WATERGATE AND LEGAL EDUCATION: A COMMENT

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The large number of lawyers involved in the Watergate affair focused public attention on the moral character of men who enter the legal profession. Does the profession of law, because of its access to power in business and government and because of its financial rewards, simply attract greedy and selfish men? To answer that such men are to be found in any profession or business is to say that law is not an honorable, unique profession, or to concede that "officers of the court" should have fidelity to nothing above their own and their clients' interests. But, then, is there anything special about legal education that should elevate the moral character of students of law?

One of the first answers that comes up when discussions of this topic are held is that law schools should have courses on legal ethics. I think this is a superficial and unproductive "solution"—however desirable, independently, it might be to have more courses on legal ethics. But one does not learn ethical behavior by studying ethics; witness Jeb Stuart Magruder. Moreover, a professor can hardly "teach" someone to be ethical; any attempt would probably backfire. You "teach" ethics by setting a good example, in and out of the classroom. Yet this trite observation does not solve our problem.

Rather, we might start by asking what variables exist in the legal educational setting that might affect the character of future members of the bar. In general, there are two types of variables: control over admissions, and control over the content of legal education. I would like to raise the possibility for argument that as to both of these we have been drifting in recent years toward an ever increasing "technocratic" view of legal education and away from broadly based humanitarian values. I am of course only speaking of general trends and not the numerous *contra* thrusts of various schools and teachers, and perhaps I am overreacting to the Watergate situation. But I do see Watergate as a call to look within. Not only must the internal processes of the federal government be scrutinized, but so must the processes of education and particularly legal education.

First, as to admissions policy, the biggest trend in recent years has been to give greater and greater prominence to the LSAT's (Law School Admission Tests). These tests are seemingly neutral. They perform an otherwise drudge function—they enable law schools to "objectively" select some students and omit many others. And they predict quite well how a student will do in his first year, so they become objectively justified.

But note the effect of the LSAT's on college students. They ask themselves, what subjects should they study so that they can do well on the tests and get into law school? And among the answers are: engineering, accounting, pre-business, mathematics, the sciences in general, and maybe English. No particular premium is placed upon securing a true liberal arts education.

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Philosophy, political theory, history, sociology, psychology—these are not particularly "relevant" to the LSAT's. And so the classical liberal arts education tends to be downgraded.

Many people will say that this is an exaggeration; students in college are not *that* aware of a simple test like the LSAT's. Such a test does not determine what courses they will choose. Yet, the effect of the test is more subtle. It permeates even into the law schools, where students who are in law school, and sometimes professors, are asked by young college freshmen and sophomores what courses the latter should take in college. The answer often is, "It doesn't really matter for law school; just about anything will do." And this is basically true because it is self-fulfilling: those who do well on the LSAT's *are* the law students (and later professors) who are asked to give the advice to the freshmen and sophomores. They are the self-selected preachers of curricular relativism, and the recipients of the preaching then are left to choose *any* course. Left with such a choice, they will gravitate toward those which have some reputation of helping get into law school—accounting, engineering, and the like.

What becomes lost here is a student body that brings to the law school a liberal and philosophical awareness of the role of law in the state, the functions of lawyers and law-makers in the grander cultural and political scheme of things. These are matters discussed in the "soft" undergraduate courses in political theory, philosophy, history, and the like. And they are matters that matter less and less because of the Gresham's law of LSAT tests: Why study "soft" ideas and concepts when that isn't going to get you an additional 20 points on the LSAT?

One might object to all this that the classic liberal arts education in the humanities is no guarantor of moral character. Of course, this is true. But, again, all we can work with are variables. We cannot tell parents how to bring up their children, and thus the greatest opportunity to help (or hurt) the development of moral character is *ultra vires* the educational establishment. But if we believe that a liberal arts education is important in widening the mental horizons of students and helping them to put various kinds of subject matter—such as law—in perspective, then we should reevaluate both the content of the LSAT's and the amount of "weight" given to those scores in admitting students to law school. Watergate in a basic sense is testament to the narrowness of perspective of high officials (mostly lawyers) in the government. Obsessed with daily "power" concerns, they apparently never questioned where the entire ship of state was heading. None of the minions surrounding Richard Nixon gave any sign of being a philosopher, a quoter of poetry, a lover of arts—anything, other than a trained technocrat.

The second class of variables over which we have some control is the content of legal education. Here, again, I would argue that we are being shaped by another "test" whose effects are strong though subtle. This test occurs at the other end of legal education—the bar admissions tests. Look at it from the viewpoint of a student. The student is in law school because he managed his pre-law affairs correctly—he took the right courses to get a high score on the LSAT. Now he will face in three years or less another major test, the bar admission test. Can he afford to take courses in law school that will not help him prepare for the bar? Yes, he can take some courses like that. But, basically, he would be a fool if he didn't take certain courses that are said to be important preparations for the bar exam. And if

he asks his professorial adviser, he will in most cases be reinforced in his belief—particularly if the adviser teaches (and deeply believes in) a basic "bar-preparation" type course.

Perhaps the direct effect of bar admission tests is greater as we go down the scale from the top law schools to the "trade schools", but I am arguing here that the effect, direct or indirect, is felt by all. And even the "trade schools" are not to be ignored; they provide us with the bulk of our lawyers in society. Moreover, in recent years the effect may be increasing for all schools. More and more law professors are becoming extra-curricular "instructors" for bar-review courses, thus enhancing the legitimacy of the bar-exam procedure. And the exams themselves are becoming somewhat broader in scope and conception (which in itself is surely to be applauded), thus increasing the "notice" law schools take of them. But the exams will take hundreds of years before they become so broad as to include questions (or ask for essays!) on jurisprudence, interdisciplinary studies, legal history, or public international law.

The result of bar-exam prominence is obvious to state: a feeling that the "real" law is the commercial law requested on bar exams, while "soft" law are those other "marginal" law school subjects that deal with the "broad" questions. Surely if we deplore this result, we should make a concerted effort to fight the bar-exam syndrome—one interesting recent development being the movement to admit graduates of law schools directly into the bar without having to take the exam.

A non-test-related development in recent years is the increasing number of "legal clinic" courses in law schools. I am a great enthusiast of legal clinic, in moderation. Some such exposure gives the law student a greater "feel" for his subject and a greater love for the law than any comparable classroom experience. But the trouble is that, like an attractive hazard, students who get into legal clinic want more and more of it and often get carried away by doing "real law" (and at the same time avoiding having to take courses). The result is an encroachment on the amount of legal education that we have a chance to impart before the student leaves us forever. And a second result is that the "here and now" aspect of legal clinic experience can entice a student away from the longer-range and broader areas of study such as society and the law or legal history or jurisprudence. (In some cases the reverse is true, especially when—by chance—a student gets involved in "philosophical" problems in his particular legal clinic experience.)

Bar exams, LSAT's, and legal clinics all have a neutral-sounding claim to make for themselves, and a kind of attractiveness and "realism" which is hard to combat in the short run (and three years of law school is definitely "short-run"). As we move away from numerical grades in law school, the mathematical objectivity of a bar exam gains in prominence and the feeling of doing something "real" for real clients in a legal clinic casts a spell of its own. These three items (and there are others; I don't claim to attempt to be exhaustive) are exerting a profound influence on the quality of legal education, an influence which, I believe, can be away from the mind-expanding traditional role of liberal arts. Law is becoming increasingly technical; technical proficiency is winning as against deeper concerns. Legal education is tending to become training in "how fast can we get there?" without asking "where are we going?" Or so it appears to me, and I might simply have taken Watergate too personally.