HUMAN NATURE AND TRAINING FOR LAW PRACTICE *

WILBER G. KATZ †

Social and Humanistic Problems in Professional Education is the topic set for this morning's discussion. I think it is significant, however, that we got deep into this subject yesterday. At least in law, medicine, and theology we found it impossible to discuss problems of method in even the strictly professional subjects without considering the broader professional objectives. And if business and engineering seemed to be exceptions, I think this was only because of the examples used by the speakers in presenting the problem methods used in those fields. If, for example, trade-association activities had been discussed as a problem in business education or if we had considered the function of the engineer in a utility rate case, we should have seen that in all fields questions of method in strictly professional education raise social and humanistic problems.

At the sessions yesterday I was struck with the hesitant or frankly pessimistic way in which lawyers spoke of the problem of training for policy judgments. One way, it seems to me, in which a law school may promote such training indirectly is by having an active program of research on important problems of public policy. I am thinking of research such as that of Eugene V. Rostow at Yale on national policy for the oil industry, and projects such as those under way at Chicago. There Walter J. Blum, a law teacher, and Norman Bursler, an economist on the law faculty, have made a critical study of tax proposals affecting the supply of rental housing. Restrictive labor practices in the housing field and building codes have also been studied, and two of our faculty worked on a brief filed by them as friends of the Court in the racial restrictive covenant cases. Many of the students can take part in such projects, and for the entire student body the research projects are part of the effective climate in which their professional work is studied.

And speaking of research, I want to comment on the microscopically small fraction of law-school funds which are devoted to research. We of the law schools have not educated either our university administrators or the legal profession to expect that the law schools should be centers of criticism and advance of the law and its administration, and

* Speech given at the Inter-Professions Conference on Education for Professional Responsibility at the session on "Social and Humanistic Problems in Professional Education," April 14, 1948.

† Dean, University of Chicago Law School.

to furnish the funds necessary for such activity. You of the medical schools, at least, would be shocked if you saw our budgets; if you agree that law has something to do with public welfare, you might even be shocked into helping us obtain an appropriate share of funds available for research.

While it is difficult to give all law students a part in actual research projects related to important questions of policy, it is possible to give them at least an introduction to what such research involves. We make an attempt to do this in our required course in Industrial Organization. We are able to do so only because we have as full-time members of the law-school faculty two kinds of economists. One of these is an economic theorist, who presents the theory of competition and monopoly as a background for study of legal institutions appropriate for promotion of what Dr. Calkins[1] called "responsible management of economic affairs." Each student is required to study organization and distribution problems of a particular industry, and the other economists are available for tutorial guidance and criticism of these studies.

But education in relation to policy encounters difficulties far deeper than those which have thus far been indicated. Experience shows that our students need insight into the process of value judgment. Policy discussion, in law schools as elsewhere, is crippled by the prevalence of two attitudes toward questions of value or policy. The first of these is the attitude which Dr. Greene[2] has called that of the "dogmatic relativist." Here values are regarded as purely a matter of individual and class desires; criteria of value independent of the preference of the valuer are asserted to be meaningless. Equally troublesome for education in matters of policy are the students who reject moral relativism but who are naïvely emotional in their invoking of criteria of justice. Some law teachers have been so plagued with such students that in desperation they rule the concept of justice out of order in their classes. I remember well the retort with which Dean Pound tried to silence one of my protesting classmates: "This is a law school, Mr. Smith; if you're worried about justice, you'd better transfer to the divinity school!"

We are not here concerned with the origin of these attitudes in our students. The convictions of the dogmatic relativists may be the result of implications which they have drawn, rightly or wrongly, from the science teaching to which they have been exposed. They may result, as C. S. Lewis has argued in *The Abolition of Man,* from the attitudes of relativists under whom they have studied literature. And as

[1] Robert D. Calkins, Vice-President and Director, General Education Board, New York City, who spoke on the "Aims of Business Education."

[2] Theodore M. Greene, Professor of Philosophy, Yale University.

for the students who are warmly concerned about justice, the naive quality of their expressions may result from their feeling on the defensive, self-conscious in rebellion against a position widely thought to have behind it the prestige of science. But whatever the causes, we must agree with President Rogers [3] that few students come from college with values which they are able to explain or defend.

I have said that our students need to gain insight into the process of value judgment. Of course they acquire much from observing the attitude and approach of law teachers who believe that law is not just the will of the dominant class, and who have respect for the craft of the law. But for this generation of law students more is necessary if they are to be started on the development of a coherent moral and political philosophy.

For this purpose we have found a valuable body of material in the writings of psychoanalysts. For the days are over when the contributions of medical psychology to the theory of morality are solely in the unmasking of rationalizations and the debunking of values. Psychiatrists in increasing numbers are saying something positive about the nature of man, something relevant to moral and legal problems. What they are saying has its relation, of course, to the discussion of the nature of man in traditional moral philosophy. But students of today will more easily face philosophical questions concerning human nature if they discover the questions as they are suggested in clinical material.

In this connection, we have been experimenting with having our law students read and discuss books such as Ranyard West's *Conscience and Society,* Erich Fromm's *Escape from Freedom* and *Man for Himself,* Freud's *Civilization and Its Discontents,* and papers such as Robert P. Knight's "Determinism, 'Freedom,' and Psychotherapy." [4]

In varying terms these writers discuss the peculiar characteristic of man—his potentiality of growth, his capacity to mature. They describe the direction of possible growth in terms such as emotional maturity, mental health, freedom, productiveness. They show that inter-personal relations are the tests of a man's development, tests which reveal the degree of his capacity to love.

Such writers also discuss the factors which obstruct the achievement of maturity, external and internal factors which give rise to tendencies to retreat from maturity, to shrink from the freedom which is possible. These tendencies are traced to experiences of childhood, experiences

3 Harry S. Rogers, President, Polytechnic Institute of Brooklyn, who spoke on "Gaps Between Statement and Achievement of Objectives in the Education of the Engineer."

4 9 PSYCHIATRY 251 (1946).

which were threatening or which appeared to be so. The realization of man's potentialities is therefore a matter of the overcoming or transcending of these stubborn tendencies.

Let me suggest some of the implications of this view of the nature of man, implications significant for the understanding of law and for the work of lawyers.

In the first place, the concept of maturity or freedom is explicitly a concept of the good for man, the objective of his development. For Dr. Knight, in the paper referred to above, freedom is the feeling which comes with action in accordance with law which has been willingly accepted—action under "acceptable inner compulsion." He is clear, however, that the good for man is not conformity to the mores, not even obedience to all laws and decrees. It means rather "willing acceptance of laws providing basic justice and opportunity to all men, with the right to oppose those decrees which are inconsistent with basic justice in human relationships." "The essence of the actuality of freedom" is to be found in "a continuous revolution toward better possibilities of freedom for all men." [5]

Here is a doctor's answer to the old question, "What is justice?," which Dr. Homer Smith [6] addressed to Professor Fuller yesterday. It is a psychological statement of the traditional doctrine of natural law—of moral law known through knowledge of the nature of man, a doctrine of justice as a criterion by which laws may be judged.

There are implications for the law also in the psychiatrist's analysis of the tendencies which block man's progress toward freedom. In *Conscience and Society,* Dr. West finds in these tendencies the basic need for law. His fundamental point is that law and organized force are necessary, not for an anti-social minority, but for all of us. With psychiatric case material he outlines the "vagaries of the aggressive impulses" which make law necessary. He explains the formation of misconceptions and fantasies in infancy, the operation of repression in preventing the correction of infantile misconceptions by later experience, and the way in which hostility on the part of other people is imagined or magnified by identification with a fantasy figure from infancy or by projection of one's own repressed hostility. "The characteristic manifestations of the aggressive instinct . . . combine with those fixed prejudices of the mind of normal man which render him incapable of executing equity in his own cause to constitute him always and essentially a potential law breaker." It is only with the aid of law that the

[5] *Id.* at 257–258.

[6] Professor of Physiology, New York University, who spoke on "Objectives and Objectivity in Science."

social impulses of men achieve anything like a satisfactory balance with the aggressive impulses. Law is for the average man; it operates as an extension of his self-control. For a democracy, "The law should at once have the approval of the average man, and be for his control."

Writings such as these, furthermore, yield insight into the nature of moral, and therefore of legal, responsibility. For example, Dr. Knight in his paper speaks of man's power "to conceive of himself as different, better, happier, more successful," his power "to reshape the very causal factors which hamper his growth." But the reshaping of internal causal factors is painful and requires effort, whether in ordinary life or in a course of psychotherapy. It is in the making of this effort, the enduring of this pain, that moral activity takes place.

Theologians have often struggled with the paradoxical quality of man's freedom, and Dr. Knight reveals an analogous paradox. As a scientist he studies human conduct on the hypothesis of complete determinism, but admits that progress toward psychic health does not take place without effort—and effort which it is not satisfactory to explain in deterministic terms. It may be disappointing to law students to find no simpler basis for human responsibility, but it is important that they be no longer protected from the metaphysical facts of life.

I have said that medical psychology has significance not only for the understanding of law but for the work of lawyers. Let me give one example. Dr. West traces the need for law to the marked capacity of human beings to form and retain prejudices, a capacity which makes man a notoriously poor judge in his own case. In other words, the self-deceptiveness and unreliability of man in moral activity makes law necessary, since moral activity is, of course, precisely the acting as judge in one's own case.

In this connection the position of the lawyer is curiously—and constructively—ambiguous. The practicing lawyer is primarily an advocate, and his loyalty is to his client. This loyalty means that his job is not that of judging his client nor the justice of the client's cause. Confidence in the law rests not only on the impartiality of judges and juries, but also on the loyal partiality of professional advocates. But this is only half the picture. It is not inconsistent with a view of loyal advocacy that the lawyer should often try to bring his client to a more objective appraisal of his situation. Indeed it is *because of* his client's confidence in his loyal partiality that the lawyer can sometimes enable the client to become to some extent an impartial judge of his own cause.

I have been giving illustrations of the light thrown by medical psychologists upon the problem of values in relation to law. I have said that we find the reading and discussion of writings of these scientists an

effective method of stimulating students to face basic questions in moral philosophy. I should add that the writings of psychiatrists are not the exclusive fare in the reading course I have described. During the current year they are read together with Plato's *Gorgias,* Dewey's *Human Nature and Conduct,* and two works in cultural anthropology. It has been our experience that such books are read and discussed with more comprehension and respect in the light of the clinical material.