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Law, says the author, can be a useful tool in the building of a liberal education. Uniquely combining the study of past experience with the solving of present day problems, law study could very well supplement or replace traditional undergraduate courses in humanities and history of Western civilization. Nothing that thus far such changes have been made primarily at a few schools of business, the author discusses the advantages of similar use of law for liberal education in any undergraduate curriculum and, eventually, in the law schools.

I.

There has been a strong revival of interest in the possible contribution of law courses to liberal education. Surprisingly, this has not occurred in the liberal arts colleges, as hoped by law teachers urging that jurisprudence be restored to its traditional place in the liberal arts curriculum.[1] It has taken place in schools of business, which have always had law courses but have hardly been characterized by a concern for liberal education. And it has taken place there just because business schools have become uneasy about their failure to give students a general education, and because using law as a liberal arts subject can mean amending or replacing existing courses instead of fighting to find room for entirely new ones. The critics who have challenged the narrowly technical nature of business education, and insisted that the liberal arts segment of the program be expanded and enriched, suggested the possible contribution of law courses and then pressed the teachers of business law to build upon their suggestion by sharp condemnation of most existing business law courses.[2] As a result, the role of law in liberal education is being considered in business schools everywhere. Courses are being developed and books are being written. There is also passionate resistance to change, and denial that a "new look" in education for business needs a new kind of law

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1. A 1954 Conference on the Teaching of Law in the Liberal Arts Curriculum found only a handful of law courses being offered to liberal arts undergraduates. Very few can have appeared since. For a report on the Conference see ON THE TEACHING OF LAW IN THE LIBERAL ARTS CURRICULUM (Berman ed. 1958).

2. Particularly effective and perceptive criticism came from GORDON & HOWELL, HIGHER EDUCATION FOR BUSINESS (1959), a study sponsored by the Ford Foundation, and PIERSON, THE EDUCATION OF AMERICAN BUSINESSMEN (1959), a survey for the Carnegie Foundation.

course. Enough has happened to justify analysis and evaluation of the trend. Even though we do not believe that contemporary society is so uniquely a business society that business education can become a synonym for liberal education, it does seem obvious that what is occurring in business schools has implications for education generally. We shall begin, then, with the problem of law in liberal education as it has emerged in business schools.

II.

Critics of traditional business law courses have so often been right for the wrong reasons that they have provoked angry responses and short-circuited exploration of what new and better courses could do. In fact the reasons which the men from the law schools have generally given for abolishing business law are not very convincing. They object to teaching "bits and pieces of substantive law," to a short course on the essentials of "Contract, Agency, and Negotiable Instruments" or "Corporations, Partnership, and Property," apparently because it is impossible to produce lawyers "on the double," because such a swift survey will be superficial, and because business students will be misled into believing that they know the law. But who ever pretended that business law courses produce lawyers? Why should we assume that a brief exposure to law misleads business students—any more than law students are misled about knowing business by bits of business material in their program? Why isn't almost *any* exposure to "law in action" a useful experience, giving *some* insight into the legal environment and *some* training in the law's way of making decisions under pressure? Why assume that the teachers must botch their job entirely, or blame the course if the quality of business students is low? It is not hard to understand why good business law teachers feel able to insist that their courses are as good as—or better than—most other undergraduate experiences.

Recent critics of business school curricula as a whole would also eliminate the traditional business law course, but, though their reasons aren't wrong, they aren't *all* the right reasons or the best ones. These observers do not follow the lawyers in judging the conventional course as if it were training men for the bar. They stress instead that the character of business has changed and that business education must now train students for the world of big business, for firms big enough to have law departments or regular contact with lawyers.[3] Certainly this is not entirely wrong. The world of business *has* changed. Yet the implications for existing business law courses can easily be overstated. All business is not big business, probably not for graduate students and surely not for undergraduates. Nor is it clear why in the new world of business a little law isn't as good

3. See GORDON & HOWELL, *op. cit. supra* note 2, at 205.

as a little accounting, a little economics, a little history, or a little behavorial science. And even if not overstated, this criticism is not easily accepted at face value when coupled—as it is—with the simple suggestion that the old course be replaced by one on "the legal framework of business."[4] There is surely no reason to quarrel with the *Gordon Report's* recommendation of a course that would

> seek to give students an appreciation of the workings and origins of legal institutions and the functions of the law as a system of social thought and social action . . . [and] might include such topics as the following: the background, importance, and role of law in our society, the legal system of the United States and its workings; private property and contract as basic concepts of a free enterprise system; and the evolution of legal attitudes toward business, including the changing relations between business and government.

But it is not clear why such a course is especially suited (as the traditional course is not) to a new era of bigness and specialization, or why this course, lacking even the *forms* of a law course as a discipline, couldn't in practice be a diluted dose of political science, sociology, history, or institutional economics, perhaps less demanding intellectually than present business law offerings!

III.

What is most troubling in the general criticism of the typical business school curriculum and its present treatment of law is not so much what is said about the traditional courses as the failure to follow this with an argument for what could be an important and exciting contribution to the education of businessmen, as to liberal education generally. I have in mind the conscious use of law as a tool for general education, to strengthen the liberal arts portion of any educational program. The critics all agree that business schools need more of the liberal arts, more "general" as contrasted with "professional" education. This is at the heart of their recommendations. Yet they seem to miss the enormous possibilities offered by law study just at this point. Perhaps they are not to be blamed, for law is not their particular concern. See what the lawyers themselves did, at the 1954 Conference on the Teaching of Law in the Liberal Arts Curriculum, when trying to go beyond criticism of old style courses to what law courses could and should do.

The Conference did begin by considering "Law Study and General Education."[5] Unfortunately, the conferees failed to pin down what was meant by general education, and so missed the chance to define the role of law as a vital general education element in liberal arts and business curricula. Archibald MacLeish, participating as a lawyer turned poet,

4. *Ibid.*
5. BERMAN, *op. cit. supra* note 1, at 18.

opened the meetings with a declaration that he owed his own liberal education to the Harvard Law School and that he would like to see law used to give a liberal education to undergraduates. Urging that "liberal education is education which prepares a man to be himself," he observed that poetry contributes by "[presenting] experience *as it is*, which is to say, as a disorder—the incident, the detail, the thing that never generalizes out—to present it as it is, but to present it in a *form* of order—the beauty of the single work of art which makes the disorder acceptable."[6] And MacLeish sensed similar possibilities in law: "The law is working in the same field. The law is engaged constantly in building this same strange bridge from actual human life over into the kind of generalization which will not be abstracted out of it but will impose order *on* it."[7] However, he said he did not see how the possibility could be seized, in an undergraduate law course, and the other discussants, apparently sympathetic, gave little help. At least they did not help explore the *idea* of general education. Discussion turned instead to "law study as a means of bringing the student closer to the realities of life and of making rational decisions for action" and "law study as a means of making students aware of law as a great freedom-creating tradition." That concluded the section on "Law Study and General Education."

Without stopping to consider more carefully what general or liberal education does, the Conference went on to examination of other specific things that *legal* education could presumably do, particularly law used to enrich study of the social sciences, and law study as a means of moral and intellectual development. Even if we believe that a full three-year law school program does all that has just been suggested (which is surely doubtful), it is certain that a short undergraduate experience in law cannot. And why a law course, any more than all sorts of other courses already in the curriculum? Is reading law really the best way to learn to think—in one semester? Does law really teach "decision making" better than other studies? Can we deny Dean Bundy's claim that many other courses are as explicitly concerned with Justice?[8] And will any particular law course do a good job of illuminating political science, economics, sociology, history and the rest? Professor Samuelson for one indicated he might prefer that his economics majors take another course in calculus, if they could choose.[9] In short, these suggestions at the Conference do not seem to lead to any kind of undergraduate law course promising a unique contribution—at least not one that could ever get by the resistance of Deans and the vested interests of existing departments.

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6. *Id.* at 19.
7. *Ibid.*
8. *Id.* at 36.
9. *Id.* at 55.

IV.

Let us return to the problem of what is meant by liberal education and thus to how law study can be a part of it. MacLeish gives us a start by saying that "liberal education is education which prepares a man to be himself." We should go on and say that it does this by revealing in various ways the ambiguity inherent in all experience, the paradoxes that arise as soon as we endeavor to say who we are, what we aspire to, what we can achieve, how we are to judge and be judged. Liberal education means awareness of the persistent—almost timeless—themes in our culture; it means understanding of the usable past that gives significance to our own creative efforts; it means learning something of a mythology that contains universal elements with which each of us can express our own creativity to the audience we seek to reach.

This particular way of expressing the tasks of liberal education reflects the writer's experience as a teacher of the famous Contemporary Civilization in the West course at Columbia University.[10] The course used history, moving from contrast to contrast, from Plato to Aristotle, Augustine to Aquinas, Scholasticism to the Renaissance, the Enlightenment to Romanticism, Feudalism to Nationalism, Mercantilism to *Laissez Faire* and then to the Welfare State, following a few persistent themes that were repeated again and again. There were difficulties. The course needed very broad-gauged teachers, especially as it approached the really contemporary scene.[11] But it needn't have been a history course. Law doing the same things would avoid many of the difficulties. Teachers would have to be particularly trained only in law. Less time would be required, since one rather than a multiplicity of disciplines would be involved. And law study *can* do much of what an ambitious general (and interdisciplinary) course seeks to do because it moves easily between tradition and persistent themes on the one hand and problem solving in immediate instances on the other. Reconciling the unique present with precedent, with the inherited past, is the very essence of law.

Perhaps the Conference should have asked W. H. Auden instead of MacLeish to speak for the poets. MacLeish may be too much a poet of experience, a poet of action, to suggest the closest parallels to law. Auden alerts us to possibilities when he writes, "The Way of Justice is a tightrope."[12] And he reveals the role of law when he describes the task of

10. "C.C." and a humanities sequence were a big part of the first two college years.

11. Most students voted the first year their best college course but "C.C." tended to fall apart in the second year when it lost the help of historical perspective and themes became blurred in the light of quite current events. N. Y. Times, July 10, 1961, reported that the second year of the course is no longer required of all students.

12. *Alonso to Ferdinand.*

poetry as the exploration of dualities.[13] The poet addresses himself to the question, "What is man?" This means asking how men differ from gods yet also are different from beasts. Poetry expresses the problem, always the same problem, in terms that change over time. In the age of the heroic epic the poet sang of immortality. Gods are immortal. Men die like beasts. Poets try to immortalize their heroes, and the greatest of men do finally become gods. For the Middle Ages the quality men share with gods is free will. Unfortunately, they can will evil, can sin. The divine quality in the Neo-classical Period is reason, the capacity to recognize general laws, and the poet celebrates "the rational city" and weeps at the corruption of the actual world. The Romantic poets find men like gods in the possession of self-consciousness, and are impatient when our awareness is dulled and mechanical. The images change but the essential poetic task is always the same. And seeing poetry this way helps us to see how law, too, might heighten a student's awareness of himself and his relationship to the world. Pursuing Auden's notion a step further, for example, we might say that we are now in the age of the producer, of industrial man who can split and control atoms. It is the ability to *create* our world that is the divine element in us, distinguishing us from beasts, but, unlike gods, we really don't control our creating. And why not express this in law terms? Isn't contract an effort to create our individual futures, a god-like effort? Doesn't contract law make clear at every point that we will be less than gods in the event, that not all our expectations will be fulfilled, that what we turn out to maximize may be (in T. S. Eliot's words this time) "not what we meant at all; that is not it, at all."

V.

Once we accept the possibility of teaching about our lives in law terms, all sorts of law courses for liberal education seem to suggest themselves. We can have the student ask, "Who am I?" He can probe for answers from a variety of law fields, asking, for example, in what sense a businessman is his employee, his partner, his endorser, his bailee. He may ask, "What am I, what powers do I have?"—pulling answers from property law, tax law, or the law of negotiable instruments, wondering about the privateness of private property and how much power anyone really can have over a particular flow of goods and services. The student may ask, "What am I doing?" He will find from contract or tort law that there is no simple answer, that, instead of maximizing profits, one is committing a nuisance or incurring liability for his product. Certainly the ambiguity of "fault" can be revealed by law as clearly as in an existentialist poem or a

13. We refer here particularly to Auden's brilliant introduction to the fourth volume of POETS OF THE ENGLISH LANGUAGE (Auden & Pearson, eds. 1950).

novel by Camus. All law, concerned with reconciling change and continuity, with the contrast between purpose and precedent, can in fact be made to illuminate the ambiguities of experience which are at the heart of liberal education.

Naturally, the law cannot do everything we might like it to do. Insights into the moral or aesthetic aspects of business life might be more poignant if gained, for example, from a comparison of Stendhal's "The Red and the Black" with a modern novel about a young man "on the make," with John Braine's "Room at the Top." But the law needn't do all, or do all equally well. Law can contribute a great deal to a liberal education, more than enough to justify its presence in every undergraduate curriculum. There is already room for a law course in every business school wanting to expand its nonbusiness studies. The compactness of a law course can make it easier for a liberal arts college to adopt than most other serious efforts at general education.

To return for a moment to business law, to the only widespread present use of law in undergraduate education, we need not be particularly concerned about criticizing or eliminating the traditional course. We should concentrate instead upon the possible uses of law to further liberal education—in business schools, in liberal arts colleges, and (one day, perhaps!) in the law schools themselves.