students with hard ethical issues: "a law school's impact on the professional development of its students should extend beyond simply teaching legal rules."\(^\text{60}\) In recommending structured reforms, Judge Edwards stated,

> It is essential that law students learn not only how to argue an appeal, for example, but also how to consider whether to bring one in the first place. They must know that there are serious decisions - non-technical, but professional in the deepest sense of the word - to be made in every such situation. They must know that in making such decisions...
they not only serve a client but also affect the system of justice. If students do not know this on leaving law school, there is nothing to prevent them from succumbing to the pressure of generating billable hours and making professional decisions accordingly. If most law graduates enter practice without ever having faced such questions in any meaningful way in law school, then it is certain that they will never reflect on such questions. They will simply not find the time or the incentive to do so once they have begun practice. Only the law school experience can offer the student the luxury of time for reflection on ethical problems.

One recommendation Judge Edwards makes is placing more emphasis on courses such as Alternative Dispute Resolutions as well as clinical programs. Judge Edwards maintains that graduating law students today are less prepared for law practice than those of his generation. Thus, greater emphasis should be placed on practical courses.

Derek Bok, President of Harvard University, agrees with Judge Edwards. President Bok argues that law schools, by emphasizing traditional skills designed to prepare a student for legal combat, have helped to produce a legal system that is among the most expensive and least efficient in the world. President Bok recommends more courses in methods of mediation and negotiation, but ultimately he suggests a greater calling for law schools:

Law schools can also help to create new institutions more efficient than traditional law firms in delivering legal services to the poor and middle class. As in medicine, these organizations will benefit if they are linked to a university so that they can offer teaching opportunities and intellectual stimulation to their attorneys while drawing upon the services of second and third year law students.

Besides improving the public image of lawyers, this approach would also provide an opportunity to give students a larger vision of their future calling, a sense of what life as a lawyer might entail, and an awareness of problems of the profession which students could help to resolve.

Yet the focus of legal education remains on “winning” and on developing a student’s capacity to “think like a lawyer.” While the system succeeds in meeting this narrow purpose, it fails to stress or encourage exploration of moral propositions as an important part of professional education. Questions of ethics and morality are ultimately left to be decided by the workings of the legal system.

Endnotes
1 T. Shaffer, On Being a Christian and a Lawyer (1934).
2 Wasserstrom, Legal Education and the Good Lawyer, 34 J. Legal Educ. 155, 156 (1984). This is the embodiment of the “good lawyer” which is reflected in law school curriculum. See infra note 46.
4 Id. at 863.
5 Id. at 864.
6 Id.
8 Id.
9 Redmount, supra note 3, at 872 (quoting K. Llewellyn, The Bramble Bush at 101 (1930)).
10 Shaffer, supra note 1, at 166.
11 Redmount, supra note 3, at 864.
12 Taylor, supra note 7, at 258.
13 Id.
14 Stone, Legal Education on the Couch, 85 Harv. L. Rev. 392, 394 (1971) (citing Fuller, What the Law Schools Can Contribute to the Making of Lawyers, 1 J. Legal Educ. 189, 204 (1948)).
15 Id.
16 Id.
18 Stone, supra note 14, at 410.
19 Id. (Quoting Erikson, Ontogeny of Ritualization in Psychoanalysis - A General Psychology, 601, 602-03 (1966)).
20 Id. at 410-11 n.65.
21 Stone, supra note 14, at 410.
22 Id.
23 Elkins, supra note 17, at 586.
24 Watson, Some Psychological Aspects of Teaching Professional Responsibility, 16 J. Legal Educ. 1, 13 (1965).
25 Id. at 9.
26 Id.
27 Taylor, supra note 7, at 263 (citing Watson, The Quest for Professional Competence: Psychological Aspects of Legal Education, 37 U. Cin. L. Rev. 93, 131 (1968)).
28 Watson, supra note 24, at 16.
29 Id. at 18.
30 Id.
31 Taylor, supra note 7, at 265.
32 Id.
33 Id. at 257-58.
34 Id. at 258.
35 Id.
36 Id.
37 Redmount, supra note 3, at 864.
38 Id. at 865.
39 Id.
40 Watson, supra note 24, at 12.
41 Stone, supra note 14, at 417.
42 See Hohfeld, Some Fundamental Legal Conceptions as Applied in Judi-
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