

ARTICLES

INTRODUCTION TO THE “DISARMED, DISTRACTED, DISCONNECTED AND DISTRESSED: MODERN LEGAL EDUCATION AND THE UNMAKING OF AMERICAN LAWYERS” SYMPOSIUM ISSUE

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INTRODUCTION TO THE “DISARMED, DISTRACTED, DISCONNECTED AND DISTRESSED: MODERN LEGAL EDUCATION AND THE UNMAKING OF AMERICAN LAWYERS” SYMPOSIUM ISSUE

Professor Bernard J. Hibbitts *

The papers and presentations collected and published in this special symposium issue of the University of Pittsburgh Law Review all arise out of a conference on the state of American legal education held at the University of Pittsburgh School of Law on April 20 and 21, 2023.

Generously sponsored by the Law & Humanities Institute (LHI) with additional support from Pitt Law, “Disarmed, Distracted, Disconnected and Distressed: Modern Legal Education and the Unmaking of American Lawyers” engaged an eclectic collection of young and established legal scholars from across the country and beyond, all of whom had previously spoken and written on various challenges presently facing law schools, law professors and law students.

The premise for the conference, jointly developed in a series of wide-ranging conversations in Pittsburgh over the previous year between Professor Richard Weisberg, a pre-eminent authority in the field of law and literature, and Professor

* Professor of Law, University of Pittsburgh School of Law. B.A. (Juris.), Oxford University; LL.B. Dalhousie University; LL.M. University of Toronto; LL.M. Harvard Law School. My opening remarks are largely based on thoughts shared and developed with students in my legal profession course here at Pitt Law, *How Lawyers Made America*. I would like to thank Anna Miller-Little, Daniel Tublin and the rest of the editorial staff of the University of Pittsburgh Law Review for the support and hard work that has made the present symposium issue possible.

Bernard Hibbitts, Pitt Law's legal historian, was that modern legal education has ultimately done more to harm than help American lawyers, reducing their social, political and rhetorical capacity in numerous ways that have not only compromised the standing of the profession but have actually endangered American democracy.

The remarks that follow this brief foreword were offered by Professor Hibbitts at the opening of the conference; Professor Weisberg provides his personal reflections in closing remarks that are published at the end of this symposium issue.

The Law & Humanities Institute, with which Professor Weisberg has been long affiliated, is a not-for-profit organization in its fifth decade of encouraging work interweaving law with the humanities. The LHI supports amicus briefs where literary expression is being censored, endeavors to make the law clearer as it interacts with ordinary people, assists with new readings of canonic and lesser-known stories, and sponsors timely academic events such as this one.

OPENING REMARKS

Once upon a time, lawyers were essential Americans. Lawyers helped to organize, finance, explore and actually settle the country, and were doing so even before Jamestown. In colonial courtrooms and assemblies, they paved the way to the American Revolution, and during and after it they framed the founding documents of the United States. They soon became the primary executive, legislative and judicial leaders of a new nation, building a novel legal and political system. But they were also our community leaders, educators, newspaper editors, and philosophers. They wrote our earliest histories, novels and plays. They defined the very language that we spoke. They even wrote patriotic songs about America, one of which we still sing today. They were never perfect, nor were they successful in all their efforts, but they sincerely tried, understanding, describing and presenting themselves as “stewards of the Republic” and “sentinels on the outposts of the Constitution.” Ultimately they fought and died for their visions of the country.

After the Civil War, however, lawyers largely walked away from the larger roles they had assumed. Dispirited and personally damaged by the emotional and physical trauma of the conflict, dismayed at developments in party politics and increasingly distracted by monetary temptation as the American economy surged towards the Gilded Age, they retreated to the cloying shelters of professional bar associations and clubby law firms. They left the public square, shifting from courtroom to boardroom and taking more satisfaction in private profit than public service. They gradually amassed vast amounts of wealth that would have astonished even the best-remunerated of their pre-Civil War brethren. In the process, most abandoned their traditional leadership roles in larger American society to other individuals and entities that became clients they served rather than fellow citizens they counselled, led and occasionally constrained.

As lawyers retreated, the strength and dynamism of American public life and the vigor of its very democracy arguably declined, becoming coarser and more dysfunctional. Labor fought capital in the streets. Nativists repressed immigrants, whites brutally oppressed and murdered freed blacks. Most lawyers pointedly stayed out of the way, contributing little to the causes of national reconstruction and reconciliation. Others—mostly in corporate practice—made social conditions worse by directly and indirectly facilitating the mass subordination of workers. Some even went so far as to do the previously unthinkable, actually taking up arms against the public—now fearfully labelled the “mob”—in organizations like the National Rifle Association and the National Guard that they led or gravitated towards. Across the country, anxious men of law built law schools and courthouses and personal residences that looked like glowering fortresses and castles. You can still see several of those in Pittsburgh today.

But the decline of American politics and civic discourse was not linear nor was its pace consistent. Indeed, especially when significant numbers of lawyers were motivated to reengage in public life in periodic efforts to reinvigorate the nation—as they did in the 1930s and 1960s—the fortunes of American democracy and the prospects of the polity seemed to improve. In the 1970s, however, largely at the behest of corporate interests terrified by their tentative resurgence, lawyers were forced or drawn into social retreat again, and the democratic decline continued for the next half-century, to the point where many domestic and international observers have lately become alarmed at the decrepitude of American democracy, and the Republic itself has visibly trembled. Meanwhile all too many modern American lawyers have displayed egregious incapacity as public leaders. Since Watergate, unethical behavior and outright corruption have infected not-insignificant numbers of lawyers in high office in the White House, Congress, and lately even the Supreme Court of the United States.

Whose fault is all this? We might plausibly lay blame at the feet of many, but in this conference I hope we as legal educators will consider our own agency in what has happened. In the late eighteenth and early nineteenth centuries, the first American law professors and the legal professionals and politicians who supported them and shared their vision knew instinctively that the task of legal educators was not just to prepare lawyers to handle the practical needs of clients and help themselves, but to train generations of leaders to go into the courts and legislatures and public spaces of the country and be instructors, examples, and inspirations to the people. George Wythe, Thomas Jefferson, James Wilson, James Kent, Daniel Webster, William Wirt, Joseph Story and many others all knew this. But we do not.

Bamboozled or perversely fascinated by the pseudo-scientific methods of Christopher Columbus Langdell, a Harvard College dropout who spent the Civil War squirreled up in his New York law office, we have enthusiastically taken legal education out of the public places and settings where our predecessors talked about

the law, and ensconced it in stand-apart law schools where law professors have used the case method to indoctrinate law students for the last 150 years. Over that time, we have disproportionately prioritized private law subjects and spent a good deal of energy and effort breaking our students down, psychologically and rhetorically, in ways that we think facilitate their proficiency in professional communication with each other but that dissuade and even disable them from effectively engaging either in public discourse or public service. Using tools ranging from outright bans to the suppression of certain types of law schools to the byzantine and deeply arbitrary Law School Admission Test we have also worked hard to turn away from our hallowed halls vast segments of American youth—women, visible minorities, immigrants and others—who might have been and still might be more inclined to be public-facing and more interested in a larger, more socially ambitious idea of American lawyering than that usually on offer in buildings like this one.

Over the same time period we have largely deprecated or have actively deprived our law students of whatever gender, color or background any kind of expansive knowledge or appreciation of history, philosophy, ethics, rhetoric and literature that might enable them—as it doubtless enabled the lawyers of the vaunted founding generation—to understand human nature, grapple with fundamental legal, social, and moral issues and discuss them constructively with their fellow citizens. In our rush to ground law students in the doctrinal and skills *competencies* that now are all the rage in the discourse of legal pedagogy, we have arguably missed the forest for the trees, creating class after class of law school graduates who are civic and cultural *incompetents*. As a result, if they are even so inclined, most law students emerge from modern American law schools as either unprepared or outright dangerous leaders who can actually damage the Republic as much as help to sustain it. Looking at various lawyers from elite institutions lately parading on the national stage, some would say this is already happening.

Again, mal-trained lawyers are not the only reason the American Republic is in a sad state. And along the way there have certainly been individual lawyers and even groups of lawyers who have managed to transcend the limitations of their law school training and make highly constructive contributions to society, but I wonder what might happen in the future if we actually tried to prepare law students to do that. What would happen if we opened legal education up to legally-inclined and civically-minded young people capable of hard work, creative thinking, and good judgement—women and men gifted not just with analytic skill, but also with powerful speech, moral character, emotional intelligence, imagination, empathy and wisdom—and seriously prepared them for greater tasks with all the resources at our disposal, while also equipping them to earn a professional living? I do believe we could do both things. After all, teaching and learning legal doctrine is not that hard. It might even be a good time for us to contemplate a shift from traditional professional preparation, as the life expectancy of our prevailing case and skills-

based legal curriculum is arguably plummeting in the age of artificial intelligence and ChatGPT. But we can still prepare American law students to use the values and principles of the law, taught in a larger social, political and philosophic context, to lead America into a new and better age. The AI bots are not going to follow us there, at least not yet. And if we don't offer this kind of instruction and inspiration to our law students, many of whom still tell us that they come to law school to change the world, who will lead this society, and who will prepare our leaders to do the right thing? These days I hate to think.

So, speaking for myself, I look at this conference as a set of invitations. I invite you to consider how we got here, how our choices about legal pedagogy and the forms and accessibility of legal instruction have impacted our law students, and how they have intentionally and unintentionally shaped events and trends that have played out far beyond our classrooms. I invite you to consider where we are, and to assess, along with our ongoing mistakes, some of the good things we have done or are starting to do to improve and repair the profession and the world that our law students are entering. And perhaps most importantly, I invite you to consider the future, and what we as legal educators can do proactively, aggressively and even urgently to steer our law students and the Republic away from the treacherous shoals that many of us see ahead from our academic perches in our professional crow's nest.

I would like to end the substantive section of these remarks with a brief quotation from Professor Emory Washburn, addressing the students of Harvard Law School in 1876 on the occasion of his retirement. Washburn was a lawyer, an historian, a former Governor of Massachusetts, and a much-loved law teacher who was an older contemporary—and in many ways a nemesis—of Christopher Columbus Langdell. In our fascination with and slavish devotion to Langdellianism, no one remembers Washburn today. But his words to his students are telling, and some of them were, I suspect, almost hurled at Langdell himself as a parting Parthian shot: “If you are to succeed as lawyers you cannot separate yourselves from the world, or cease to mix and mingle with it as citizens . . . [There are] duties you will owe to the State and society around you as individuals, as men of personal influence and as originators and guides of public thought, if you prove yourselves to be worthy of the profession you have chosen.” Washburn went down fighting; he was definitely “old school.”

Today I think Washburn would say the very same things to us, perhaps with even greater fervor. He would call us to a larger and grander vision of ourselves as lawyers and law teachers. In this hour of civic peril, he would hope, as I hope, that we will discharge our public trust and our public duty by helping our law students rise to the challenges of our time before it is too late for this Republic that they will inherit.

I would like to close with an appreciation of my conference co-organizer, Professor Richard Weisberg, whose Law & Humanities Institute has done so much to make this gathering possible. Over the course of more than a year preceding this event, Richard and I talked at multiple lunches and meetings about what it might look like. We talked about the state of contemporary legal education, we talked about our own careers, we talked about the past, and we talked about the future. I had always admired Richard's work on law and literature—indeed, a copy of one of his best-known books sits in my office library—but as our conversations continued, I came to regard him not only as a learned colleague with wide-ranging interests that we were lucky to have at Pitt Law, but also as a friend and a mentor. I will always treasure his unstinting support and encouragement for this ambitious and timely project, and I owe him a huge debt of thanks for inviting me to be a part of it.

Welcome to this conference. Richard and I look forward to our panels and our discussions.