

# Law School as Liberal Education

Sherman J. Clark

## Introduction

The president of a liberal arts college, if asked why college is worthwhile, would be able to respond on several levels. He or she would certainly say something about the value of the degree as a credential to help students get a job or get into graduate school. In addition, he or she would likely emphasize the professional value of the skills and capacities developed through a liberal education, which can help students succeed at work or in graduate school. More deeply, however, we would expect that he or she would have something to say about the intrinsic value of the education and experience itself—why a thoughtful person might want to go to college, apart from the work it might help one get or do.

I believe that something similar can be said about law school. The legal academy and profession are confronting difficult questions about the value of legal education—about whether and how law school is worthwhile. Most of this conversation appropriately focuses on the commercial and professional value of a legal education because that is the main reason people go to law school—to qualify and prepare for careers. Here, I hope to add to the conversation by considering a set of ways in which law school, like a liberal arts undergraduate education, may be valuable to a thoughtful person apart from its instrumental value in qualifying and preparing one for work. How might legal education help one to thrive, to live a full and satisfying and meaningful life?

I recognize that framing the question in this way may create some skepticism. Indeed, vague talk about liberal education in the face of concrete realities, such as escalating tuition and unclear job prospects, warrants skepticism. Moreover, thinking about law school and thriving requires a willingness to think about what it means to thrive: Who are we to say what it might mean for any given person to live a full and satisfying life? But if we are to be thoughtful about the impact of law school on the quality of lives, we must be willing to think at least tentatively about what makes for quality in life. All we can do—indeed, what I think we have an obligation to do—is to try to be as thoughtful as we can about the ways in which legal education also may be valuable education for life, even if not every student will appreciate that deeper value, and even if it proves more difficult to describe than its more obvious professional benefits.

**Sherman J. Clark** is Kirkland & Ellis Professor of Law, University of Michigan Law School.

Here then is a tentative starting point, two closely related things a thoughtful person might consider components of a full and rich life: First is meaning and purpose, a sense that one's life is not pointless but has some significance, and is, if lived well, worthwhile; and second is understanding and appreciation of the world, the sense that the world in which we live is not a random mess, but makes sense, and is, if seen well, beautiful. Granted that these are things worth having, how can law school help? I suggest that legal education can develop the capacity to see and understand things better and in ways that can help one live meaningfully and well.

I do not mean that law school should focus on these things directly; we should not replace or even supplement contracts and torts with classes on the meaning of life or the beauty of the cosmos. Law school must teach law and lawyering and nothing I say here is meant to deny that law schools above all must provide professional training. Indeed, my claim is that it is the very study of law and lawyering that can develop the capacities and habits of mind that, in turn, can help one wrestle with deeper issues. Nor is it a question of "balancing" the professional and personal elements, as perhaps by mixing in some "law and \_\_\_\_" or theoretical classes, along with practical and doctrinal classes. Indeed, I believe that the dichotomy between practical training and the development of deeper capacities is a false one. Rather, the very education that trains one for work as a lawyer also, and for overlapping reasons, can prepare one to thrive as a human being. Here I hope to explore how that can be the case.

I also recognize that many students do not experience law school as something that can nourish one's inner life; they are more likely to describe law school as soul-crushing than as soul food. In response, first of all, some difficult and demanding work is just part of the process; some of the discomfort students feel in the classroom may be evidence that the process is working. Lung-busting sprints build wind; muscle-exhausting weight lifting builds strength. More to the point, we hardly can expect students to make the most of law school unless they see what it is possible to make of it. If we hope to encourage students to understand and experience law school as something with potential intrinsic human value, we need to try to articulate what that value may be.

We could focus on how a legal education can be put to work in public service and effective citizenship. This is, of course, a key value of legal education and a crucial reason why many students go to law school—to be useful to others, or to make useful change in the world. Thinking of law school as professional training need not mean thinking of it, or putting it to work, selfishly. I grant and will return to this point. First, however, I want to think about how legal education may be worthwhile to students themselves. That said, I recognize that to talk about individual thriving as something distinct from public service and citizenship may be misleading. One way to give meaning to a life may be though public service and participation in a community. If so, and if meaning is, indeed, central to thriving, then legal education may help students to thrive

by enabling them to better serve and participate. Granting that, here I hope to consider another, less-obvious but equally valuable set of ways law school may help one thrive—by helping to build capacities more personal than public. I will return to the potential other-regarding manifestations of these traits. My primary focus, however, will be less on what these capacities may help one do or accomplish in private or public life and more on what they may help one see and appreciate in both.

### **“A Certain Blindness”**

The material of the law may be doctrine, procedure, policy and the like but the central activity of the law is persuasion. Whether arguing to a judge or jury, counseling a client, speaking to fellow legislators or negotiating a deal, lawyers must bring to bear substantive knowledge and professional skills not merely in the abstract but also in ways that will resonate with those they must reach. Law school, therefore, is not just about analysis but also argument—not just about policy but also and, essentially, about persuasion.

And while the material of persuasion may be logic, reason, and the construction of arguments, the heart of persuasion is comprehension. Every lawyer and negotiator knows that the most well-informed and well-constructed argument will not persuade unless it speaks to what matters to the person it must reach. It must find or make space in the world view of the individual to be persuaded. And to speak to what matters to others first requires an understanding and appreciation of what matters to them. We cannot make space in the world views of others unless we can see the world as they do. Doctrinal training can help us make logical legal arguments but we will not make persuasive arguments unless we confront what William James called “a certain human blindness”<sup>1</sup>—our inability to imagine the world from the perspective of others and understand and appreciate what matters to them and why.

This capacity, whether one calls it sympathetic engagement, intellectual empathy, or simply putting oneself in the shoes of another, obviously is not only valuable to lawyers. Negotiators, leaders of all sorts, even salesman, know that it is essential to understand what matters to, and, thus, what might move, motivate, or reach those with whom they must work. But this capacity is central to the lawyer, whose work is persuasion, and whose primary tool is argument.

This is one reason we teach as we often do—pressing students to make and respond to arguments, to articulate and to defend alternate positions, and to come to terms with the views other than their own. This also is one reason we value a diverse classroom, in which students encounter a range of views. But what classmates do not provide, we as teachers do: We articulate competing views, play devil’s advocate, and demand that students come to terms with important issues not just from their own particular perspectives but also from

1. William James, *On a Certain Blindness in Human Beings*, in *William James, Talks to Teachers on Psychology and to Students on Some of Life’s Ideals*, 229 (Henry Holt and Co. 1899).

the perspectives of others. This is a way of learning the raw material of the law, of course. But more than that, it is a process of developing the ability to persuade, which, in turn, requires, and, thus, can engender, the ability to comprehend.

This capacity is as valuable in life as in law and not just because it can help us persuade people. More deeply, thinking well about what people care about and what things mean to them calls upon us to imagine more broadly what might matter and what it is possible for things to mean. James aimed to help us feel “how soaked and shot-through life is with values and meanings which we fail to realize because of our external and insensible point of view.”<sup>2</sup> And because, as James recognized, we never can enter fully into the perspective of another, this is as much an imaginative as intellectual capacity, calling on us to stretch our minds to imagine different ways of seeing the world. Our work, thus, demands from and can develop in us the ability and willingness to triangulate our life and world from the imagined perspectives of others. It thus can enrich and broaden our sense of the possible. And if thriving involves in part a search for what can or ought to matter in life and for what life does or can mean, this capacity, albeit developed for professional persuasion, is a valuable personal capacity, indeed.

### **Making Sense of Experience**

Persuasion in and about the law is not merely about what different people want or think ought to matter. It is also, and fundamentally, about rooting our arguments in relevant authority—text, precedent, tradition and the like. Indeed, experienced practitioners sometimes advise new lawyers not to make “policy arguments.” And this is good advice, at least to the extent that it reminds practitioners that judges, for example, are unlikely to care what a particular lawyer thinks the law ought to be. But every lawyer also knows that authority rarely resolves difficult questions in mechanical fashion. Or, more precisely, we know that the many questions to which authority gives an unambiguous answer can be resolved by any lawyer or without much help from a lawyer at all. What will come to our attention as lawyers, and call upon our training and talents, are those situations in which law clearly matters but in which it is not clear what the law is.

So we learn to argue about what the law is and means. In ways that vary widely in varying circumstances, we learn to think about the relationship and connection between authority and outcomes—the meaning of an enactment, the reasons for a rule, the scope of a precedent, the relevance of a tradition or practice. We are constantly engaged in a process of finding or giving meaning to what we have said and done. We also argue about what considerations appropriately give meaning in various contexts. We sometimes, for example, appropriately emphasize the formal meaning of texts. But we sometimes necessarily broaden the inquiry to include the larger context in which a

2. William James, What Makes a Life Significant, *in* James, Talks to Teachers, *supra* note 1, at 265.

particular authority must be understood or the ends it should be understood to serve. More broadly still, this is also, if often implicitly, a process of continuous self-definition. Thinking well about the meaning of what we have said and done calls upon us to think deeply about our community itself.

Legal argument, thus, calls upon us to examine past events and decisions, find meaning or purpose in them, and think about how they apply to present and perhaps unanticipated circumstances, with an eye to the future. So this, too, is what we require of our students in the law school classroom. Granted, we often make space for wide ranging, normative argumentation about what the law should be and why, just as we spend substantial time simply explaining or requiring students to explain the concrete operation and application of legal rules and principles that may be unambiguous but can be complex. But more often, and steadily, we press our students to weave these two threads together in the way that legal argument demands—to root argument in authority, to ground policy in precedent. We require students to think and to argue about how what we have said and done illuminates what we want or need and who we are, and, thus, to guide what we should do or decide.

This habit of mind is as essential a part of making and finding meaning in life as it is of making and interpreting statutes and cases. It is the awareness that we are neither fully defined by nor fully free from what we have decided and done; it is the capacity to embrace and deal with this difficult reality. Each of us, for example, must think about which among our past words and deeds we will embrace as emblematic of who we are and why. More broadly, we can learn to take responsibility for the significance of what we have said and done and whether and how our actions and experiences define us and help us understand our lives. As lawyers, what we learn do in the context of public life, we can draw on in our own lives. And if one aspect of living well and fully is to understand one's life not as pointless but rather as having some significance, some meaning, then this capacity, too, is of as much value in life as in the law.

### **The City and the Soul**

It might seem as if the context in which law addresses these questions—questions of what can matter and what experience can mean—is far removed from the context in which they must be addressed in life. But this distance can be an advantage, as in when mapping difficult terrain one might welcome a chance to look at it from high ground. Legal argument looks for meaning at the level of the polity, and, thus, may not often speak directly to questions of personal thriving. But this wider scale can give one a sense of what is possible and of the larger context in which a particular life might be meaningful. More to the point, it can build the habit of mind, necessitated by the demands of legal argument, to think about difficult issues not just from various perspectives but also at different and mutually illuminating scales.

It is no coincidence that the most important book about justice and government is also the most thought-provoking book about individual thriving. Or, more accurately, the most thought-provoking book about

thriving is framed as a book about justice and government. Plato's *The Republic*, although often described as an elucidation of the ideal city, is in fact an extended metaphor for the soul. In the process of redefining justice as a form of internal balance conducive to human thriving, Plato's Socrates suggests that one might better read the fine print of a just man by looking to see whether some of the same things might be found writ large in an imaginary just city. What follows in *The Republic*, however, is neither a treatise on the ideal state nor a systematic examination of the relationship between the city and the soul but rather an extended and often exasperating conversation about both. The participants, and the reader, are forced to wrestle with and argue about what can matter at the level of both the city and the soul, how the parts of the each fit together, how they reflect or construct each other.

Law school is or can be this sort of conversation, as well. In some ways, the law teacher is at a disadvantage, as compared to Socrates, in our efforts to foster this sort of conversation. We do not have the luxury of creating imaginary worlds for pedagogical purposes. Our students need to know the actual law of our actual world. But this, too, is an advantage. We are forced to anchor our thinking in real questions and to confront what really matters or ought to matter as we address those questions, which requires and enables us to think more clearly. Often the thinking proceeds from the private to the public, as it were, as we consider what private reasons ought also to count as public reasons. But the learning goes both ways, because thinking about which of our individual concerns also ought to be public reasons inevitably requires us to think more deeply about our individual concerns. To think well about what ought to matter in law and politics, we must think about what matters to people. Again, just as we do not simply translate private concerns into public life, neither do we simply take what we have seen to matter in law and apply it to the personal search for meaning. Rather, we think more deeply about both private and public life by seeing each from the perspective of the other.

Rich legal thought, thus, is a process of constantly altering not just the angle from which we examine things but also the distance from which we do so. As an art lover might look closely at a painting, then step back for perspective; we examine life up close as we consider what matters to people, then from the broader remove of the law as we consider how these concerns ought to matter in public life. And as the art lover, having stepped back and gained perspective, might then move close again, equipped now with a new set of insights and questions demanding a new and closer look, so, too, we, having thought about what can matter from the illuminating remove of law and politics, may be better equipped to consider more closely and well what can matter in life.

### **The Socratic Method**

Law students would be neither well-satisfied nor well-served if constantly left with as much fundamental uncertainty as is the inevitable and intended

consequence of Plato's Socratic dialogues. Some things about the law are clear; students must know what those are. But the law school classroom rarely offers as much certainty as students might desire; this, too, is part of the way legal education works. The Socratic questioning and answering central to the law school classroom aims to overcome the tendency to rely on easy but inadequate answers to hard but unavoidable questions. It requires us to become comfortable with, or at least capable of, confronting uncertainty.

Crucially, what we seek is not the murkiness that can come from confusing things that could be clear nor from mucking up something shallow until it is murky enough to seem deep. That sometimes happens, unfortunately. That has a name: bad teaching. Rather, the uncertainty we acknowledge and seek comes from seeing clearly how deep something really is. This capacity, which might better be called intellectual humility, is not the opposite of clear thought but a consequence of it. It is at the heart of Socratic wisdom.

This capacity is essential to the study and practice of law, because important legal questions often do not have clear and easy answers. Despite our best efforts to do as described above—to consider issues from varying perspectives, to make sense of sometimes ambiguous authority and experience, and to evaluate potentially competing public and private concerns—we often will be left with disagreement and uncertainty in the face of difficult legal questions. Yet they often must be answered, at least tentatively. Law, perhaps unlike some fields of study, does not allow us simply to dismiss issues because we cannot nail them down with the certainty we might prefer. It forces us to inhabit that space between arrogant certainty and empty relativism.

And this, too, perhaps is the space where a meaningful life is found and lived. We cannot find what might matter in and give meaning to our lives if we lack the courage to question our own assumptions—to reject the false solace of an unexamined life. This is what Socrates meant when he described such a life as not worth living for a man.<sup>3</sup> And courage is, indeed, a substantial part of it. Melville put it this way, in his remarkable “six-inch chapter:”

Glimpses do ye seem to see of that mortally intolerable truth; that all deep, earnest thinking is but the intrepid effort of the soul to keep the open independence of her sea; while the wildest winds of heaven and earth conspire to cast her on the treacherous, slavish shore? / But as in landlessness alone resides highest truth. . . .<sup>4</sup>

Nor, however, is one likely to find much meaning in drifting merely, in an easy and empty relativism, or in the easy and inadequate response that “it depends.” As law professors have been asking students for generations: it depends on what? What we need is the willingness and ability to ask hard questions rather than duck them—to wrestle with what we know we cannot pin

3. Apology 38a. (ὁ δὲ ἀνεξέταστος βίος οὐ βιωτὸς ἀνθρώπῳ). Bryn Mawr Greek Commentaries Edition, Bryn Mawr Collegem Gilbert P. Rose, Ed. 1989, (translation by author).

4. Herman Melville, *Moby Dick* 108 (Oxford World Classics Ed., Avenel Books 1985) (1851).

down. This capacity is central to the work of law, and thus to legal education; and it is perhaps even more central to the work of life.

Now this may all seem rather abstract. Perhaps it would be preferable if I offered, instead, a list of specifics that legal education can help students learn about human thriving. But that would miss the point. It, again, is not that students learn about life in law school but rather that legal education can develop capacities in them that, in turn, can help them learn and thrive throughout life.

By analogy, visitors could study Italian before spending time in Italy, so as to make the most of their trip. By speaking the language, they could talk more with people, understand and appreciate the culture better, learn more and have more fun. While learning the language before the trip, they might well learn something about Italy; but that would be only a hint of the value in doing so. Similarly, in law school, students might learn something about what can give meaning to a life or how they might see beauty in the world. But that is hardly the limit—nor, indeed, the point. The main thing they actually learn in law school is the law. The deeper value—the way in which law school can be a liberal education—lies in the capacities they can develop, and in the things those capacities will help them see and appreciate on their journey.

At some risk of overworking the analogy, it is hardly necessary to learn Italian before traveling to Italy, and not everyone will be eager or indeed able to do so. The value of that effort will depend in part on the purpose of the trip. Are you just going to Italy for business—to do deals or to earn money? If so, you probably could get by with a phrase book or by mostly dealing with Italians who speak English. Or do you aim to learn as much as you can and to appreciate and enjoy as fully as possible what you see and hear? Ask the same question about the capacities potentially developed by legal education in the context of life. If you just want to make deals and earn money, the deeper capacities, while potentially useful, are inessential; you probably can get by treating law school as mere professional training. Or is it your hope to make the most of this journey as well?

### **Insight and Ethics**

I began by observing that those thoughtful about liberal undergraduate education are able to speak to its broader potential benefits. Andrew Delbanco, for example, in his illuminating defense of liberal education, describes a set of capacities potentially developed in college:

1. A skeptical discontent with the present, informed by a sense of the past.
2. The ability to make connections among seemingly disparate phenomena.
3. Appreciation of the natural world, enhanced by knowledge of science and the arts.
4. A willingness to imagine experience from perspectives other than one's own.

5. A sense of ethical responsibility.<sup>5</sup>

It is noteworthy that Delbanco's list overlaps almost completely the ways in which legal education can enhance one's capacity to thrive. In particular, four of these five capacities are essentially ways of seeing—ways in which a liberal education equips one better to understand and appreciate others and the world. Law school, seen in this light, is, indeed, a form of continued, albeit more-focused, liberal education of just this sort.

There is, however, a notable outlier among the traits described by Delbanco. It is the last listed—a sense of ethical responsibility. Unlike the others, this is not a trait that can be easily re-understood as a component of an internal capacity for understanding and appreciation. It points outward and refers as much to conduct as comprehension. It is also the trait that so far finds no parallel in the account I have offered here, and, as such, it highlights a potential lacuna in this account and points to a deeper potential critique of the way I have described the benefits of legal education. One might suggest that my account is selfish, lacking the other-regarding element that would call our attention not just to questions of legal ethics but also to broader concerns of social responsibility.

I could demur, given my focus on individual thriving, and simply say that, in addition to the study of the law itself and the thriving-enabling capacities that study can engender, legal education ought also to include an ethical and social-responsibility component—presumably in the form of some combination of external rule-based constraints or internal deontological-ethical principles. But to those who would prefer to see ethics as an integral part of, rather than merely a constraint on, the study and practice of law this would not suffice. And it need not.

In fact, just as the personal and human benefits of legal education can emerge from, rather than require compromise with, the professional training central to the law school mission, so too do at least some ethical considerations. The thriving concerns highlighted here may actually serve as a link between doctrine and ethics, a way of both anchoring ethical thought in the study of law and encouraging ethical behavior in the practice of law. In particular, learning to think better about what matters may be more effective than ethical rules or deontological constraints in helping us treat others more justly.

This might be the case if understanding manifests itself as empathy, and, in turn, as more just treatment of others. James argued that the certain blindness he described—the inability to see things as others do and understand what matters to them—“lies at the root of every stupid and sanguinary mistake that rulers over subjects make.”<sup>6</sup> If so, and if liberal education can alert us not just to this blindness but actually to help us see better, then perhaps even an initially self-regarding search for understanding and meaning can lead

5. Andrew Delbanco, *College: What it Was, Is, and Should Be* 3 (Princeton Univ. Press 2012).

6. William James, *What Makes a Life Significant*, in *Talks to Teachers*, *supra* note 1, at 265.

to better other-regarding action. Perhaps. But it is also possible that greater understanding of what matters to others will be put to work in the service of profit or exploitation, as with salesmen or advertisers. If I am more sanguine than James regarding our capacity to overcome our blindness, I am less so regarding the direct and immediate consequences for others of our doing so.

Rather, if we can expect greater understanding to lead not only to greater personal thriving but also better public conduct, it will be because of the indirect, rather than the immediate consequences of comprehension and appreciation. And here again, Plato's *The Republic* may be our best source of insight. One reading of *The Republic*, and in particular the conversation in Book IX on the connection between justice and happiness, is that a certain right internal balance—Socrates offers it as deeper definition of justice—will bring about the external conduct through which justice is usually described.

Through the metaphor of the city, Socrates suggests that just individuals have put the knowledge-loving part of their own souls in charge of the honor-loving and pleasure-seeking parts. He also suggests that people who have thought deeply about what brings happiness and who have learned to see the transcendent order and beauty of the world will be such knowledge-loving individuals. Those who have thought well about what ought to matter will see that not money and glory but rather knowledge and understanding are the central components of a rich and blessed life. They will disdain money and honor, accepting each only as necessary; and, disdaining the things injustice might bring, they will have little or no reason to be unjust. Knowledge, unlike the lesser goods, is not a zero-sum game; the love of it offers no motive to treat others unjustly. This is perhaps best understood as a particular facet of the broader Socratic view that people do wrong when they do wrong out of ignorance about what will really make them thrive. If so, then just or ethical behavior towards others is best understood as the outward manifestation of a deeper internal insight into what really matters.

I do not claim that the capacities developed by legal education render unnecessary an explicit ethical component as part of the law school curriculum. Just as legal education should and does include a great deal of straightforward doctrinal learning; it should include an explicit focus on ethical rules and concerns.

### **Conclusion**

I have argued, so far, that the ability to see and to understand others and the world can help one thrive by helping one explore the range of possible ways in which one might find meaning in or give meaning to life, and that legal education can engender this ability. I might further suggest, albeit more tentatively, that seeing and appreciating may not just help make such a rich and full life possible, but may to some extent constitute such a life. Perhaps, as Frost's farmer-turned-stargazer put it, "[t]he best thing that we're put here for's

to see.”<sup>7</sup> Put differently, if Socrates is right that a deep understanding of the human condition will reveal that understanding itself is one of life’s greatest goods, then an education that helps us see and understand the world better is even more directly connected to thriving than we have so far suggested.

Each of the habits of mind we have seen as central to law, and applicable to life, can not only help students and lawyers find a place in the world, but, more generally, can help them better see the world itself. By learning to see things from different imagined perspectives, and in light of experience, and at varying scales, and with courage in the face of uncertainty, we can learn to see everything better. And perhaps, if we could see it better, we could better see its beauty. In this sense, legal education truly is a form of liberal education—helping us see and appreciate even things far removed from anything discussed in law school.

But let me conclude by stepping back from this particular speculation because the potential value of legal education as liberal education does not hinge on my or any particular account of what might be the deepest meaning and most satisfying purpose in life. Granted, the Socratic hope, described above—that deeper internal thought may lead to better and more just external conduct—hangs on the further hope that thinking well about what matters will lead one to value knowledge rather than power and money and the like. But my claim about the potential personal value of legal education does not depend on that or any other particular expectation about what our deepened thinking will reveal.

Perhaps our truest thriving does lie in an awareness and appreciation of the profound order and beauty of the world. But perhaps it is rather to be found in service to others, or in the nurturing of the creative impulse, or in coming to the right relationship with God, or in finding some oneness and unity with the universe, or in love, or in some as yet unimagined combination or unity of these things and more. Perhaps it will not be the same for each of us. But wherever lies a rich and meaningful way of living, and whether it be manifold or one, we all should agree that it is worth seeking. And we should all agree that what increases our ability and willingness to look for it is of great value indeed. Legal education can do just this, even as it teaches the substance and practice of law—by engendering the capacity to see from different perspectives different potential sources of meaning, to make sense of and take responsibility for experience, to wrestle with the connections between individual and community life, and to confront courageously the humbling Socratic uncertainty that follows clear thought.

W.E.B. Du Bois wrote, regarding undergraduate education, that “[t]he true college will ever have one goal—not to earn meat, but to know the end and aim of that life which meat nourishes.”<sup>8</sup> Now, I do not claim that this should be the

7. Robert Frost, *The Star-Splitter*, in *The Poetry of Robert Frost* 176 (Henry Holt and Co. 1969).
8. W. E. B. Du Bois, *The Souls of Black Folk* 82 (A.C. McClurg & Co. 1907) (1903).

“one goal” of legal education, which must have as its primary aim to prepare people for the practice of law and public service. It is heartening, however, to consider the ways in which that the same education—the very training that best serves these pragmatic professional and public purposes—can also, by developing capacities as valuable to the person as to the lawyer or leader, serve this deeper human end as well.