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Law as a Learned Profession: The Forgotten Mission Field of the Professional Movement

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LAW AS A LEARNED PROFESSION: THE FORGOTTEN MISSION FIELD OF THE PROFESSIONALISM MOVEMENT

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* Professor of Law, Florida State University College of Law. I prepared this paper for the National Conference on Professionalism: Can Commissions, Committees, and Centers Make a Difference? I very much appreciate the invitation of the symposium's organizers, Roy Stuckey of the University of South Carolina School of Law and Deborah Rhode of the Stanford University School of Law. My actual comments at the Conference were much briefer and more topical—a specific application, really, of the principles set out more fully and generally here. Those comments appear in this volume at page 520.

I also very much appreciate the support of my colleagues, faculty and staff, at the Florida State University College of Law in the preparation of this paper. The College of Law gave me a generous research grant, and Kristie Hatcher-Bolin, Jason Kellogg, Roman Ortega-Cowan, and Chenell Garrido provided excellent research assistance. I am indebted, too, to the faculty workshop at Temple University for the opportunity to present and discuss an earlier version. The comments of Professor Jane B. Baron, my most gracious host at Temple, were particularly detailed and helpful.

Finally, I could not publish a paper on legal professionalism in the journal of his alma mater without mentioning Julian Jacobs Nexsen of the Columbia, South Carolina, law firm of Nexsen, Pruett, Jacobs & Pollard. He has always been my model of lawyerly professionalism; he is, it is no exaggeration to say, my father in the law. Among us Carolinians, at least, it cannot detract from my praise to say that he is also my uncle, the husband of my mother's sister Betty.

No people can be both ignorant and free.

Thomas Jefferson[1]

Feast your souls on Plutarch, and dare to believe in yourselves when you believe in his heroes. A hundred such men—educated against the fashion of today, made familiar with the heroic, and come to maturity—are enough to give an eternal quietus to the noisy sham of education of this time.

Friedrich Nietzsche[2]

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1. Thomas Jefferson, *quoted in* MORRIS BERMAN, THE TWILIGHT OF AMERICAN CULTURE xi (2000).

2. FRIEDRICH NIETZSCHE, THE USE AND ABUSE OF HISTORY 41-42 (Adrian Collins trans., Liberal Arts Press, 2d ed. 1957 (1874)).

> It seems to me essential to health of our law and legal work that student, bar and bench should know that the Grand Tradition of the Common Law is our rightful heritage and needs complete and conscious recapture.
>
> *Karl N. Llewellyn*[3]

> Like all the best radical positions, then, mine is a thoroughly traditionalist one.
>
> *Terry Eagleton*[4]

I. INTRODUCTION

The current professionalism revival is well along in its second decade and, nominally at least, its second century and millennium. This phase reminds me of the paradoxical name of Mexico's long-time governing party: the Institutional Revolutionary Party.[5] If a revival—even a revolution—is to last a decade, much less a century or millennium, it must begin to take institutional forms. In terms of Weberian sociology, this is the inevitable shift from charisma to bureaucracy;[6] in ecclesiastical terms, it is the move from the tabernacle in the wilderness to the temple in Jerusalem, from the catacombs under Rome to the Cathedral in Vatican City.

This is hardly a lamentable process, though it may leave some of us longing for the heady atmosphere of the movement's more spirited early days. Indeed, the ability to turn this corner distinguishes the successful movement from the flash in the pan. And, in this respect, the professionalism movement has certainly succeeded.

If I may shift metaphors, the seeds of the movement's early message, sown in a host of reports and special commission studies, have not fallen on stony ground. Nor have they merely sprouted in shallow soil, soon to dry up in the heat of controversy or the drought of flagging enthusiasm. Rather, the seeds of the professionalism movement's first phase have grown into a fertile crop of institutions that have spread across the entire legal landscape. These seeds have taken firm root in academic professionalism centers, bar standing committees on professionalism, and state supreme court professionalism commissions.

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3. K.N. LLEWELLYN, THE BRAMBLE BUSH: ON OUR LAW AND ITS STUDY 157 (1960).
4. TERRY EAGLETON, LITERARY THEORY: AN INTRODUCTION 206 (1983).
5. *See infra* note 15.
6. *See* RICHARD A. POSNER, THE PROBLEMATICS OF MORAL AND LEGAL THEORY xiii, 190-91 (1999) (applying Weberian notions to legal professionalism).

Their fruits include periodicals, writing competitions,[7] service prizes,[8] foundation grants,[9] and, of course, last but most appreciated (at least among some constituencies), academic conferences.[10]

Even in law schools, perhaps the most conservative of the professionalism triad's components, the movement has had its impact. Professionalism components are *de rigueur* in first-year orientation programs,[11] and virtually every professional responsibility textbook contains a treatment of professionalism issues.[12] Even the law school curriculum, invariably the last bastion of academic recalcitrance, has had to open up to professionalism issues,

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7. Thus, for example, the Florida Bar Standing Committee on Lawyer Professionalism has just launched a student writing contest on professionalism. *See* FLORIDA BAR'S CENTER FOR PROFESSIONALISM, 2000 ANNUAL REPORT OF ACTIVITIES, at TAB 12 (2000) [hereinafter 2000 ANNUAL REPORT].

8. Each year the state of Florida recognizes an outstanding faculty member from an accredited law school who best exemplifies the mission of the Commission on Professionalism. *See* 2000 ANNUAL REPORT, *supra* note 7, at TAB 5.

9. The *National Conference on Enhancing the Professionalism of Lawyers: Can Commissions, Committees and Centers Make a Difference?* was funded by the Nelson Mullins Riley & Scarborough Center on Professionalism at the University of South Carolina School of Law and co-sponsored by the Keck Center on Legal Ethics and the Legal Profession at the Stanford University School of Law. *See also* LAWYERS' IDEALS/LAWYERS' PRACTICES: TRANSFORMATIONS IN THE AMERICAN LEGAL PROFESSION ix-xi (Robert L. Nelson et al. eds., 1992) [hereinafter LAWYERS' IDEALS] (describing the American Bar Foundation's 1988 Conference on Professionalism and the Foundation's support of the publication of a book of the papers presented at the conference).

10. *See, e.g.*, A.B.A. CONFERENCE OF CHIEF JUSTICES, A NATIONAL ACTION PLAN ON LAWYER CONDUCT AND PROFESSIONALISM (1999); Symposium, *21st National Conference on Professional Responsibility*, 1995 THE PROF. LAW. 1; Symposium, *1997 W.M. Keck Foundation Forum on the Teaching of Legal Ethics*, 39 WM. & MARY L. REV. 283 (1998); Symposium, *Community, Pluralism, and Professional Responsibility*, 63 GEO. WASH. L. REV. 921 (1995); *Conference on the Commercialization of the Legal Profession*, 45 S.C. L. REV. 883 (1994); Essays, 41 EMORY L.J. 403 (1992); Symposium, *Liability Insurance Conflicts and Professional Responsibility*, 4 CONN. INS. L.J. 1 (1997); *Proceedings and Papers of the Conference on Legal Ethics: The Social Responsibility of the Lawyer*, 1989 ANN. SURV. AM. L. 1; *Professionalism in the Practice of Law: A Symposium on Civility and Judicial Ethics in the 1990s*, 28 VAL. U. L. REV. 513 (1994); *Symposium on Professional Responsibility*, 42 S.C. L. REV. 783 (1991); Symposium, *The Future of the Legal Profession*, 44 CASE W. RES. L. REV. 333 (1994).

11. *See, e.g.*, 2000 ANNUAL REPORT, *supra* note 7, at TAB 5 (detailing the orientation programs at various Florida law schools and their incorporation of professionalism ideas).

12. *See, e.g.*, ROBERT H. ARONSON ET AL., PROFESSIONAL RESPONSIBILITY: PROBLEMS, CASES, AND MATERIALS 43-49 (2d ed. 1995); ROBERT F. COCHRAN, JR. & TERESA S. COLLETT, CASES AND MATERIALS ON THE RULES OF THE LEGAL PROFESSION 1-2 (1996); GEOFFREY C. HAZARD, JR., ET AL., THE LAW AND ETHICS OF LAWYERING 1036-38 (3d ed. 1999); JAMES E. MOLITERNO & JOHN M. LEVY, ETHICS OF THE LAWYER'S WORK 63-64 (1993); THOMAS D. MORGAN & RONALD D. ROTUNDA, PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY 22-25, 381-83 (7th ed. 2000); JOHN T. NOONAN, JR. & RICHARD W. PAINTER, PROFESSIONAL AND PERSONAL RESPONSIBILITIES OF THE LAWYER 74-75 (1997); DEBORAH L. RHODE & DAVID LUBAN, LEGAL ETHICS 41-53, 223-24 (2d ed. 1995); RICHARD A. ZITRIN & CAROL M. LANGFORD, LEGAL ETHICS IN THE PRACTICE OF LAW 320-24 (1995).

at least a bit.[13] One prominent academician has recommended that the law school curriculum open up a lot and has given detailed directions as to how.[14] The movement's place in the legal landscape is by no means assuredly permanent; even Mexico's Institutional Revolutionary Party has had recent trouble with competition.[15] But it is surely safe to say that, at the turn of the millennium, the movement is securely ensconced in the bar, the courts, and the academy.

I have explored elsewhere the main areas of the movement's emphasis: curbing litigational excess,[16] restoring civility,[17] and encouraging pro bono practice and other means of meeting the legal needs of the indigent.[18] This conference and a very few others[19] have deepened the study of lawyer professionalism with the deployment of interdisciplinary heavy machinery. Now I want to turn to what I shall argue is still a neglected area: the law as a learned profession.

To place my topic comfortably in the setting of this conference, let me first point out a striking irony. This conference takes the salutary step of bringing interdisciplinary scholarship to bear on the question of professionalism. In heartening contrast to law scholarship's usual bow to other disciplines, the conference's organizers have not only invited amateur interdisciplinarians like

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13. *See, e.g.*, 2000 ANNUAL REPORT, *supra* note 7, at TAB 5 (detailing the inclusion of professionalism ideas into the curriculum at various law schools in Florida).

14. *See* DEBORAH L. RHODE, PROFESSIONAL RESPONSIBILITY: ETHICS BY THE PERVASIVE METHOD (2d ed. 1998).

15. Historians often cite a contradiction in the name of the Institutional Revolutionary Party, or PRI, which won every Mexican election from 1929 to 2000. *See* Tim Weiner, *Political Machine Dependent on Power Loses Its Power*, N.Y. TIMES, July 4, 2000, at A7. However, the name "Institutional Revolutionary Party" in some ways reflects the party's history. See *id.* In its first thirty to forty years, the PRI worked to modernize Mexico. *See id.* In the last thirty years, however, the PRI has been criticized for losing its old ideals and calcifying into an inflexible institution. *See id.* Economic problems in the 1980s led to major victories by the PRI's opponents, including the National Action Party, or PAN. *See id.* In July 2000, PAN ended the PRI's 71-year reign on the Mexican presidency, "convert[ing] Mexico from a waning one-party state into a self-confident democracy whose voters are capable of ousting a government, no matter how dominant." Julia Preston, *Joy in Streets of Capital as Reign of 71 Years Ends for the PRI*, N.Y. TIMES, July 3, 2000, at A1.

16. *See* Rob Atkinson, *A Dissenter's Commentary on the Professionalism Crusade*, 74 TEX. L. REV. 259, 283-94 (1995).

17. *See id.* at 294-98.

18. *See* Rob Atkinson, *A Social Democratic Critique of Pro Bono Publico Representation of the Poor: The Good as Enemy of the Best*, 9 AM. U. J. GENDER SOC. POL'Y & L. 1 (2001).

19. *See* LAWYERS' IDEALS, *supra* note 9 (including papers presented at the American Bar Foundation's 1988 Conference on Professionalism). Scholars from other disciplines have participated in professionalism conferences. For example, the 1988 Conference on Professionalism included distinguished sociologist Eliot Freidson, who was a member of the American Bar Association's watershed Commission on Professionalism. *See* ". . . . IN THE SPIRIT OF PUBLIC SERVICE:" A BLUEPRINT FOR THE REKINDLING OF LAWYER PROFESSIONALISM, 1986 A.B.A. COMMISSION ON PROFESSIONALISM vi, 53.

me;[20] they have also led off with, and focused on, the work of established scholars in fields outside law. Surely this is an essential step; as one legal ethics scholar has said, legal scholarship needs to be put on the gold standard.[21] Yet many of our students have never had a course in these disciplines. And, what is worse, some of our leading jurists are calling for less, not more, light from allied fields.[22]

I want to sound a call for recommitment to law as a learned profession, to what Karl Llewellyn called the "Grand Tradition of the Common Law."[23] My call is not, I hasten to say, a sigh of misplaced nostalgia or a sneer of Ivy League elitism. Rather, my aim is both progressive and meritocratic. A recommitment to the law as a learned profession is the best way for all lawyers to go forward into the rapidly changing world in which the lawyers of tomorrow will practice, the best hope of maintaining and advancing what lies at the heart of all professionalism: meaningful work in the service of individual citizens and the public interest. Even more importantly, this is the only way to ensure that our law will continue its millennia-long evolution toward economic prosperity and social justice.

All that sounds quite high-flown, all too much, you may fear, like the empty rhetoric that all too often mars the professionalism movement. Let me reassure you: I mean it all quite literally and practically. I want to show you how restoring a lost element of learning to the profession of law is necessary to three vital goals: meaningful work for lawyers, economic prosperity, and social justice.

In Part II, I sketch my universalistic view of law and the kind of legal education it implies. To both, I oppose their antitheses, classic Langdellian jurisprudence and pedagogy. In Part III, I outline a critical component of Legal

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20. As proof of my amateur status, see generally Rob Atkinson, *Altruism in Nonprofit Organizations*, 31 B.C. L. REV. 501, 512-19 (1990) [hereinafter Atkinson, *Altruism*] (critiquing Henry Hansmann's economic model of nonprofit organizations); Rob Atkinson, *Beyond the New Role Morality for Lawyers*, 51 MD. L. REV. 853 (1992) [hereinafter Atkinson, *New Role Morality*] (exploring metaethical underpinnings of legal ethics); Rob Atkinson, *How the Butler Was Made to Do It: The Perverted Professionalism of* The Remains of the Day, 105 YALE L.J. 177 (1995) [hereinafter Atkinson, *Perverted Professionalism*] (borrowing literary examples to illustrate legal ethics problems); Rob Atkinson, *Liberating Lawyers: Divergent Parallels in* Intruder In The Dust *and* To Kill A Mockingbird, 49 DUKE L.J. 601 (1999) [hereinafter Atkinson, *Liberating Lawyers*] (discussing the lessons that literature can teach lawyers); Rob Atkinson, *Nihilism Need Not Apply: Law and Literature in Barth's* The Floating Opera, 32 ARIZ. ST. L.J. 747 (2000) [hereinafter Atkinson, *Nihilism*] (discussing how the law and literature movement provides a supplement to legal ethics models).

21. *See* David Luban, *Against Autarky*, 34 J. LEGAL EDUC. 176, 177 (1984).

22. *See* Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 34-35 (1992) (arguing that the emergence of law and economics, law and literature, law and sociology, and other "law and" movements has negatively affected legal education).

23. I have sounded some of these themes preliminarily elsewhere. *See* Rob Atkinson, *Br'er Rabbit Professionalism: A Homily on Moral Heroes and Lawyerly Mores*, 27 FLA. ST. U. L. REV. 137, 149-51 (1999) (arguing for legal education as expansion of liberal education).

Education in the Grand Tradition, a course in Law and the Humanities. Part IV tries to anticipate objections to that course, from both inside and outside the Grand Tradition. In conclusion, I briefly canvas the prospects of my proposal's adoption.

II. THE DOMAIN OF LAW—AND LEGAL EDUCATION

In the mythology of a secular and democratic society, we the people make the law to govern ourselves. We make our law, and our law makes us. The ultimate subject and the ultimate object of our law are thus the same: humanity, taken both individually and collectively. This cannot but remind us of the ancient wisdom of the Greek sages: The proper study of human beings is humanity;[24] humanity is the measure of all things;[25] and—more elegantly but also more imperatively—Know thyself.[26]

I suppose there could be disagreement about these points. Even for those of us who share this common starting point, the road beyond it forks at the very first step. One way is the Grand Tradition;[27] the other way, though not so well marked, is much more often taken. The Grand Tradition assumes that lawyers will be the chief custodians of the law. As such, they will have to take all of the law's great ambit—the whole wide realm of human action and interaction—as their own. Law, to do its job, and lawyers, to do theirs, must comprehend the whole human world.[28] This Paper is a call back to that nearly forsaken way. But the first step on that way is to pass—more accurately, I am afraid, to come back from—an altogether too tempting wrong turn.

A. Law's Insularity: Dean Christopher Columbus Langdell's "Discovery"

The alternative to the Grand Tradition turns from this wide, panoramic path in favor of a narrow, blinkered way—the way of law's autonomy. Law, from this perspective, is an island complete unto itself. Through this insular realm run a high road and a low road. The high road was famously laid out by Christopher Columbus Langdell late in the nineteenth century at Harvard Law School.[29] Law, for Langdell, was a science, but a very peculiar, self-enclosed

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24. ALEXANDER POPE, AN ESSAY ON MAN 17 (Frank Brady ed., MacMillan 1965) (1733-34).

25. *See* PLATO, PROTAGORAS AND MENO 28 (W.K.C. Guthrie trans., Penguin Books 1987) (1956).

26. *See id.* at 77.

27. *See* KARL N. LLEWELLYN, JURISPRUDENCE: REALISM IN THEORY AND PRACTICE 217 (1962) (discussing the Grand Tradition, or Grand Style, under which "every current decision is to be tested against life-wisdom").

28. *See id.* at 320.

29. Here I am following the standard account of Langdell. *See* Jane B. Baron, *Law, Literature, and the Problems of Interdisciplinarity*, 108 YALE L.J. 1059, 1074 (1999); ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S 35-42

science.[30] The data of Langdell's science were in the books of law, mostly the reports of judicial decisions; the lawyer's laboratory was the library, a library with no windows and highly artificial lighting.[31]

Virtually everyone agrees now that Langdell's supposed law-science was a pseudo-science, his declaration of legal independence from other disciplines, the isolationism of the ostrich.[32] But its effects are still very much with us. It gave us the case method, and with it the lingering assumption that a lawyer's principal skill is to be parsing appellate opinions.[33] More importantly, for present purposes, it seriously undermined long-standing links between law and other disciplines, both in the academy and in practice.[34]

Perhaps most importantly, Langdell's law-science gave a kind of accidental respectability to what I must call the low road of legal autonomy. If law is essentially a free-standing system of rules, then one might plausibly infer that lawyers need only know those rules. To be sure, an elite of lawyers might be needed to systematize the rules in such forms as great treatises and even greater restatements. They could be headquartered, say, at Cambridge or Philadelphia. But most lawyers, and the law schools that train them, would need only to concern themselves with the rules. Any attempt to go beyond the rules would be, in a word, unscientific, as certified by none other than the dean of the Harvard Law School. Thus Dean Langdell's high road of legal pseudo-science helped foster a low road of antiscientific, or at best credulous, lawyering that takes the law in the books on the faith handed down by the law's self-appointed high priests. The complement to the elite lawyer as Langdellian astrologer is the ordinary lawyer as fortune-teller, the one loftily charting law's self-centered cycles and epicycles, the other credulously cranking out individual client's legal horoscopes.

This is a highly unflattering, but I think entirely fair and accurate, account of what is to me, and I trust to most of my readers, alien if not enemy territory. With that brief scouting expedition behind us, let us return to friendlier, more familiar ground.

B. Law's Universalism: Legal Education in the Grand Tradition

Law in the Grand Tradition, as we have seen, takes the whole human world into its ambit.[35] But this world has two hemispheres, and the students of each, unfortunately, have not gotten along very well. I want first to identify the hemispheres, then the disagreements among their students. Finally, I want to

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(1983).

30. *See* STEVENS, *supra* note 29, at 52.

31. *See id.* at 52-53.

32. *See id.* at 57 ("Practitioners had always had some doubts about the case method, both intellectually and politically.").

33. *See id.* at 53.

34. *See id.* at 56-57.

35. LLEWELLYN, *supra* note 27, at 320.

propose a curricular reform that would either reconcile the disputants or at least allow their relatively peaceful coexistence and competition.

There is, however, a preliminary difficulty: I myself am one of the disputants. What is worse, my own position deeply colors both my identification of the two hemispheres of the human world and my proposed resolution of disputes among Grand Tradition proponents. In fairness, be forewarned—my position is essentially Milton's: the liberal Milton of *Areopagitica*'s marketplace of ideas, the republican Milton of *The Ready and Easy Way to Establish a Free Commonwealth*, the humanist Milton of *Of Education*, the pragmatic Milton of *The Doctrine and Discipline of Divorce*, and, last but maybe most importantly, the slightly heretical Milton of *De Doctrina Christiana*.

1. The Two Hemispheres of Law's Domain

My halving of the human world tracks a deep, and deeply disputed, division in liberal thought: the separation between the descriptive and the normative, the indicative and the imperative, the "is" and the "ought."[36] For my purposes, this divide separates the social sciences from the humanities. On one side, we have economics, sociology, anthropology, and psychology; on the other, moral philosophy, literature, and the other arts. History lies a bit on both sides of the line;[37] religion falls under various headings on either side.[38] The study of each side is, in my vision of the Grand Tradition, both a necessary complement of the study of the other and an essential component of legal education.

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36. *See* ROBERTO MANGABEIRA UNGER, KNOWLEDGE & POLITICS 125-37 (1975) (identifying and criticizing division); IRIS MURDOCH, METAPHYSICS AS A GUIDE TO MORALS 25-57 (1992) (identifying the distinction between fact and value). For a more sympathetic treatment of the distinction between fact and value, see ROBERT NOZICK, PHILOSOPHICAL EXPLANATIONS 535-45 (1981).

37. In my mind the best case for this division of history lies in Nietzsche's *The Use and Abuse of History*. *See* NIETZSCHE, *supra* note 2. According to Nietzsche, history serves three essentially humanistic functions: the "monumental," in giving us examples of human greatness, *see id.* at 12-17; the "antiquarian," in giving us a sense that we are rooted in a meaningful past, *see id.* at 17-20; and the "critical," in giving us the power to break with our past and shape our future from it, *see id.* at 20-22. Each, Nietzsche insists, must be tempered not only by the other, but also by a scientific history, a sense of the "truth" of history that prevents our falsifying or forgetting our past and thus misunderstanding ourselves as both its product and its improvers. *See id.* at 12-22. This distinction between humanistic and scientific history is reflected in ordinary language in the words "historical," which relates to the past and "historic," which relates to the past that is significant or influential. In German, the distinction is more clearly reflected in ordinary language from which the technical terms "geschichte" and "historie"—the significant past and the mere past—are drawn. NORMAN PERRIN, THE NEW TESTAMENT: AN INTRODUCTION 28 (1974).

38. In part, this reflects the fact that mine is a humanist world. In larger part, it reflects the fact that various aspects of religion fall under my other headings, on both sides of the descriptive/normative divide: sociology and anthropology on the descriptive side; moral philosophy and literature in the humanities; history in both, divided along the lines Nietzsche suggests. *See* NIETZSCHE, *supra* note 2, at 12-22.

a. The Descriptive Realm of the Social Sciences

The social sciences, in my scheme of humanistic law, give us the basic data about law's ultimate subject and object: us. It teaches us, for example, how our acculturation makes us more or less receptive to social norms; how legal incentives, penalties, uncertainties, and entitlements affect our "getting and spending;" and how we tend to behave, individually and in groups, at different ages, under different conditions, and in different cultures and subcultures. Civil engineers must know their metals, the tensile strengths of iron, steel, and aluminum; we lawyers, as social engineers, must know our own mettle, in ways that only the social sciences can teach us.[39]

The point of this study, from my perspective, is not to learn what we should be, or do. Rather, it is to learn how to be what we want to be, what the human limits are to human dreams and aspirations. With David Hume, I deeply doubt the true derivation of a moral "ought" from a factual "is."[40] But the merest common sense establishes that an "ought" will often imply a "can." That we do not have wings does not mean we should not fly. But it does mean that, if we mean to fly, we will have to build effective airfoils.[41] More to the

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39. Perhaps the most ambitious post-Realist effort to integrate the social sciences with the study of law was the work of Harold D. Lasswell and Myres Stuart McDougal. Harold D. Lasswell & Myres Stuart McDougal, *Legal Education and Public Policy: Professional Training in the Public Interest*, 52 YALE L.J. 203 (1943); Myres S. McDougal, *Jurisprudence for a Free Society*, 1 GA. L. REV. 1 (1966); *see also* ANTHONY T. KRONMAN, THE LOST LAWYER: FAILING IDEAS OF THE LEGAL PROFESSION 202 (stating Lasswell and McDougal's 1943 article "defines more clearly than any other document the spirit of American legal scholarship today").

40. *See* DAVID HUME, A TREATISE OF HUMAN NATURE 469-70 (L.A. Selby-Bigge ed., Oxford 1964) (1888). Hume writes:

> I cannot forbear adding to these reasonings an observation, which may, perhaps, be found of some importance. In every system of morality . . . I have always remark'd, that the author proceeds for some time in the ordinary way of reasoning, and establishes the being of a God, or makes observations concerning human affairs; when of a sudden I am surpriz'd to find, that instead of the usual copulations of propositions, *is*, and *is not*, I meet with no proposition that is not connected with an *ought*, or an *ought not*. This change is imperceptible; but is, however, of the last consequence. For as this *ought*, or *ought not*, expresses some new relation or affirmation, 'tis necessary that it shou'd be observ'd and explain'd; and at the same time a reason should be given, for what seems altogether inconceivable, how this new relation can be a deduction from others, which are entirely different from it. . . . [T]his small attention wou'd subvert all the vulgar systems of morality, and let us see, that the distinction of vice and virtue is not founded merely on the relations of objects, nor is perceiv'd by reason.

Id.

41. As this example implies, the physical sciences are also relevant to law; if we want to know the minimal level of subsistence that all agree the state should guarantee its citizens, we must know a bit about human nutrition. But I am inclined to think that the link between law and the physical sciences is more subject-matter specific than that between law and the social sciences. It may well be impossible to understand, for example, environmental law without a reasonable grounding in chemistry, physics, and biology. My point here is that it is not possible to adequately

point, if we are to effect a more just distribution of wealth, we had better understand the incentive effects of taking from the rich and giving to the poor, on both sides of the transfer.

These claims for the importance of social science to law are subject to two important qualifications. First, the social science of the past has served some very dubious masters and served up some thoroughly discredited prescriptions. We must not forget the racist anthropology of the *Plessy*-era Court[42] or the deterministic eugenics of Holmes's opinion in *Buck v. Bell*.[43] And we should remember the great irony of attacking the dismal science of *Lochner*-era economics[44] with the sexist sociology of the Brandeis briefs.[45] Dubious social science is not going to go away; our own era's trickle-down economics,[46] recovered-memory psychology,[47] and bell-curve sociology[48] are proof enough of that. But the best corrective for bad social science, at least in the realm of public policy making, is lawyers trained to recognize it and seek its correction. *Plessy* only fell when the NAACP lawyers proved in *Brown* that separate could not, as a matter of demonstrated fact, ever be truly equal.[49] Social science does not claim to be infallible, but it does offer the prospect of self-correction. We would do well to educate our students not only to recognize its characteristic mistakes but also to question its more extravagant claims.

The second qualification of my endorsement of social science for law students is at least equally important, but much more open to dispute. I maintain that social science is descriptive, not normative; it tells us what is, not what ought to be.[50] Not all its practitioners and proponents recognize this

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understand law itself without, at the very least, a basic understanding of sociology, psychology, and economics. On the other hand, this is an argument I'd be happy to lose; my losing would simply mean that legal education needs would be even broader than I myself currently insist upon, and that would be broad indeed.

42. *See* Plessy v. Ferguson, 163 U.S. 537 (1896). *See generally* STEPHEN JAY GOULD, THE MISMEASURE OF MAN (W.W. Norton & Co. 1996) (debunking scientific arguments for the ranking of races).

43. 274 U.S. 200, 207 (1927).

44. *See* Lochner v. New York, 198 U.S. 45 (1905).

45. *See* Muller v. Oregon, 208 U.S. 412, 419-20 n.1 (1908).

46. *Compare* CRAIG ROBERTS, SUPPLY-SIDE REVOLUTION (1985) (defending supply-side theory) *with* PAUL KRUGMAN, PEDDLING PROSPERITY: ECONOMIC SENSE AND NONSENSE IN AN AGE OF DIMINISHED EXPECTATIONS (1995) (criticizing supply-side theory).

47. *See* Frederick Crews, *The Revenge of the Repressed*, N.Y. REV. BOOKS, Nov. 17, 1994, at 54; Frederick Crews, *The Revenge of the Repressed: Part II*, N.Y. REV. BOOKS, Dec. 1, 1994, at 49 (critically reviewing works on recovered memory).

48. *Compare* RICHARD J. HERNSTEIN & CHARLES MURRAY, THE BELL CURVE: INTELLIGENCE AND CLASS STRUCTURE IN AMERICAN LIFE (1994) *with* Alan Ryan, *Apocalypse Now?*, N.Y. REV. BOOKS, Nov. 17, 1994, at 7, 11 (review essay concluding that "*The Bell Curve* is not only sleazy; it is intellectually, a mess").

49. Brown v. Bd. of Educ., 347 U.S. 483, 493-95 (1954).

50. *See* Lasswell & McDougal, *supra* note 39, at 213 ("Clarification of values, by relating general propositions to operational principles in representative and specific contexts, must for effective training be distinguished from the traditional, logical, *derivation* of values by philosophers. Such derivation . . . is a notorious blind alley.").

limitation. The right wing of the law and economics movement, to take an extreme example, believe that their studies can show us not only what efficient outcomes are, but also that wealth maximization is the ultimate—perhaps the sole—human good.[51] I believe that there is no such ultimate value "out there" to be found and that determining what to value, as opposed to figuring out how to get what we value, requires looking in a different direction.

b. The Normative Realm of the Humanities

It is the humanities that help us decide what we want to have, even what we want to be. They hold up for us various visions of human flourishing, both as cultures and as individuals: systematically, in the case of moral philosophy; inspiringly or monitorially, in the case of imaginative literature; all three, under constraints of factual verifiability, in the case of history.

But in no case—this is a hotly disputed point—do the humanities speak authoritatively in the sense of leaving us without individual and collective choice. In one vision of liberalism, this is only true of legal authority. For pragmatic reasons deeply rooted in Europe's early modern religious wars, the liberal state stays out of matters of fundamental norms, even though some versions of such norms may well be objectively true.[52] Another vision of liberalism—and this one is my own—doubts or, more strongly, denies that there are any such binding moral norms. Thus, the state cannot prescribe fundamental life-choices, neither because it may sometimes be in the hands of those who misunderstand those fundamentals nor because the mistaken may be too recalcitrant to correct without excessive force, but simply because there are no such norms.

c. Two Hemispheres, One World

Against the background of this admittedly broad-brush sketch, we can already see how the descriptive hemisphere of the social sciences and the normative hemisphere of the humanities complement each other. The humanities offer us a wide range of plausible and potentially desirable personal values and social goals. Constituted as we are, individually and institutionally, we plot where we want to go and what we want to be. The social sciences guide us in three related ways. First, and most basically, they help us ascertain whether the plausible is, in fact, possible. Second, they tell us what we will

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51. *See* RICHARD A. POSNER, THE ECONOMICS OF JUSTICE 60-69 (1981).

52. *See generally* JOHN RAWLS, POLITICAL LIBERALISM, at xxiv (1993) ("[T]he historical origin of political liberalism (and of liberalism more generally) is the Reformation and its aftermath, with the long controversies over religious toleration in the sixteenth and seventeenth centuries.").

have to do to get there. Finally, they tell us how much getting there will cost in terms of other, competing goals or, in economic terms, opportunity costs.[53]

In our society, of course, the relevant "we" that make these decisions are not lawyers as such, but citizens through political processes and consumers and suppliers in the market. Nor without a dramatic departure from ancient and widely shared norms would we—lawyers, citizens, or economic agents—have it otherwise. Nevertheless, someone will need to be the social repository of knowledge about where to look for ends, means, and measures. In the Grand Tradition, the repository of social information—collective wisdom, I daresay—was, in large measure, the legal profession.[54] For it to continue that role—more accurately, for it to resume that role—lawyers will have to be trained and retrained in both the humanities and the social sciences.

d. The Two Hemispheres and the Law

So far, I have dealt with the world that law governs, the two very human and closely related hemispheres of fact and value. But, in the Grand Tradition, students of the law must do more than survey the world that law governs; they must also look at the law itself, not only as it relates to particular areas of human interaction—commerce, families, and the state—but also as a general means of social regulation. This latter is, of course, legal theory, or jurisprudence. Jurisprudence in the Grand Tradition, as I envision it, must look at law from both of the perspectives we have identified: the social scientific and the humanistic. It must thus scrutinize both the empirical reality of law as a system of social control and the values law has been used to, and can be made to, suppress or advance.

2. Toward Synthesis

This assessment implies several related components of legal education in the Grand Tradition. Most obviously, the Grand Tradition curriculum would include three related courses: Social Science for Lawyers, Law and Humanities, and Jurisprudence, with this last understood as the application of social science and the humanities to law itself. Less obviously, all courses in the curriculum would be informed by relevant insights from the humanities and social sciences. To borrow from the title of Deborah Rhode's book on legal ethics,[55] the Grand Tradition curriculum would be social sciences and the humanities by the pervasive method.

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53. *See generally* MARK SEIDENFELD, MICROECONOMIC PREDICATES TO LAW AND ECONOMICS 21 (1996) (defining opportunity costs).

54. See 1 ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 280 (Phillips Bradley ed., Henry Reeve trans., Francis Bowen rev., Alfred A. Knopf 1956) (1835), for the proposition that our great issues all become legal issues.

55. RHODE, *supra* note 14.

Within that basic framework, a vast array of possible combinations and emphases are certainly possible and probably desirable. The Grand Tradition curriculum, to be true to its own core values, would have to encourage the experimentation essential to the social sciences and the diversity at the core of the humanities. Thus, I can safely leave its fuller elaboration, or elaborations, to another forum than this—and, perhaps, to more qualified hands than mine.

In the remainder of this Paper, I will sketch in more detail the contours of one particular component of a Grand Tradition curriculum: the Law and Humanities course. This is much more in my area of competence, and, I am convinced, it is much more neglected as law is currently taught and practiced. Here, too, as in the Grand Tradition curriculum as a whole, would be room for both experimentation and diversity; thus, what I offer is emphatically no more than a starting point for discussion. Indeed, it has only two fixed values: a commitment to cover in our discussion those who have made us who we are and a willingness to include in our discussion anyone who wants to help us decide who we will become.[56]

III. THE LAW AND HUMANITIES COURSE

In this Part I will outline in more detail my proposed Law and Humanities course. First, I will sketch out the goals of such a course. Then, with those goals in mind, I will sketch out its content. Finally, I want to say a bit about the placement of a Law and Humanities course in the law school curriculum as a whole.

A. Goals

The Law and Humanities portion of this Grand Tradition curriculum trilogy has several related purposes. The first, and more formal or process-oriented, is the teaching of empathy. This component is widely touted in the current law and literature movement. The second, and more substantive, goal is less widely discussed: learning systems of value other than liberal democracy and multiple possibilities of ordering values within liberal democracy. There are other, ancillary benefits, both formal and substantive: a sense of high literary craft and a common vocabulary of allusions. Finally, and perhaps most importantly, there is the prospect of pure, even transcendent, aesthetic delight.

1. Empathy with Others

It is frequently argued that lawyers, judges, and law professors need to develop the ability to empathize with others, particularly with those who are "other" in some significant way: those of another race, sex, or sexual

56. *See* Atkinson, *Perverted Professionalism*, *supra* note 20, at 219 ("We Western humanists take openness to the other to be essential to our own moral lives.").

orientation or those who are legally, economically, physically, or psychologically handicapped (or, presumably, privileged). Though this claim is made with particular insistence from the political left,[57] it is echoed on the right as well.[58] Indeed, so far as I know, no one denies it.

More controversial are claims about how empathy can be cultivated. It is sometimes suggested, or at least implied, that exposure to truly great imaginative literature is a sufficient condition. Adherents of the law and literature movement aver, or at least heavily imply, that if we read the right books, we will automatically be—in some secular sense—born again as more empathetic, and thus better, people.[59] A bit more modestly, some suggest that reading great fiction is a necessary, if not quite sufficient, condition for the cultivation of empathy.

This latter, more modest claim strikes me as plausible enough. But, for present purposes, I want to make an even more modest claim: Reading great works of imaginative literature may well be one way, perhaps among many others,[60] to cultivate empathy. I believe that has been my own experience,[61] and

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57. *See generally* RICHARD WEISBERG, POETHICS: AND OTHER STRATEGIES OF LAW AND LITERATURE 92 (1992) [hereinafter POETHICS] (discussing a literary lawyer's revelation that human empathy can coexist with his professional responsibilities); ROBIN WEST, NARRATIVE, AUTHORITY, AND THE LAW 6-7 (1993) (suggesting that developing a capacity to empathize may help lead to a method for moral criticism of law); Lynne N. Henderson, *Legality and Empathy*, 85 MICH. L. REV. 1574 (1987) (arguing that empathy can and does play an important role in legal decisionmaking).

58. *See generally* POSNER, *supra* note 51, at 123 ("[E]mpathy . . . is also politically relevant because it facilitates the resolution of conflict.").

59. *See* RICHARD A. POSNER, LAW AND LITERATURE 11-12 (2d ed. 1998). *But see* Richard Delgado & Jean Stefancic, *Norms and Narratives: Can Judges Avoid Serious Moral Error?*, 69 TEX. L. REV. 1929 (1991) (identifying and questioning this position).

60. As Jane B. Baron, *Law, Literature, and the Problems of Interdisciplinary*, 108 YALE L.J. 1059, 1066 (1999) has observed: "And even if it were true that lawyers could learn something from literature about human nature, nonrational understanding, or moral judgment, it is not clear that literature is the only—let alone the best—source of education on these matters. Why not study psychology, cognitive theory, or ethics?" Another frequently cited avenue is pro bono publico work for indigent clients. *See* Deborah L. Rhode, *Cultures of Commitment: Pro Bono for Lawyers and Law Students*, 67 FORDHAM L. REV. 2415, 2420 (1999) ("Because lawyers occupy such a central role in our governance system, there is also particular value in exposing them to how that system functions, or fails to function, for the havenots."); *see also* DAVID LUBAN, LAWYERS AND JUSTICE: AN ETHICAL STUDY 282 (1988). Luban states:

> Pro bono practitioners have a better chance to understand and represent the interests of members of an entirely different social class and background from most lawyers and their clients; to gain insight into the day-to-day problems of the poor (and of those who adopt their interests), to "see around one's own corner."

Id.

61. *See* Atkinson, *Perverted Professionalism*, *supra* note 20 (arguing that attention to literature, specifically *The Remains of the Day*, allows us better insight into others and ourselves); Atkinson, *Liberating Lawyers*, *supra* note 20 (arguing through a comparison of *Intruder in the Dust* and *To Kill a Mockingbird* that dialogue with those around us may show us the truth about them and ourselves); Atkinson, *Nihilism*, *supra* note 20 (analyzing *The Floating Opera* to support the view that developing friendships with those we meet in life helps us to understand ourselves).

presumably that is the sort of personal experience that underlies others' more ambitious claims for the transformative power of literature. We could, of course, be wrong: Perhaps our empathy came from sources other than our reading; perhaps we are not really so empathetic as we think. Even so, I think the experience of empathy through reading is widely enough shared, and likely enough genuine, to warrant recommending great books as a plausible, if unproven, source of empathy. (And, even if the prescription is not certifiably effective, it certainly seems safe).

Before turning from process to substance, I want to emphasize what is often overlooked in the frequent commendations of empathy and of literature as a means of cultivating empathy: Empathy in this sense is a skill to be learned. Like the classical, Aristotelean virtues, it is a state of the psyche in the performance of a task.[62] Once we see empathy and its cultivation in this perspective, it is impossible not to see the study of literature for the purpose of learning empathy as a form of skills training.[63]

2. *Access to Other Values*

Even if the most modest claims about cultivating empathy through literature were disproved, other advantages to studying the classics would remain. The chief among these, to my way of thinking, is exposure to other value systems—other ways of being human in the world. Even if we cannot experience these systems empathetically from the inside, as it were,[64] we can certainly see them from the outside as external observers. For example, I may not be able to feel Achilles's pain at the desecration of Patroclus's body,[65] but I can nonetheless see that he and others like him in his heroic culture—including, of course, the Trojan's King Priam[66]—felt such sentiments.

And this intellectual comprehension, even if unaccompanied by emotional empathy, is not insignificant, particularly for lawyers. As Alisdair MacIntyre has famously shown, our own value system is not monolithic, but sedimentary: It is not a neatly organized, logically coherent whole, but a messy amalgam of layers laid down in cultures as disparate as those of Homer's heroic Greece, Jesus's heretical Judaism, and the Enlightenment's ambitious secularism.[67] If we are to know ourselves, we must, in an important way, know these cultures too. If Homer was, as even Socrates conceded, the education of Hellas, then

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62. *See* ARISTOTLE, THE NICHOMACHEAN ETHICS *ll.* 1103a15-1103b25 (David Ross trans., 1986).

63. *See supra* Part III, where I try to anticipate criticisms of my law and humanities proposal.

64. *See* RONALD DWORKIN, LAW'S EMPIRE 78-83, 266-68 (1986) (distinguishing "internal" and "external" skepticisms).

65. *See* HOMER, THE ILIAD bk. xvii, 284-85 (Louise R. Loomis ed., Samuel Butler trans., 1942).

66. *See id.* bk. xxiv, at 384-85.

67. *See* ALASDAIR MACINTYRE, AFTER VIRTUE: A STUDY IN MORAL THEORY (2d ed. 1984).

we, like Socrates, must know him if we, on Socrates's injunction,[68] are to know ourselves. After all, our highest court of justice is unmistakably a Greek temple; our political classics, self-consciously neo-classical; our Gospels, translated Greek scriptures.

I say "our Gospels" advisedly. The Christian Bible was once unembarrassedly taken to be part of the common law; that is a historical fact.[69] Whether that fact is to be celebrated or lamented is, of course, quite another question. Knowing the deep roots of our normative culture is a necessary condition not just of knowing ourselves, but also of transcending ourselves. Socrates did not just know Homer; he radically took issue with him,[70] even as Jesus did Moses,[71] and Mohammed, Jesus.[72] So it should be in our own time. As Nietzsche put it, "I do not know what meaning classical scholarship may have for our time except in its being 'unseasonable'—that is, contrary to our time, and yet with an influence on it for the benefit, it may be hoped, of a future time."[73]

3. *Access to Other Characters*

The perspective that literature offers us on different values systems in the macrocosm of culture has a complement in the microcosm of individual character. We have already noted, the current emphasis in the law and literature movement on empathy with others. Here I have in mind an older, external perspective found in Dean Wigmore's taxonomy of character-types:

> And so the lawyer, whose highest problems call for a perfect understanding of human character and a skillful use of this knowledge, must ever expect to seek in fiction as in an encyclopedia, that learning which he cannot hope to compass in his own limited experience of the humans whom chance enables him to observe at close range.[74]

As Richard Posner has observed, one of the great strengths of truly classic literature is its capacity to show us others, even our enemies, sharing in our

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68. *See supra* note 26 and accompanying text.

69. *See* Vidal v. Mayor of Phila., 43 U.S. (2 How.) 127, 198 (1844).

70. *See* PLATO, *Republic*, (Paul Shorey trans.) *in* THE COLLECTED DIALOGUES OF PLATO Book X (Edith Hamilton & Huntington Cairns eds., 1982).

71. Or, in the view of his followers, the followers of Moses, chiefly the rabbinical authorities of his own day. *See Matthew* 5:17 (Revised Standard Version) (Jesus states: "Think not that I have come to abolish the law and the prophets; I have come not to abolish them but to fulfill them.").

72. *See* THE KORAN 4:163-64 (describing Islam's acceptance of Jesus as a prophet, but not as divine).

73. NIETZSCHE, *supra* note 2, at 4.

74. John H. Wigmore, *A List of One Hundred Legal Novels*, 17 U. ILL. L. REV. 26, 32 (1922) (reprinting and correcting the original essay that was published in 2 U. ILL. L. REV. 574 (1908)).

full, and fully rounded, humanity—a perspective lawyers and judges, particularly in an adversarial system, sorely need.[75]

4. Ancillary Benefits

Judge Posner, an ambivalent proponent of literature for lawyers, has identified two ancillary values that the study of literature offers lawyers and judges.[76] The first of these is "scrupulousness," which he identifies as "the search for the exact word and phrase."[77] Quoting T.S. Eliot, Posner claims that the result of this search is sentences where:

> . . . every word is at home,
> Taking its place to support the others,
> The word neither diffident nor ostentatious,
> An easy commerce of the old and the new,
> The common word exact without vulgarity,
> The formal word precise but not pedantic,
> The complete consort dancing together.[78]

Another ancillary value is concreteness, the "use of visual or tactile imagery to drive home a point."[79] Posner's claims for concreteness are both rhetorical and normative. Judges (and, by implication, lawyers) who write scrupulously and concretely are not only more persuasive; they are also more faithful to the realities of the human situation—in a word, more truthful. I suspect that Posner is overly optimistic about the extent to which these two advantages converge.[80] He repeatedly implies that if judges simply were to avoid euphemism and face the harsh facts of the world, then they (and we) would see the right answers to hard normative issues transcribed from the world out there into their opinions.[81] To be sure, we might well see the issues

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75. *See* POSNER, *supra* note 58, at 308-09.

76. *See id.* at 283.

77. *Id.* at 284.

78. *Id.* (citing T.S. ELIOT, LITTLE GIDDING Pt. V (1942)).

79. *Id.* at 285. Here Posner may well have proved one of his own principal points, albeit inadvertently. He insists that "the legal mind is insensitive to the imagery of language." *Id.* at 286. But it is a bit difficult to conjure up the image of an image driving a point home, whether one tries to picture herding or hammering. And "tactile imagery" is a bit hard to conceive, much less see—Braille, or bas relief?

80. Two of his chief critics, Richard Weisberg and James Boyd White, seem to share this view. *See* WEISBERG, *supra* note 57, at 188-213; JAMES B. WHITE, *Preface*, THE LEGAL IMAGINATION xx-xxi (1973).

81. Thus, for example, Posner faults in particular those who "think[] of abortion in abstract rather than concrete terms," drawing the general conclusion that "[i]t is dangerous for judges to lose sight of the consequences of their decisions and fool themselves into thinking that they inhabit a purely conceptual realm." POSNER, *supra* note 58, at 287-88. But one has to wonder how much the abortion debate would really be advanced by juxtaposing graphic posters of aborted fetuses to detailed descriptions of death by back-alley abortion.

more clearly, the contrasting costs and benefits in starker relief. But, as Plato argued against the poets[82] as well as the sophists,[83] rhetorical power, which particularly appeals to the emotions, can be used to advance evil purposes as well as good. Still, on the source of rhetorical power, Posner makes a compelling case for us to study at the feet of literary masters, notwithstanding what we may think of their implicit or explicit moral message.

5. *"Pure" Aesthetic Delight*

And there is, I am told, still more to reading the classics. The classics are said to be more than avenues to others' experiences or repositories of ancient culture. Indeed, so this line of thinking runs, we mistake and misuse them if we treat the classics solely as tools for improving our moral selves or our political culture. They are not merely, or even primarily, good, at least in the mundane, instrumental sense; more significantly, they are beautiful.

False modesty aside, I have to say that I seldom, if ever, experience the classics that way. But others plausibly claim that experience,[84] and their claim, I submit, is eminently worthy of our attention. It promises to take us out of, and in some sense even above, ourselves in a way that could not but make our lives richer and more meaningful. And that—at risk of lapsing back into the philistine—would make us better people in a real, if nonmoral, sense.

6. *Conclusion*

The fundamental question of legal professionalism is often said to be this: Can a good person be a good lawyer?[85] Including the humanities in the study of law offers the prospect of answering that question not only affirmatively but also optimistically. Armed with the insights of the humanities, our students may well be both better people and better lawyers.

In fairness, it must be noted that Posner adds a third "craft value": "*impartiality* (detachment, balance, an awareness of the possibility of other perspectives than the writer's own.)." *Id.* at 282. But, to continue with his abortion example, once we have seen both the physically and emotionally painful loss of a human fetus and the physical and emotional pain of being forced to carry an unwanted fetus to term, we must still choose between these two deeply unpleasant alternatives based on something other than the evidence before us, however moving it may be.

82. PLATO, *Republic* (Paul Shorey, trans.), *in* THE COLLECTED DIALOGUES (Edith Hamilton & Huntington Cairns eds., 1961).

83. PLATO, *Gorgias* (W.D. Woodhead, trans.), *in* THE COLLECTED DIALOGUES, *supra* note 82.

84. *See* HAROLD BLOOM, HOW TO READ AND WHY 29 (2000) (comparing reading to falling in love); WEISBERG, *supra* note 57, at 122 (describing the "Great Books" as "sources of profound personal joy as well as professional and human wisdom."); OSCAR WILDE, *Preface to* THE PICTURE OF DORIAN GRAY 5 (Penguin Books 1978) (1891) ("They are the elect to whom beautiful things mean only beauty.").

85. Atkinson, *New Role Morality*, *supra* note 20, at 854 & n.2 (citing supporting authority).

B. Content of the Course: Choosing (Among) the Classics

As even the most ardent promoters of the classics concede, no one could ever read them all.[86] Here, as elsewhere, the "can" conditions the "should." If we decide we should read the classics, we must perforce decide which classics to read. If choosing the classics is the first step, then the second immediately follows: choosing *among* the classics. My choices for the recommended Law and Humanities course are reflected in an emphatically tentative syllabus in my Appendix. In this section, I want to explain what must look, on its face, like the most motley of medleys.

My *grundnorm*, necessarily, is the placement of my course in the law school curriculum. Lists composed for other purposes—most famously, for undergraduate surveys[87] and life-time reading plans[88]—look somewhat different. My principal criteria for selection are the course objectives outlined above: stimulating empathy with a wide range of others, providing exposure both to the main stream of Western culture and to its principal tributaries and eddies, presenting a wide range of genres and styles, and giving some sense of those works in which the main course runs most deeply, broadly, and forcefully.

My commitment to the riparian metaphor is perhaps the most evident aspect of the syllabus. I start at the headwaters, and I take the headwaters to be plural. The three well-springs I choose—the Judeo-Christian, the Greco-Roman, and the Germanic—are certainly not the only sources, nor are they of equal influence. But, to supplement my metaphor with Alasdair MacIntyre's, each of these sources has left long and deep deposits in both our culture in general and our law in particular.

In choosing these early sources, I have given more weight to subsequent influence than to intrinsic merit. Conversely, I have chosen later works with an eye toward showing the influence of these early sources. For example, I follow the epic line running from Homer and Virgil through Dante and Milton down to Derek Walcott's *Omeros*. This particular line cannot but show that influence is not the same as imitation, even if it is not quite the struggle for transcendence that Nietzsche and Bloom so insist upon.[89] The links between Olympian gods, the Catholic and Protestant God, and god-forsaken Caribbean

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86. *See generally* BLOOM, *supra* note 84 (providing a selection of poems, stories, novels, and plays to help individuals gain an appreciation for good reading).

87. *See* DAVID DENBY, GREAT BOOKS 21-24 (1996) (providing reading lists for Columbia University's Literature Humanities and Contemporary Civilization Courses).

88. *See generally* HAROLD BLOOM, THE WESTERN CANON: THE BOOKS AND SCHOOL OF THE AGES (1994) (discussing the qualities of the classics that compose the Western cannon); CLIFTON FADIMAN & JOHN S. MAJOR, THE NEW LIFETIME READING PLAN (4th ed. 1999) (providing selections from great works of literature). *But cf.* RICHARD WEISBERG, *Law, Literature, and the 'Great Books,' in* POETHICS, *supra* note 57, at 117-18 (stating the standard law and literature syllabus "could also form the basis of any 'Great Books' course in a core university curriculum").

89. *See* MACINTYRE, *supra* note 67, at 113-15.

fisher-folk cannot but heighten difference and dissent as much as continuity and conformity.

Something similar should occur with my selection of the sonnet as the principal lyrical form. One cannot miss similarities of theme as well as form in the troubadour tradition immediately behind Petrarch and the much earlier Song of Songs and elegies of Sappho, and the form continues, with no essential variation, from the sixteenth century into our own. Yet variation of theme in this enduring form could hardly be more marked—from Petrarchan and Elizabethan pastorals through Milton's political broadsides and Donne's metaphysical meditations to Wordworth's romantic rhapsodies and Marilyn Hacker's erotic romps.[90]

A moment's glance will reveal that I have strayed fairly far from the strictly literary. This broadening reflects several of my basic criteria. It shows my preference for influence, even endurance, over excellence (though, of course, it can well be argued that the former are the best proof of the latter).[91] It also reflects that this is to be a course on law and the humanities, not merely law and literature. Hidden in that choice, however, is an implicit argument that literature itself is larger than we sometimes suppose, in two related dimensions.

In the first place, I am inclined to share Terry Eagleton's view that literature itself is not an entirely coherent category.[92] As Eagleton points out, standard and explicitly literary anthologies often contain works that fit better in other fields than in any of the canonical genres of literature.[93] One of those genres, the essay, is almost a transparent "fudge" factor; if the informal essay is a form of literature, then literature's themes, like law's dominion, cover the whole of human experience.

In the second place, I am inclined to agree with Judge Posner that moral philosophy in its prescriptive mode, as opposed to critical or analytic modes,

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90. *See* Brad Leithauser, *Tough Cookie*, N.Y. REV. BOOKS, Apr. 26, 2001, at 56, 56 (attesting the endurance of the sonnet form and the variety of its content).

91. *See* POSNER, *supra* note 59, at 7 ("These works have a measure of *universality*—it is what enables them to pass the test of time, to survive into cultures remote from those of their creation.").

92. *See* EAGLETON, *supra* note 4, at 1-16 (discussing the various aspects of literature).

93. *See id.* at 1-2. Thus, for example, the magisterial *Norton Anthology of English Literature* includes part or all of Boethius's *The Consolation of Philosophy*; Sir Walter Raleigh's report of a naval battle near the Azores; Richard Hooker's *Of the Laws of Ecclesiastical Polity*; Hakluyt's *Voyages*; John Milton's *Areopagitica*; Edward Hyde's *The History of the Rebellion*; Francis Bacon's *Novum Organum*; King James I's *The True Law of Free Monarchies*; Thomas Hobbes's *Leviathan*; John Locke's *An Essay Concerning Human Understanding*; Edmund Burke's *Speech on Conciliation with the Colonies*; John Stuart Mill's *The Subjection of Women*; John Henry Cardinal Newman's *The Idea of a University*; Thomas Henry Huxley's *A Liberal Education*; Charles Darwin's *The Descent of Man*; Friedrich Engels's *The Great Towns*; and Herbert Spencer's *Social Statics*. 1 & 2 NORTON ANTHOLOGY OF ENGLISH LITERATURE (M.H. Abrams et al., 3d ed. 1974). (In the 1993 edition, the following works were excluded: Boethius's *The Consolation of Philosophy*, Hakluyt's *Voyages*, King James I's *The True Law of Free Monarchies*, Edmund Burke's *Speech on Conciliation with the Colonies* and Herbert Spencer's *Social Statics*).

is a kind of imaginative literature.[94] With Posner and against Platonists, I doubt that philosophy can discover ultimate moral truth; with Posner and against Platonists, I doubt that any such truth exists to be discovered. But even if Posner and I are right—I would argue, especially if we are right—then philosophy has a profoundly important function: constructing coherent models of desirable lives and societies by articulating viable options for virtuous individuals and just worlds.

A final factor of selection has to be accessibility. It hardly seems worthwhile to chart the course of Western humanism if students are too intimidated to wade in, or at too great a risk of getting lost or discouraged along the way. Thus, I have tried to choose accessible works in more modern translations with more helpful introductions and annotations. Even if the Library of America's editors are correct in their belief that nothing dates so quickly as an introduction,[95] it does not follow that introductions can be safely dispensed with. Perhaps what we must have is frequently amended or supplemented introductions.

I have tried to reserve criticism of my course from both inside and outside the Grand Tradition for separate treatment. But one criticism arises, in a sense, within my course itself, and thus needs to be addressed here: My proposal is at risk of collapsing under its own weight. Perhaps the most salient aspect of my tentative syllabus is its outrageously over-ambitious scope. No one, much less a harried law student, could cover all the works I propose to include in any meaningful depth in anything short of his or her whole life.

That is the heart of the matter; a lifetime is precisely the time-frame I have in mind. The Law and Humanities course would essentially be an introduction to these works. As such, the course would present them to the student in relation to each other, to Western culture in general, and to Western law in particular. But some of these works are much too long, or too deep, to be read in their entirety, much less mastered, in any initial encounter. Thus, with respect to these more demanding works, all we can hope for is meaningful readings of selected segments, very much on the model of undergraduate literature anthologies. Those selections, like the works from which they are taken, would be based on the general criteria of the course.

But I would depart from the undergraduate anthology model in one critical respect: I would have the students buy virtually all of the works from which they read the selections. Having the whole of the work literally in hand is important in several ways. In part, this seems crucial to understanding the selection they are reading as a part of a larger, more complex whole. An important part of a reading's context is the rest of the text. In addition, having

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94. *See* POSNER, *supra* note 6, at 9-11.

95. *See* EDMUND S. MORGAN, *Persuading the Persuaded*, THE N.Y. REV. OF BOOKS, Sept. 23, 1999, at 7 (reviewing AMERICAN SERMONS: THE PILGRIMS TO MARTIN LUTHER KING JR. (Michael Warner ed., Library of America 1999)) ("The format of the series has required that there be no introduction explaining or justifying the selections and none has been needed.").

the whole work in hand should help give students the feeling that even after they have read the particular passages assigned, they still have much to do. And, of course, with the whole book in hand, they have a much easier time reading on.

Beyond that, the book's literal handiness, its very physicality, is important for another, even more basic, reason. At the risk of sounding hopelessly nostalgic, I believe that having books in hand will promote appreciation of both the utility and the beauty of books, as scholarly tools and as cultural artifacts, even works of art. I hasten to say that this appreciation need not come at the expense of an equal, or perhaps greater, love of high-tech reading materials. One can love a Lear jet and still admire a Massarati. Nor am I promoting here the bibliophilic equivalent of the Franklin Mint. One can admire a mini-van as well as a Massarati. What I have in mind are not hand-tooled Moroccan leather spines and vellum leaves tipped with gold. Rather, I am thinking of what I would call Library of America practicality: buckram bindings and acid-free pages sewn—not glued—together, the kind of serviceable student editions that Everyman and Modern Library have been producing for the better part of a century.[96]

A number of even these modestly priced hardbacks, of course, will run into some money; the books for my proposed course will predictably cost several times the price of the standard hardback casebook with paperback supplement typical of most law school courses. Perhaps it has been too long since my impecunious student days, but I do not imagine that the additional cost will be preclusive of anyone's taking the course. If I am wrong, this cost barrier could easily be surmounted. The new crop of professionalism institutions could help the course with a system of grants or loans to buy these books. Not to put too fine a point on it, this is called putting your money where your mouth is.

Furthermore, it may be possible, here as elsewhere, to find a virtue in necessity. In the final analysis, the relative costliness of the course books, along with the obvious impossibility of reading them all in a single law school course, may themselves help teach important lessons. Most basically, these books, unlike standard casebooks, should literally last a lifetime. Their content will not be superseded by subsequent developments. Their cost is, quite literally, a long-term investment. That investment, it is fair to say, will be the beginning of a home library.

The suggestion of a home library, alas, is likely to strike us as either quaint or pretentious. I hope I have banished the latter with my dismissal of leather bindings in favor of buckram. But an element of quaintness, even condescension, may remain: the faintly distasteful memory of door-to-door encyclopedia salesmen in lower middle-class neighborhoods holding out the

96. Here I have to sound a sad note. Modern Library has lately taken, alas, to gluing rather than sewing its pages to their bindings. Happily, on the other hand, Everyman and the Library of America are still holding the line.

all-too-often false promise of social advancement through self-education;[97] Harvard President Charles W. Eliot's "five-foot shelf" of books, the Harvard Classics, selected explicitly for those who lacked the advantage of an education at his, or any, college.[98]

I will return to the charge that my proposal is offensively elitist.[99] But now I want to make a somewhat different point: Today, those whom President Eliot and his contemporaries of all classes would have considered the educated elite, those who have four years of undergraduate education behind them and who are in the midst of three years of legal education, are themselves missing what Eliot hoped to put into the hands of all. As he put it:

> I hope that many readers who are obliged to give eight or ten hours a day to the labors through which they earn their livelihood will use The Harvard Classics, and particularly young men and women whose early education was cut short, and who must therefore reach the standing of a cultivated man or woman through the pleasurable devotion of a few minutes a day through many years to the reading of good literature.[100]

I cannot read this without wondering how many hopeful working-class men and women scrimped to buy President Eliot's offerings, only to find themselves too tired for even his "few minutes a day"[101] of after-hours reading and to fault themselves for a lack of Lincolnesque, midnight-candle conscientiousness. The year Eliot wrote, 1910, was in the middle of the *Lochner* Era.[102]

This very problem, and the ultimate impossibility of its satisfactory resolution, may ultimately be the most important practical lesson of the course. (I mean "practical" here in both the ordinary language sense and the sense that embodies all of moral philosophy.) The contemporary practice of law scarcely affords enough time to read the classics. In the Law and Humanities course, students should begin to see that if law, as taught or as practiced, deprives them of time for the classics, it cheats both them and also itself.[103]

C. Placement in the Curriculum

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97. For a poignant description, drawn with as much sympathy for the seller as for the potential buyer, see JOHN UPDIKE, IN THE BEAUTY OF THE LILLIES 86-108 (1996).

98. *See* Charles W. Eliot, *Introduction* to 50 THE HARVARD CLASSICS 10 (Charles W. Eliot ed. 1910).

99. *See infra* Part IV.B.

100. *Id.*

101. *Id.*

102. *See supra* note 45 and accompanying text.

103. *See* Atkinson, *Liberating Lawyers*, *supra* note 20, at 732-47; *see also* WEISBERG, *supra* note 56, at 122 (lamenting "the risk of having another generation lost to these sources of profound personal joy as well as professional and human wisdom").

So much, at least by way of justification, for the content of the Law and Humanities course; a bit remains to be said about the form in which it would be offered. For several related reasons, I favor offering this course as an elective upper-level seminar. Offering it in the first year would be more nearly ideal, but anyone who has fought the turf-wars of the first-year curriculum knows better than to approach that sacred precinct with profane intent. A mandatory course, even if not in the first year, would obviously reach the largest possible audience. But captive upper-class audiences are a decidedly mixed blessing as over a decade of teaching professional responsibility has long since taught me. What is more, offering the course to all students at the outset would probably present serious staffing problems; if there is anything more dubious than forcing law students to take a course, it is forcing law professors to teach it.

The self-selection of students for an optional Law and Humanities course admittedly presents a paradox, if not a problem: The very students who may need the course most may be the least likely to sign up. Like liberal education itself, the course may appeal mostly to those who have already learned its lessons. Accordingly, we are at risk of preaching to a choir of undergraduate English majors and Lit-Crit ABDs. But this cloud may have a silver lining: At least these students are likely to bring a high degree of commitment to the course. The interest of others may well be piqued by something I have alluded to already—the inclusion of humanities in existing courses as part of a pervasive Grand Tradition approach, particularly in the first-year curriculum and in mandatory upper-level courses like professional responsibility. Finally, as I shall argue in more detail below, other proponents of the professionalism movement can encourage students to take such courses.[104]

There is another silver-lined cloud I should mention. First, the cloud. A number of law schools, including my own, have recently adopted certificate programs in particular specialty areas:[105] environmental law and international law, to take our own new offerings as examples.[106] From the perspective of the Grand Tradition, these programs may well be a mixed blessing. Although they promise depth—including, perhaps, sounder grounding in allied disciplines—they may deliver depth only at the cost of breadth. What began, I am convinced, as a dubious marketing tool for law schools, a way for up-and-coming institutions to distinguish themselves from the pack, may become an even more dubious credentialing process for students. Afraid that they may be at a competitive disadvantage for jobs with a "mere" J.D., students may self-

104. *See infra* Part IV.

105. *See* Jeffrey E. Lewis, *"Advanced" Legal Education in the Twenty-First Century: A Prediction of Change*, 31 U. TOL. L. REV. 655, 657 (2000).

106. *See* Memorandum from the Florida State University College of Law Certification Programs, to the faculty at Florida State University College of Law (Dec. 2000) (on file with author).

select into specialty programs of little intrinsic interest to them or, for that matter, to prospective employers.

Through this cloud, I think I see a great opening for the Grand Tradition. If, as I expect, students feel compelled to specialize in something, or anything, proponents of the Grand Tradition can offer them a paradoxical option: specialize in generalization. Just as medicine's general practitioners redefined themselves as family practitioners, and lawyers in general practice created their own special bar sections, so the Grand Tradition could be made a choice among others, one "specialty" among many. If, as I concede, the Grand Tradition cannot be made the mandatory law school curriculum, then one track among others is precisely what it already is. Establishing a certificate program in its name would not, however, be an empty gesture, the curricular equivalent of officially informing students that they speak prose. For one thing, a certificate program in the Grand Tradition may help level the playing field on which its professors compete with specialty certificate programs for students. For another, the notion of "specializing in generalization" may help reduce the dubious proliferation of certificate programs to absurdity.

A certificate program in the Grand Tradition holds a final, much more important prospect: saving civilization as we know it (not to put too fine a point on it). "How the Lawyers Can Save Civilization" would make, admittedly, a pretty silly sequel to "How the Irish Saved Civilization,"[107] a title already silly enough. But the former, like the latter, has, for all its obvious over-generalization, a very real element of truth—and, as it happens, the same truth. The medieval Irish were hardly alone in saving classical civilization. But the accident of Irish (and, more generally, British) geography in combination with the institution of the medieval monasticism played a very distinctive role indeed in preserving both classical texts and habits of mind. On the very edge of the Western world in gale-lashed wastelands like the Outer Hebrides and the Skellig Rocks, tiny bands of refugee monks kept the light of classical culture burning, albeit barely.[108]

Law schools, and particularly certificate programs in the Grand Tradition, might well serve a similar, though less dramatic, function today. Even in the most elite universities, undergraduate education in the humanities is woefully underfunded and undersubscribed.[109] If the humanities are to survive as a vital part of our society, as anything other than an antiquarian fetish or a cultural adornment, their deliverer may, in a very real sense, have to be legal educators. Our program, ensconced in the relative security and remoteness of the legal

107. THOMAS CAHILL, HOW THE IRISH SAVED CIVILIZATION (1995).

108. For a popular account, no less melodramatic than my own, see KENNETH CLARK, CIVILISATION: A PERSONAL VIEW 7-8 (1969).

109. *See* James Engell & Anthony Dangerfield, *The Market-Model University: Humanities in the Age of Money*, HARV. MAG., May-June 1998, at 48.

academy, may well be part of "the monastic option for the twenty-first century."[110]

IV. OBJECTIONS AND ALTERNATIVES

Much of what I have covered, I concede, is disputed territory, and, as I have admitted, I am one of the disputants. Here I need to take up the principal criticisms likely to be made of my plan both from within the Grand Tradition and from outside.

A. Criticism from Within the Grand Tradition

The Grand Tradition in legal education, I have to admit, is not as seamless as my account in Part II might suggest. Indeed, the current near-eclipse of the Grand Tradition may have as much to do with these internal divisions as with any alternative approaches to law and legal education.[111] My perspective here, however, is more prospective than retrospective. Whatever has caused the decline of the Grand Tradition, if it is to be revived, we must attend to its intramural conflicts.

1. Disputes between the Hemispheres: Social Scientists Versus the Humanists

The deepest and most damaging division has been between those whose work is rooted in the hemisphere of social science and those whose work is rooted in the humanities. Those comfortably rooted in one realm have made expansive claims against, or cast deep aspersions upon, the other realm. Thus, for example, the Legal Realists, enamored as they were with social science, regularly dismissed those who emphasized the humanistic aspects of law as belle-lettrists and other brands of high-brow, if not supercilious, dilettantes and tyros.[112] In the days of the Realists, such claims were mostly made on behalf of psychology and sociology; now they come chiefly from economists.

On the other hand, proponents of the humanities have attacked, or counter-attacked, economists in particular and social scientists more generally as narrow technocrats, if not low philistines. These number-crunching Gradgrinds

110. This phrase is from BERMAN, *supra* note 1, at 132.

111. This is essentially the thesis of Anthony Kronman's *The Lost Lawyer*. *See* KRONMAN, *supra* note 39.

112. *See, e.g.*, Lasswell & McDougal, *supra* note 39, at 205 ("Great emphasis is put upon 'historical' studies, but too often these studies degenerate into an aimless, literary eclecticism that fails to come to grips with causes or conditions." (citations omitted)).

are said to be insensitive to basic human needs, not to mention oblivious to nobler aspirations.[113]

The basic problem here is reductionism in both offensive and defensive modes. Economists, in particular, claim, with the barest qualification, that their discipline describes everything of importance; proponents of law and the humanities respond, with equal over-generalization, that economics and its sibling social sciences explain either nothing of real importance or everything with right-wing bias. One lays claim to neither the blessedness of the peacemaker nor the brilliance of the synthesizer by suggesting the obvious—the truth lies somewhere in between.

To their credit, the economists are coming around, joined, if not led, by Judge and Professor Posner, who has acceded, albeit begrudgingly, to the importance of literary studies for lawyers.[114] From the humanist side, there are also at least some signs of rapprochement. Martha Nussbaum, philosopher by training and leftist by profession and practice, is a Law and Literature professor on loan to the "Chicago School" itself.[115] She has dedicated her recent *Poetic Justice* to none other than Richard Posner,[116] long the *bete-noire* of the law and literature movement's leftist elite,[117] with the most profuse and personal praise.[118]

As a member of the humanist camp not above skirmishing with the economists,[119] I nevertheless whole-heartedly welcome this détente. Indeed, I earnestly hope it will mature into an alliance. I need only reiterate here what I have already said above: Legal education in the Grand Tradition has two essential hemispheres, the descriptive realm of the social sciences and the

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113. *See* MARTHA C. NUSSBAUM, POETIC JUSTICE: THE LITERARY IMAGINATION AND PUBLIC LIFE xx (1995) (discussing Charles Dickens's *Hard Times*); ROBIN WEST, CARING FOR JUSTICE 181 (1997) [hereinafter WEST, CARING] ("The first 'project' of the 'law and literature movement,' both chronologically and in a sense logically is . . . to construct, at least as an 'ideal type,' a conception of lawyering which has as its center a *literary* rather than an economic sensibility."); ROBIN WEST, *A Rejoinder to Judge Posner*, *in* NARRATIVE, AUTHORITY, AND LAW 79 (1993) [hereinafter WEST, *Rejoinder*] (criticizing Judge Posner's interpretation of Kafka's works); Robin West, *Authority, Autonomy, and Choice: The Role of Consent in the Moral and Political Visions of Franz Kafka and Richard Posner*, 99 HARV. L. REV. 384 (1985) (analyzing various Kafka works as evidence against neoclassical economic theory).

114. *See* POSNER, *supra* note 59, at 7 ("I want [the law and literature movement] to flourish but not to be overrated.").

115. *See* NUSSBAUM, *supra* note 113, at xiii-xix.

116. *See id.* at xi-xii.

117. *See* WEST, *Rejoinder*, *supra* note 113; RICHARD WEISBERG, *Thoughts on Judge Richard Posner's Literary Performance*, *in* POETHICS, *supra* note 57, at 188.

118. *See* NUSSBAUM, *supra* note 113, at xii ("For his generosity in arguing with me for years (and I trust he won't stop now), his tireless energy in producing comments, and his great capacity for friendship, I dedicate this book with affection to Richard Posner.").

119. *See* Rob Atkinson, *Altruism in Nonprofit Organizations*, 31 B.C. L. REV. 501 (1990); Rob Atkinson, *Unsettled Standing: Who (Else) Should Enforce the Duties of Charitable Fiduciaries?*, 23 J. CORP. L. 655, 664-76 (1998) (criticizing Henry Hansmann's strictly economic account of nonprofit organizations).

normative realm of the humanities. Removing or diminishing either half severely harms our common, holistic cause.

2. *Disputes within the Hemispheres*

Unfortunately, as we have just seen, Grand Traditionalists have split along hemispheric lines, pitting social scientists and humanists against each other. But there is worse: Those on either side of this divide also feud among themselves. Even here, however, there is hope under the common rubric of a Grand Tradition program.

a. Social Scientists

Thankfully, something of a rapprochement, or at least détente, prevails within the social science camp. Economists, sociologists, and psychologists are recognizing the legitimacy of each other's fields and even talking with each other, if not always in a common or mutually intelligible tongue. In particular, economists are acknowledging both critiques of the psychology of homo economus and the usefulness of studying a related species, homo sociologicus.[120] From the other side, under the banner of socioeconomics, social scientists from other disciplines are, more or less respectfully, both correcting the excesses of neoclassical economics and expanding the scope of its fundamental insights into their own fields and beyond.[121]

b. Fellow Humanists

The split within the humanist camp is both more severe and less easily accounted for. It falls less among the various disciplines and departments than along the long ideological spectrum of contemporary academic politics. Within the traditional left-right polarization, of course, that spectrum refracts into an almost infinite range of shades. For our purposes here, I need only identify two broad bands and show how each can be comfortable in what might be called (with apologies to the Reverend Jessie Jackson) a Rainbow Coalition for the Grand Tradition.

Schematizing shamelessly, my fellow humanists divide on two basic issues: espousal of traditional Western values and belief in objective,

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120. *See* POSNER, *supra* note 6, at 211 ("I assign large roles, in a mature legal professionalism having a social science orientation, to other disciplines, including sociology—a traditional rival of economics.").

121. *See* POSNER, *supra* note 6, at 216-17; *see also* SECTION ON SOCIO-ECONOMICS NEWSLETTER (Ass'n of Am. L. Sch., Washington, D.C.), Nov.-Dec. 2000 at 1 (containing the schedule for annual program on the topic of "Socio-Economics and Other Schools of Thought"); Symposium, *Law and Society & Law and Economics: Common Ground, Irreconcilable Differences, New Directions*, 1997 WIS. L. REV. 375.

transcendent norms, traditionally Western or otherwise.[122] On the right—and, remember, I am painting a picture with an admittedly broad brush here—are those who both espouse traditional Western values and believe that those values have an objective foundation. This would be the view, for example, of many Christians, Jews, and Muslims; it would be shared on the secular side by Platonists of virtually all imaginable stripes. It is essentially the position of the National Association of Scholars.[123] On the left, the position on both points is just the opposite: Western values are suspect, if not explicitly rejected, and the objective foundation of any value system is doubted if not denied. If the Modern Language Association could agree on a creed, this would be it;[124] Critical Legal Studies does come pretty close to having a creed, and this is pretty much it.[125] If the aggressively ineffable and existential could be defined, these two parameters—doubts about Western values and objective norms—would capture the essence of post-modernism.[126]

(1) The Humanities' Right Wing: Traditional Values on a Transcendent Foundation

Humanism's right wing should be quite comfortable with a Grand Tradition approach to legal education—from the perspective of its left wing, uncomfortably comfortable. In the right-wing view, normative questions—legal, moral, even aesthetic questions—have right answers.[127] What is more, those answers have long since been not only discovered (or revealed), but also elaborated and articulated, in the culture (secular or religious) of the West.[128] Their principal problem with the humanistic component of the Grand

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122. For purposes of this sketch, I have in mind two particular sets of values, those associated with representative democracy and market-based economics. In some sense, virtually all imaginable values have, at one time or another, found expression in the West. On the other hand, representative democracy and market economics, in anything like their present form, are relative new-comers.

123. *See* Scott Henson & Tim Philpott, *The Right Declares a Culture War*, THE HUMANIST, March, Apr. 1992, at 10, 10-11. The NAS's commitment of Western values is explicit and unmistakable; their belief in the objective grounding of those values is neither.

124. *See* Eugene Goodheart, *Literary Study Left and Right*, SOC. SCI. MOD. SOC'Y, Jan./Feb. 1992, at 19, 19-20.

125. *See* Louis B. Schwartz, *With Gun and Camera Through Parkest CLS-Land*, 36 STAN. L. REV. 413, 435 (1984) ("CLS 'values' are avowedly subjective, based on faith rather than reason.").

126. *See* TERRY EAGLETON, THE ILLUSIONS OF POSTMODERNISM vii (1996) ("Postmodernity is a style of thought which is suspicious of classical notions of truth, reason, identity and objectivity, of the idea of universal progress or emancipation, of single frameworks, grand narratives or ultimate grounds of explanation.").

127. *See* POSNER, *supra* note 6, at 10 ("Utilitarian and neo-kantian ethics, the most influential modern schools of academic moralism in the West, both illustrate 'right answers' moral realism.").

128. *See* WEISBERG, *supra* note 57, at 121 ("The Great Books, as we understand them, are virtually the sole effective source of postmodern radical thought. No wonder the West's most aggressive rebuilders . . . have relied on these masterpieces to structure and inform their own

Tradition curriculum is that it does not, or cannot, go far enough. Fashionable leftist thought in academia generally, or legal antiestablishment principles in state law schools particularly, preclude teaching the truth as Truth to the current generation of law students.[129]

To the humanities' right wing, my answer is that of Milton[130] and Holmes[131]: *Ex hypothesi*, their truth, if it is truly true, can fend for itself in the marketplace of ideas. The real problem, from their own perspective, is not that they cannot announce their truth as sole and absolute, but that in current legal academia they cannot include it at all—nor, for that matter, can they include what they see as heresies and heterodoxies.[132] If they are right about the truth—if, in the words of one of their Gospels, knowing the truth will set you free[133]—then it should be enough to present their way as but one way among many. The rest, if they are indeed right, can safely be left to Truth itself, or the Author of Truth, or the One who is the Way, the Truth, and the Life.[134]

(2) The Humanities' Left Wing: Nontraditional Values Without a Transcendent Foundation

The position of humanism's left wing, as I have identified it, is precisely the opposite of its right. The left-wing doubts, or denies, that Western values are preferable and that any values, including their own, are ultimately right or true.[135] But their problem with the kind of humanistic course I propose is not merely opposite of right-wing humanists; it is also much more than equal. Right-wing humanists, after all, can only complain that such a course could not accord their values, and the texts that embody them, adequate deference; left-wing humanists can plausibly object that their values and their texts are being omitted and, what is worse, displaced by the very tradition that has historically repressed or excluded them—a tradition that is, at its worst, essentially repressive and exclusionary.[136]

At its most radical extreme, I have to admit, this position cannot comfortably ally itself with the Grand Tradition. At that extreme, it rejects what I—and most other Western humanists, even of the most right-wing—take as the basic commitment of our culture: dialogue about the most basic values, even—perhaps especially—with those who reject those values. As others have

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iconoclasm.").

129. *See id.* at 120 ("Movements, critics, and teachers should not avoid the most widely read worthy fiction just to satisfy some social litmus test.").

130. *See* John Milton, *Areopagitica: A Speech for the Liberty of Unlicensed Printing*, 3 THE HARVARD CLASSICS 189, 220-21 (Charles W. Eliot ed. 1937) (1909).

131. *See* Abrams v. United States, 250 U.S. 616, 630-31 (1919) (Holmes, J., dissenting).

132. *See supra* note 129.

133. *John* 8:32.

134. *John* 14:6.

135. *See* Schwartz, *supra* note 125, at 435-36.

136. *See* WEISBERG, *supra* note 57, at 118 ("Indeed, some feminist innovators in the field of Law and Literature have already taken its pioneers to task for their focus on the Great Books.").

observed, the only real answer to Socrates and, with him, the cultural heritage of the West is not an argument, but a club.[137] Stated less belligerently, it is not talking back, however disrespectfully, but simply turning your back.

It is only the latter, not any form of the former, that the course I contemplate would preclude. To put it somewhat differently, arguing against the legitimacy of every text in the Western canon and, indeed, against all the received wisdom of the West would be a completely acceptable attitude. For, again, the deepest value in the West is simply the opportunity to argue, even if over that most basic value itself, or, as Socrates said, to talk together about the things that really matter.[138]

This is not, I think, to privilege or foreground the Western tradition unfairly. I am not saying that we start with Western humanism because it carries a presumption of validity and thus wins by default unless its critics bear the burden of proof. I am only privileging Western values descriptively: These are, as a matter of fact, the roots and branches of our normative world. Humanities courses can quite comfortably accommodate not only students, but also teachers who are highly critical of the Western tradition.[139] All it asks of them is that they show us what is wrong with that tradition before they ask us to take their prescribed cures. And, as some of its greatest critics have shown, one of the most compelling criticisms of the West is holding up its values to those who preach but do not practice them.[140]

(3) The Middle Positions

In logic and in fact, the intersection of these two variables—belief (or not) in Western values and belief (or not) in the objective foundations of any values—produces two intermediate positions between the left and the right. Adherents of the first intermediate position reject traditional Western values but still believe in, or at least look for, ultimate normative foundations. This is the position of both traditional Marxists and contemporary neo-Aristotelian or neo-Hegelian critical theorists like Roberto Unger[141] and Drucilla Cornell.[142] In the law and literature movement, this seems to be the position of Robin West

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137. *See* ROBERT NOZICK, PHILOSOPHICAL EXPLANATIONS (1981).

138. *See* PLATO, *Socrates' Defense (Apology)*, *in* THE COLLECTED DIALOGUES, *supra* note 81, at *ll.* 41a-d.

139. *See* DENBY, *supra* note 87, at 124-27 (describing the teaching of Aristotle in Columbia University's first-year Contemporary Civilization course by radical feminist Ti-Grace Atkinson (as far as I know, no relation)).

140. *See* Matthew 23:27 ("Woe to you scribes and Pharisees, hypocrites!"). *See generally* SELECTIONS FROM THE PRISON NOTEBOOKS OF ANTONIO GRAMSCI 194-95 (Quintin Hoare & Geoffrey Nowell Smith eds. & trans., 1971) (explaining that utopias and rationalistic ideologies are valuable because they operate as criticism that makes possible the reevaluation of social ideologies).

141. *See* UNGER, *supra* note 36.

142. *See* Drucilla Cornell, *Towards a Modern/Postmodern Reconstruction of Ethics*, 133 U. PA. L. REV. 291 (1985).

and Richard Weisberg.[143] Adherents of the second intermediate position embrace traditional Western values yet question their ultimate foundations. This is roughly the position of Hume,[144] Holmes,[145] and, in contemporary legal scholarship, Richard Posner[146] and Richard Rorty.[147] In the interest of full disclosure, I should say that this latter position is my own as well.

If the two extremes can be accommodated within a Grand Tradition curriculum, the two intermediate positions should fit *a fortiori*, and, in fact, they have. Posner, a liberal skeptic, recognizes a limited and subordinate place for literary studies in the law school curriculum.[148] I, sharing Posner's liberal skepticism (though not much else),[149] seek a much more expansive role for humanistic studies, coequal and coordinate with that of the social sciences. Richard Weisberg, a deep critic of the Western tradition who seems to espouse fundamental norms, sees one of the richest sources of these norms and one of the strongest positions from which to question traditional values in the Western literary classics themselves.[150]

B. Alternatives to the Grand Tradition

The principle extramural critics of the Grand Tradition in legal education are, we can be thankful, less opponents of that tradition than proponents of alternative models. Even more fortunately, if we look just a bit below their differences with the Grand Tradition, we can see reasonable hope of peaceful coexistence, if not quite common cause.

Extramural critics of the Grand Tradition in legal education are an odd, if not quite unholy, alliance of Old Turks and Young Fogies.[151] What tends to unite them is a strongly avowed concern for the practical and skills-oriented, often joined with a distinct distaste for the high-brow and elite.[152] It would be

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143. *See* Atkinson, *Liberating Lawyers*, *supra* note 20, at 713 (describing West and Weisberg's search for transcendent norms in literature).

144. *See* HUME, *supra* note 40.

145. *See* Oliver Wendell Holmes, *Natural Law*, 32 HARV. L. REV. 40 (1918).

146. *See* POSNER, *supra* note 6, at 3-38.

147. *See* RICHARD RORTY, ACHIEVING OUR COUNTRY: LEFTIST THOUGHT IN TWENTIETH-CENTURY AMERICA 123-40 (1998).

148. *See* POSNER, *supra* note 59, at 5-8.

149. As I argue elsewhere, from the metaethical skeptical premise that Posner and I share, no substantive normative positions follow. As it happens, we stand at approximately opposite ends of the liberal political spectrum. *See* Rob Atkinson, *The Reformed Welfare State as the Radical Humanists' Utopia*, 27 FLA. ST. U. L. REV. (forthcoming 2001).

150. *See* WEISBERG, *supra* note 57, at 122 ("In short, some of us in the field of Law and Literature have simply not been convinced that there exist any better sources of *radical* understanding."); *see also* BLOOM, *supra* note 88, at 5 ("[I]t is a superb . . . irony that the inaugural author of what eventually became the Torah was not an Israelite at all, but a Hittite woman [Bathsheba].").

151. *See* David Luban, *The* Noblesse Oblige *Tradition in the Practice of Law*, 41 VAND. L. REV. 717, 734 (1988) (referring to Old Turks and Young Fogies).

152. *See id.* at 731-34.

grievously wrong, however, to assume that the opposition here is either entrenched or unalterable. Rather, in both halves of the extra-mural camp the Grand Tradition can find not only sympathetic spirits but also able allies.

1. The Old Turks of Langdellian Orthodoxy

The Old Turks are the rear-guard of Langdell's now more than century-old revolution; their strongest voices, in fact, are not in legal academia at all, but in the bar and on the bench.[153] Often unconsciously reflecting Langdellian paleo-radicalism, they want legal education to be practical, but practical in a most peculiar way: in a word, doctrinal.[154] Their position is an almost perfect proof of the maxim that those most opposed to theory are most committed to yesterday's theories. They accept as an unconscious article of faith that law is an autonomous discipline; to their minds, accordingly, an effort to reunite law with the rest of human knowledge, either in a Law and Humanities course or a Grand Tradition curriculum, would be a most suspect departure.[155]

At the same time, these Old Turks are, paradoxically, some of the staunchest proponents of the professionalism movement.[156] Having been educated under the dead hand of Landellian orthodoxy, which aggressively isolates law from other disciplines, they are nevertheless surprised that the practice of law often lacks the values, virtues, and civilities that they themselves try to bring to it from their personal lives, social commitments, and religious faiths.[157] They insist that professional responsibility courses offer more than "just the rules," apparently unaware that relatively few of the current generation of professional responsibility texts are exclusively, or even principally, rule-oriented.[158] They widely bemoan the passing of lawyers like Atticus Finch, apparently unaware that Atticus, by his adoring daughter's account, spent countless hours reading—and his reading included the classics.[159] They are painfully, even resentfully, aware that they themselves

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153. Perhaps the most powerful statement of their case is by Judge Harry Edwards of the D.C. Circuit. *See* Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 34-35 (1992) (arguing that the emergence of law and economics, law and literature, law and sociology, and other "law and" movements has negatively affected legal education).

154. *See id.* at 39 ("[L]aw students must also receive a doctrinal education."). Judge Edwards, however, does note that the "practical" scholarship he recommends is not "wholly doctrinal." *See id.* at 35.

155. *See id.* at 35 ("[B]ecause many of the adherents of these [" law and "] movements have a low regard for the practice of law, their emergence in legal education has produced profound and intoward side effects.").

156. *See id.* at 38 ("Law students need concrete ethical training.").

157. *See id.* at 38-39.

158. *But see* Jane B. Baron & Richard K Greenstein, *Constructing the Field of Professional Responsibility*, 15 NOTRE DAME J.L. ETHICS & PUB. POL'Y 37, 37-41 (2001) (arguing that current teaching and scholarship in "professional responsibility" remains largely "legalistic").

159. *See* HARPER LEE, TO KILL A MOCKINGBIRD 22, 94 (1960); *see also* Atkinson, *Liberating Lawyers*, *supra* note 20, at 673 ("Lee's aristocrats are always reading.").

have sharply diminished after-work hours for their families and civic causes, much less for any program of parallel reading.[160]

The Old Turks are put off—quite understandably, to my way of thinking—with the farther fringes of what I have identified as the left wing of humanistic legal scholarship. To them legal theory is likely to mean the most radical fringes of feminist theory or the "trashing" school of Critical Legal Studies.[161] It not only offers them no practical help; it seems to go out of its way to insult them and their values, when it bothers to condescend to speak in a language intelligible to them at all.[162]

Lacking time for a scholarly practice of law, the Old Turks want legal scholarship to provide them with ready answers to pressing problems in their day-to-day practice.[163] Unable to give the kind of on-the-job, in-the-firm mentoring and skills training that they feel is vital to the practice of law, the Old Turks want legal education to provide their firms with junior associates ready to hit the ground running.[164] They need to see—many of them, to their credit, have already seen—that these are worse than half-way measures. They are the academic equivalent of eating the seed-corn, and we have been about them far too long already for the safety of our common profession and the Grand Tradition of the Common Law. Most fortunately, the Old Turks' own discomfiture on these points offers a measure of hope. If we can offer plausible prospects of solutions to their very real problems, I am confident they will be more than willing help us find and implement them.

2. *The Young Fogies of Clinical Legal Education*

Like the Old Turks, the Young Fogies are typically people of boundless energy, enormous goodwill, and intense professional frustration. They typically are refugees from the Reagan era's slash and burn policy toward subsidized legal services, especially the federally-funded Legal Services Corporation (LSC).[165] They have seen the Great Society, even parts of the New Deal and

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160. *See* Edwards, *supra* note 149, at 72-73 (noting the increasing pressures and materialism of law firms).

161. *See id.* at 46-47 (discussing the "impractical" scholarship found in law review literature and exemplified in critical legal studies). *But see id.* at 49-50 (noting the potential value of the approaches and viewpoints of CLS scholars and feminist movements).

162. *See id.* at 46-48.

163. *See id.* at 42-57 (discussing how "practical" legal scholarship is both prescriptive and doctrinal).

164. At their worst, they produce documents like the *MacCrate Report*, a notorious attempt to press upon law schools training in the very skills that they and their firms are better positioned to provide, at the expense of any movement toward Grand Tradition teaching. *See* THE MACCRATE REPORT: BUILDING THE EDUCATIONAL CONTINUUM (Joan S. Howland & William H. Lundberg eds., 1993).

165. *See* Alan W. Houseman, *Civic Legal Assistance for the Twenty-First Century: Achieving Equal Justice for All*, 17 YALE L. & POL'Y REV. 369, 380-81 n.41 (1998) (discussing former legal services lawyers who continued legal services work even after federal funds vanished); *see also* Nina Bernstein, *Under Siege, Lawyers Seek New Tactics to Help Poor*, N.Y.

New Freedom, pillaged and put to the torch, and they see nothing but smoke the whole horizon round. Accordingly, they have retreated to the Ivory Tower. With traditional sources of funding sacked or under siege, they want to continue the good works they once did for deserving indigent clients in the relative financial security of law schools in the form of clinical programs.[166] Their bastion is the Clinical Legal Education Section of the American Association of Law Schools; their banner includes mandatory law student pro bono work, expanded clinical and other skills offerings in the law school curriculum, and parity of status between clinical and "regular" law school faculty.[167]

Many of us in the left quadrants of the Grand Tradition's social science and humanities hemispheres know these Young Fogies as not only political allies, but also personal friends. Both are certainly true, I want to emphasize, in my own case.[168] Having said that, however, I must sound the strongest possible dissent on a vitally important, albeit tactical, point: Unlike many of my fellow Grand Traditionalists,[169] I cannot see how clinical education, or skills training more generally, can be expanded in the current fiscal atmosphere except at the direct expense of the Grand Tradition.

Clinical education, truth be told, is decidedly a second-best way to do two vitally important jobs: educate law students and provide legal services to the poor.[170] As a social democrat and a legal educator, I have to insist that neither

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TIMES, Jan. 21, 1996, at A13 (describing "refugees" from legal services who created privately funded poverty law firm).

166. *See* Robert J. Condlin, *Clinical Education in the Seventies: An Appraisal of the Decade*, 33 J. LEGAL EDUC. 604, 604 (1983) (noting the growth of clinical legal programs in the 1970s).

167. *See* James E. Moliterno, *Legal Education, Experiential Education, and Professional Responsibility*, 38 WM. & MARY L. REV. 71, 92-98 (describing the clinical legal education movement).

168. Indeed, the main model for my "Young Fogey" is a former colleague and friend of mine, the late Steve Goldstein, who died at the age of forty-eight while serving as Associate Dean for Academic Affairs at the Florida State University College of Law. For a sample of his many virtues, particularly in the service of society's most unfortunate, see *A Tribute to Dean Steven M. Goldstein*, 22 FLA. ST. U. L. REV. 799, 799-826 (1995).

169. Professor Eleanor W. Myers of Temple University has suggested to me that I might well find sympathizers with my proposal among the proponents of the kind of "integrated" theory and practice courses she recommends in *Teaching Good and Teaching Well: Integrating Values with Theory and Practice*, 47 J. LEGAL EDUC. 401 (1997). *See also* WILLIAM H. SIMON, THE PRACTICE OF JUSTICE: A THEORY OF LAWYERS' ETHICS 1 (1998) (arguing that law schools diminish students' moral aspirations); David Luban & Michael Millemann, *Good Judgment: Ethics Teaching in Dark Times*, 9 GEO. J. LEGAL ETHICS 31, 40 (1995) (arguing that clinical education is the best way to teach legal ethics); Deborah L. Rhode, *Into the Valley of Ethics: Professional Responsibility and Educational Reform*, 58 LAW & CONTEMP. PROBS. 139, 140 (Summer/Autumn 1995) (arguing that law schools should teach legal ethics in all substantive areas).

170. This is, of course, not the orthodox view. *See* Deborah L. Rhode, *Cultures of Commitment: Pro Bono for Lawyers and Law Schools*, 67 FORDHAM L. REV. 2415, 2436 (1999) (stating that "it is hard to find anyone who opposes law school pro bono programs, at least in principle"). On the other hand, I am not alone in holding it. *See* Condlin, *supra* note 162, at 604-10

of these jobs, each absolutely critical in a liberal republic, be done at the expense of the other. It is a tragedy that some on the political right would have us provide a token of legal service to our indigent fellow citizens at the expense of educating the next generation of lawyers in the Grand Tradition. But it is a travesty that some on the political left have declared this sad pseudo-necessity a virtue.

For those of us on the political left of the Grand Tradition, this dilemma is easy to solve, at least in principle. We should work together with our friends and allies in clinical education to get them, and those of our students who are willing to make the sacrifices necessary to follow them, back on the frontlines of the war against poverty. But that frontline needs to be advanced again, as it was in their heyday, the 1960s, back into the world beyond academia. Until we can advance, we must retreat no further. We must be kind, even generous, to the refugees we have already taken in. But we can accommodate no more without risk of real damage to core values we share with them.

C. Summary

If I am not unduly optimistic both a Grand Tradition law school curriculum and its Law and Humanities component should attract wide support within the legal academy. Social scientists should welcome the Law and Social Science component and should not worry about its Law and Humanities complement. And that component should appeal to both the left wing and the right wing of humanistic legal scholars: the latter could come to praise it; the former, to bury it. Equally important, the Grand Tradition curriculum should be able to reach out successfully to two critical external constituencies, practice-oriented proponents of the professionalism movement and social justice activists in the law school clinics. The Grand Tradition curriculum will not be for everyone. But, if it is to be true to itself, it must not reject constructive dialogue with anyone.

(arguing that clinical educators lack a critical perspective and so "teach students to manipulate and dominate others as a matter of habit"); Robert Condlin, *The Moral Failure of Clinical Legal Education*, *in* THE GOOD LAWYER: LAWYERS' ROLES AND LAWYERS' ETHICS 317, 326-32 (David Luban ed., 1984) (discussing the negative effects of persuasion-mode behaviors "as a set of disembodied means" rather than as "part of a larger moral system that includes constraints on the use of such means"); Robert J. Condlin, *Socrates' New Clothes: Substituting Persuasion for Learning in Clinical Practice Instruction*, 40 MD. L. REV. 223, 226 (1981) (suggesting that clinical practice instruction encourages students to be "superficial, authoritarian, close-minded, and amoral"); *see also* Jonathan R. Macey, *Mandatory* Pro Bono: *Comfort for the Poor or Welfare for the Rich?*, 77 CORNELL L. REV. 1115, 1116 (1992) (arguing that "mandatory pro bono will not help the poor"); Alan M. Slobodin, *Forced* Pro Bono *for Law Students Is a Bad Idea*, 1 B.U. PUB. INT. L.J. 199 (1991); Jennifer Murray, Comment, *Lawyers Do It For Free?: An Examination of Mandatory Pro Bono*, 29 TEX. TECH L. REV. 1141, 1171 (1998) (considering possibility that clients served by law school pro bono program may be harmed).

V. CONCLUSION

I must, to be even minimally consistent with what I have said, submit my proposal to scrutiny under the analytic lens I have recommended—social science and the humanities. It is entirely fair to ask whether my Law and Humanities course in particular and, more generally, my version of legal education in the Grand Tradition is economically feasible and sociologically realistic. Even if it is, that is only half the question. There remains the other hemisphere, the humanities half: is this the way we want ourselves and our world to be? The very presence of distinguished social scientists among us at this national conference on professionalism cannot but remind us of what we have to gain and to lose: knowledge of our very selves, the core value of the West. In conclusion, I cannot adequately analyze where we should head and whether we will get there. But let me suggest, in the terminology if not the methodology of social science, two scenarios: the best case and the worst.

A. The Best Case Scenario

At the conclusion of my presentation of this paper, the hall will erupt in thunderous applause, and the more wildly enthusiastic among you will bear me about in triumph on your shoulders. Afterward, we will settle down, at least a little, to a sympathetic discussion of law as a learned discipline. As a result of that conversation, formalized in an ABA Special Commission appointed by President Martha Barnett, my proposal will be refined, good ideas strengthened and clarified, dubious ones toned down or dropped entirely. The Commission's report will contain action recommendations, some of which will be referred to standing committees—for example, Legal Education, Admission to the Bar, and, of course, Professionalism. One of those recommendations will consist of reforming curricula along the lines I suggest, that is, adding two new courses, Law and Social Sciences and Law and Humanities, to the existing curriculum and reemphasizing the third course, Jurisprudence. Such courses could be made a mandatory offering at all schools; even more aggressively, they could be made mandatory courses for all students. But I hope neither will happen, for reasons both ideological and pragmatic. Rather, I hope these courses will be voluntarily offered at a wide range of schools by an enthusiastic corps of professors to an eager cadre of students.

Professionalism commissions, committees, and centers can play a vital role in reviving this neglected aspect of legal education. By encouraging leaders of the bench and the bar to recommend these perspective courses, they can reduce student anxiety about the relevance of such courses to legal practice and public service. By collecting and disseminating course offerings and syllabi and by sponsoring academic conferences, the new professionalism institutions can promote intermural cooperation among law professors. By sponsoring Continuing Legal Education programs that build upon this element of the law school curriculum, they can offer practicing lawyers, judges, and legal academics opportunities to make deep learning both a lifelong and a profession-wide project. Perhaps most importantly, these new professionalism

institutions can help law schools guard against the erosion of this critical component of legal education by conflicting claims on students' time and energy.

B. The Worst Case Scenario

This Paper will, at its conclusion, be politely applauded, then more or less immediately and generally forgotten. It has, to be frank, no powerful natural constituency. It is indeed deeply elitist, albeit, I must insist, in a thoroughly Jeffersonian or meritocratic way: it offers to modern law students the French Revolutionaries' dream of a *carriere ouverte au talent.* Nor have I the inclination, much less the talent, to press it into a crusade. So, quite likely, the mountains will not move, nor will the walls crumble.

But certainly some of you of similar inclination will call or write or email me about it, and we will exchange suggestions and eventually syllabi. We will have fun with it, and we and our students—maybe even our law—will profit immensely. That, I have to say, is quite enough for me. We will not, of course, have gained the world. But, if I may paraphrase the Gospels, we may well have saved some souls, and not just ours alone. At the very least, we will have come and reasoned with our dearest poets and prophets. That, for some of them and many of us, has been the best and the most there is.

APPENDIX: A LAW AND HUMANITIES READING LIST

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            2. *Psalms*
            3. *Proverbs*
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