LEGAL EDUCATION AND NATIONAL DEVELOPMENT*

TODAY I BEG LEAVE to suggest for your consideration certain features of American legal education which I believe to be highly relevant to the processes of national development. Let me sincerely disclaim, however, any missionary zeal to convert you to American ways or that I would be so presumptuous as to prescribe how you should do things. I trust that law schools and law teachers in both of our countries can profit from lessons that can be learned from each other. What deserves to be adopted or adapted on either side is of course a matter for self determination.

I submit that the creative and dynamic qualities of the legal profession and legal institutions in America are the results of views about and attitudes toward law and legal processes which are significantly different from those found in many other parts of the world. Law is viewed not as a complete and static system of doctrine but as a process whereby conflicts of interest are resolved in ways that are compatible with prevalent values. In that view, doctrine is mainly the systematized reflection of past values. Although received doctrine is always relevant to the solution of current problems on the assumption that it continues to have controlling effect until reason to impeach or change it is shown, the question whether is reason to modify it or vary its application is likewise relevant. The role of lawyers is conceived to be not so much that of rationalizing received doctrine in order to maintain its unchanging purity through changing times and circumstances as that of using legal processes to validate decisions and actions in the light of all pertinent intelligence, including newly discovered knowledge and insights as well as the wisdom recorded in established doctrine. The emphasis is on how law can be used as an instrument to serve people's needs instead of on using preconceived doctrine to determine what needs will be served.

These differences between conceptions of law and lawyers' roles are surely in large part the product of markedly different approaches that are employed in legal education. Distinctive pedagogical methods and techniques employed in American law schools appear to have been the subject of widespread attention in India.[1] There has been much discussion of the advantages and disadvantages of the case method of instruction, as it is called, and more recently of the problem method, in comparison with the lecture method which predominates in many places, and tutorials and seminars, of which a variety of adaptations can

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1. See the All-India Legal Education Seminar Issue of the 4 *Jaipur Law Journal* (1964).

be cited in various systems. But much of this dialogue appears to have been essentially occupied with narrow questions of classroom technique.[2]

The important difference between American methods of legal education and those employed in most other parts of the world is, I submit, more basic than merely the matter of padagogical techniques. It primarily concerns *what* is taught rather than *how* to teach. Differences of technique are largely the function of different attitudes, conscious or intuitive, above what is important for law students to learn.

Legal education in most places outside the United States is chiefly, sometimes almost solely, concerned with transmitting information about legal conceptions and doctrine. Law schools are considered to be mainly responsible for perpetuating knowledge of the rules, precepts, and principles which comprise the established body of the law, through succeeding generations of law students. Lectures and legal writing are largely devoted to abstract analysis, definition, and classification of concepts, the arrangement of stated rules into logically symmetrical systems, and the projection and particularization of such systems.

By way of contrast, American law schools are primarily concerned with legal method instead of legal doctrine. Instructional time in America, for instance, is mostly devoted to exercises or demonstrations in the processes of identifying legal problems, recognizing considerations which are pertinent to their resolution, and manipulating as well as evaluating such considerations. Rarely is any substantial amount of class time spent in recitation of doctrine by either teachers or students. Examination papers are judged mostly on the degree of sophistication displayed by the examinee in identifying issues and using partinent considerations either to reach a warrantably assertable solution or to justify a given solution, not on whether the examinee states a "right" or "wrong" legal conclusion or proposition of law. It is in fact a favorite practice of American law teachers deliberately to propound problems in examination questions which students would not have studied, for which they would not have been supplied specific answers beforehand, and for which specific answers would never have been authoritatively articulated by either the courts or juridical writers.

In the type of examination question which is used most in American law schools, the circumstances of a real or hypothetical controversy are stated and examinees are required either to decide how the controversy should be resolved, as if they were judges deciding a lawsuit, or to present the best arguments they can think of for a specified side of the case, as if they were lawyers representing a client. Teachers sometimes remark, not entirely facetiously, that they themselves do not know the answers to the questions they ask until they

2. *Id. passim.*

learn them from student answers,—which is a jocular way of emphasizing that they are examining not to see if students can recite authoritatively correct doctrine in their answers but to see how proficient they are at identifying discrete legal issues on the answer to which would depend the solution of a practical problem, and at identifying pertinent considerations and relating them to the issues in such a manner as to produce a convincing answer. It happens in the experience of almost all American law teachers, moreover, that examinees who reach diametrically opposite conclusions about how a controversy which is the subject of a lawsuit should be resolved would be given equal credit for their answers because they would have displayed equal skill and sophistication in formulating persuasive legal rationales for their positions.

All of this is not to suggest that American law teachers consider doctrine unimportant. If it were necessary to rank the things law students should learn in the order of their importance, information about doctrine would doubtless rank high. Just as it must be impossible to think unless you know something to think about, it would be hard to solve legal problems without knowing pertinent legal precepts. But the heart of the matter is that Americans think there are other things as well which law students should learn before a law school should certify them as possessing requisite competence for rendering professional service, and that some of the other things they should learn are important enough to deserve more attention in law school instruction than transmission of doctrine because they are harder to learn unassisted than is the knowledge of doctrine.

A distinguished American law teacher of long experience who has been President of the Association of American Law Schools categorized and tabulated what he called the "legal capacities" which a lawyer should possess and which, therefore, a law school should, insofar as practical, endeavor to cultivate and develop in its students.[3] His "Inventory of Legal Capacities," omitting explanatory comments, is as follows :

I. Component Capacities.

A. Legal Information.

1. Basic Subject - Matter Principles - Substantive.
2. Basic Subject - Matter Principles - Adjective.

B. Legal Insights.

1. Legal Function.
2. Legal Institutions.
3. Legal Method.
4. Legal Policy.

3. Strong, "Inventory of Legal Capacities," 3 *Jour. Leg. Ed.* 557 (1950).

C. Legal Skills.

1. Dialectical.

a. Fact Discrimination.
b. Case Analysis.
c. Statute Analysis.
d. Legal Synthesis.
e. Issue Analysis.
f. Issue Disposition.

2. Technical.

a. Legal Advocacy : Adjective.
b. Legal Advocacy : Argumentative.
c. Legal Draftsmanship.
d. Legal Research.
e. Legal Writing.

II. Integral Capacity.

D. Legal Practice.

1. Legal Counselling.
2. Legal Planning.
3. Legal Negotiation.
4. Legal Contestation.

Most of what takes place in American law schools programs can be related to one or another of items in this list.

The "case method" of instruction, which has been so widely reported and discussed, is not so much a technique for transmitting knowledge as a device to induce and assist students to develop various legal capacities simultaneously. It is in fact more a method of studying than of teaching law. Students are required to study judicial opinions with the object of discovering insights (item I, B, in the "Inventory") about what makes legal institutions and processes function the way they do. Ensuing class time is generally devoted to discussion of the materials studied. The primary purpose of such discussions usually is to cultivate the dialectical legal skills listed under item I, C, in the Inventory of Legal Capacities, as well as to deepen, sharpen, and extend legal insights. Although the discussion of cases sometimes amounts to little more than the use of dialogue to articulate doctrine, it is generally assumed that students will learn the governing rules of law as incidental by-products of their study of assigned readings before class and of their participation in class discussions. By way of contrast, it is certainly arguable that lectures are the most efficient way to transmit information. And they certainly can serve a distictive pedagogical purpose, beyond what can be done to communicate with written texts, through the opportunity which they afford for reception to be gauged by observation and for alternative methods of presentation to be employed as

needed until effective communication is achieved. But other important objectives, such as the ability to analyze facts to see what ones are legally operative, identify legal issues presented by the facts of a dispute, analyze meanings in judicial and legislative expressions, or draw conclusions concerning the net effect of the interaction of two or more pertinent legal phenomena (legal synthesis), are not as well served when the teacher tells the students how to do it as when they engage in an exercise, during class discussion, in doing it for themselves.

What has been said about the case method is also largely applicable to what is called the problem method, which has been lately attracting considerable attention.[4] By this method, as usually understood, problems are posed in advance of class, and students are expected to analyze them and formulate judgment about their solution, drawing on resource materials which were either assigned or discovered by independent research. Thereafter, the problems are discussed in class much as cases are discussed under the case method. The principal difference is that under the problem method the study and discussions cannot be related to predetermined authoritative answers such as those which are provided in the judicial opinions which are studied for the case method. Except for that difference, however, the nature of the dialogue which takes place during class meetings, and the pedagogical objectives and legal capacities served thereby, are not consequentially different.

The legal capacities which were classified in the *Inventory* as "technical" may be taught by a variety of methods, including that of class discussion. Understanding of pleading techniques, for example may be a separate subject of study by the case method, in addition to which questions of pleading may arise in the discussion of cases or problems in courses dealing with other subjects. Likewise, discussions in any course may at time take the shape of planned or impromptu debates which afford opportunities to develop forensic skills, whereas those as well as pleading skills may comprise the central concern of laboratory courses in practice court. Cultivation of the ability to do legal research and writing, although not the subject of extensive treatment in courses primarily devoted to those ends, is one of the multiple purposes for which research papers are required in various courses.

The integral capacities of counselling, planning, and negotiation often are the primary ends of small group work in seminars using the problem method. They may also be consciously pursued, however, in some of the class discussions in ordinary courses when the discourse is turned in those directions and students are required to consider and discuss how they would use what they had learned from certain materials in advising or representing clients in legal matters of that nature.

4. See The Problem Method, 1966: Survey and Appraisal, Report of the Committee on Teaching Methods, Proceedings of the 1966 Annual Meeting of the Association of American Law Schools, at 198.

Practitioners of the discussion method of teaching believe that insights and understanding about legal processes are more meaningful if you think them out for yourself than if they are told to you by someone else. Class discussions furnish the occasion and the stimuli for students to think through legal problems for themselves. Since not everyone in a class can talk at once if discussion is to be meaningful, participating of any particular student is vicarious rather than vocal most of the time. In large classes the percentage of students who can speak during the discussion of a particular question may be so small that for the others they amount only to demonstrations of legal reasoning. Even demonstration discussions, however, escape the tendency which lectures can have to induce in students uncritical attitudes toward what they are told on authority.

The great vitality of American legal education is, I believe, directly and significantly attributable to the intellectual processes of observation, reflection, and discourse which it employs. These are the hallmarks of truly "liberal" education, as distinguished from the "strict" and authoritarian transfer of a precise body of traditional information. It matters not so much what is studied, appraised, and discussed, or whether it be cases, problems, or other legally relevant phenomena including doctrine, as that the methods be employed which open student's minds and inspire original thinking.

In the modern age of science and technology, even narrower specialization is the order of the day in most areas of higher education. Generalists are desperately needed, however, to meld the partial viewpoints of specialists into a whole view in the determination of national policy in the complex world of today. It is an historic and natural role for lawyers to participate in the formulation of policy at both the general level of initial planning and the particular level of implementation, as the spokesmen of affected interests. The liberal disciplines employed in American legal education are, I believe, singularly well suited to the development of genaralists who are equal to these tasks.

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