1978

Book Review. Lawyers, Law Students and People by Thomas L. Shaffer and Robert S. Redmount

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BOOK REVIEW


REVIEWED BY GENE R. SHREVE*

A law professor and former dean of a prestigious American law school told me recently that he found Shaffer and Redmount's book disappointing. "They make us all out to be Kingsfields," he said. Kingsfield was a vicious and domineering law professor in John Osborn's fictionalized account of student life at Harvard Law School, The Paper Chase. Actually, Shaffer and Redmount go to considerable pains in their book to point out that very few Kingsfields are extant in American law schools. The failure of my professor friend to grasp so rudimentary a point in the book suggests that written criticism of legal education is taken rather casually by representatives of the law school establishment—the authors are highly critical of American legal education. Their criticism is challenging and succinct, but, if they had confined themselves to criticism alone, they would have accomplished little. What makes the book remarkable is that the authors describe in a thoughtful and convincing manner some of the processes by which legal education may be functionally defined. Through their research and interpretation of data, the authors demonstrate how available strengths in legal education go unexploited and how obstacles to learning go unchecked.

The authors' criticism of legal education is contained in the following premises. First, humanism is an important quality in lawyering. Second, most lawyers are not humanistic enough. Third, vital and perishable opportunities to teach humanistic values and to integrate humanistic methodologies into problem solving are overlooked by law schools.

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The book suggests that lawyers must be willing and able to respond to the human needs of their clients. Professional responsibility must include acknowledgement of

the fact that most lawyers in practice are ministers to the needs of human beings. They deal with hurt and threat and expectation and desire. They are expected to be reasonably concerned and personally helpful in dealing with their clients. In effect, this becomes definition for what is meant by the humanistic orientation or humanistic disposition of lawyers.¹

Few may disagree with the authors' first two premises. Humanistic values are important but neglected in the practice of law. Lawyers too often function as a warrior elite of intellectual technicians, dealing with the legal issues represented by their clients rather than with the clients themselves. Skills of analysis and persuasion are venerated and are not infrequently employed as foils against the lawyer's own client. Lawyers are often ignorant of values and methodologies important to skills of counseling and mediation. They are often contemptuous of knowledge provided by the social sciences even though it is relevant to their clients’ needs.

The book is centered on the authors' third and most controversial premises. The first chapter is a polemic against the failure of American law schools to provide a humanistic learning experience. Shaffer and Redmount contend that teachers are preoccupied with the refinement of intellectual skills. Training that prepares students for the interpersonal demands of lawyering is minimal or nonexistent. The reluctance of teachers to share control of classroom activity and the refusal of teachers to recognize and respond to the human needs of their students result, according to the authors, in a kind of negative behavioral training. Students who become lawyers treat their clients with similar disdain.

The topic has seldom been treated with such verve and eloquence, but the criticism is not new.² There is no reason to believe that criti-

2. The particular manner in which law school shortcomings are described may differ, but many of the faults that the authors raise as deficiencies in humanistic orientation seem to have been raised earlier by other writers. Kennedy, How the Law School Fails: A Polemic, YALE REV. L. & SOC. ACT., Spring 1970, at 71; Mohr & Rodgers, Legal Education: Some Student Reflections, 25 J. LEGAL EDUC. 403 (1973); Patton, The Student, the Situation and Performance During the First Year in Law School, 21 J. LEGAL EDUC. 10 (1968); Reich, Toward the Humanistic Study of Law, 74 YALE L.J. 1402 (1965); Sarason, Sarason, & Cowden, For Some Students Dying Begins with Graduation, LAW & LEARNING, Fall 1974, at 44; Savoy, Toward a New Politics of Legal Education, 79 YALE L.J. 444 (1970); Watson, The Quest for Professional Competence: Psychological Aspects of
cism alone is more likely to lead to reform now than it has in the past. Perhaps those in a position to change things are too stung to act on recommendations contained in such criticisms; at least there are few printed rejoinders. Critics are largely ignored, except by a few like-minded individuals who can be innervated at the lack of progress indicated by reading criticisms of American legal education that were made ten years earlier.4

Next, Shaffer and Redmount describe educational theorists' work on how students learn. Illuminating summarizations of the findings of Bruner, Piaget, Conant, and others are provided. The book contains a valuable bibliography of writings on legal education and (more selectively) on education in general and the social sciences. The authors are undoubtedly correct in their assessment that few of us in law teaching have sufficient "consciousness that learning is an intimate personal and psychological experience." Attitudes in the learner that enhance or block learning are detailed.

The book then proceeds to evaluate the literature on legal educa-

Legal Education, 37 U. Cin. L. Rev. 91 (1968); Zaremski, The First Year in Law School: The Intention Is to Make You Feel Less Than a Human Being, Law & Learning, Summer 1973, at 51; Note, Anxiety and the First Semester of Law School, 1968 Wis. L. Rev. 1201. The authors note the extensive writing that has been undertaken, listing many of the above articles in the book's bibliography.

Shaffer and Redmount produced considerable writing of their own on humanistic issues in legal education prior to the publication of this book. See, e.g., Redmount, Attorney Personalities and Some Psychological Aspects of Legal Consultation, 109 U. Pa. L. Rev. 972 (1961); Redmount, A Clinical View of Law Teaching, 48 S. Cal. L. Rev. 705 (1975); Redmount, A Conceptual View of the Legal Education Process, 24 J. Legal Educ. 129 (1972); Redmount, Humanistic Law Through Legal Education, 1 Conn. L. Rev. 201 (1968); Shaffer, Collaboration in Studying Law, 25 J. Legal Educ. 239 (1973); Shaffer, Lawyers, Counselors and Counselors at Law, 61 A.B.A.J. 854 (1975). As one might expect, the book has given the authors an opportunity to aggregate and to refine many concepts from their earlier works. The tone taken by Shaffer and Redmount challenges traditional legal education more directly than that of their earlier works. Their methodology of persuasion is different in the book and (as discussed in this review) quite effective.


4. The authors see a hegemony of vested law school interests as an obstacle to reform in legal education.

The perpetuation of power is the first law of those who have it. Bar admission committees, the Praetorian Guard of the legal sanctum, insist even more than law professors that law school continues forms of learning that insure against change. Bar examiners continue to test for information or legal analysis and leave professional competence to chance. Law teachers have as their special pride and exultation a conceptualistic brilliance that boggles the mind. The teacher's intellect serves the power of the law, and that is what learning the law is made to seem all about. An interlocking and self-perpetuating network is created between the lawyer, the institutional forms of law, the teacher, and the student who inherits the system.

T. Shaffer & R. Redmount, supra note 1, at 28.
tion. The authors' somewhat unexpected conclusions here establish the purpose of the remainder of the book. Prestigious reports on legal education by the Carnegie Commission on Higher Education\(^6\) and the Association of American Law Schools\(^7\) largely fail to reflect the humanistic concerns of Shaffer and Redmount and, not surprisingly, draw their disapproval. More surprising is that the authors also dismiss as speculative virtually all writings sympathetic to humanistic legal education.

The bias of the authors is clear. They write that they are "shameless evangelists for a particular point of view in legal education."\(^8\) But the strategy of the authors may be to break the stalemate between humanistic critics and the controllers of American legal education, even at the risk of alienating the former, by transposing the discussion to a different and more productive level. The question the book poses for itself becomes: Can law school processes be discerned and evaluated through research methodologies of the social sciences? Field work in the law school community and the interpretation of data are integral parts of the inquiry.

Undoubtedly, there are law school teachers and others who will feel that they do not need empirical data to understand that students must be taught in a manner that will enable them to serve their clients with compassion and understanding as well as with intellectual skill, or that even purely analytic learning by students will be enhanced if they feel respected by their teachers rather than degraded or ignored. But law teachers stressing these values tend to work in isolation, often unnoticed or unsupported by their own faculties. Such teachers may write about their teaching, but, if the writings have any impact at all, it is likely to be "because their authors have poetic insight which tends to operate independent of their data."\(^9\) Teachers rarely write about observations of any classes other than their own and "[a]s long as the writer is a teacher and is describing what he does in his own classes, he feels little need to convince."\(^10\) The authors suggest that humanistic reform in legal education has been blocked by a narrowness of thinking in reformers and by their inability to persuade.

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9. Id. at 50.
10. Id. at 54.
The solution posed by Shaffer and Redmount is to add to the dialogue on humanistic reform a dimension of field investigation in the law school community and interpretation of data which they call "advocacy research."11 The process seems intended to lead those wishing to examine humanistic issues in legal education to a more systematic awareness of law school roles and the law school environment. The authors appear to believe that humanistic values in legal education are susceptible to verification. Through verification, the need and means for change can be more readily demonstrated.

During a period from 1972 to 1973, the authors and their research staff tested, interviewed, and evaluated a population composed of students, faculty, and alumni from three Indiana law schools.12 The authors investigated patterns of progression of humanistic learning from the beginning of law study to practice. They examined backgrounds of law students and their attitudes toward humanistic values. Finally, they investigated law school teaching and a larger environment, which the authors call the "law school climate,"13 in order to discover opportunities for and obstacles to humanistic learning. As the authors readily acknowledge, their data are at times thin. But their topics, research methodologies, and results are invariably interesting. I will undertake to summarize only a few of what seem to me to be the most thought-provoking of the authors' findings and observations.

1. **Law School May Leave Humanistic Values Untouched**

Critics of legal education commonly view law school as a dehumanizing experience for students.14 To test this hypothesis, Shaffer and Redmount gave first- and third-year students, faculty, and alumni an identical set of three hypothetical problems. In each hypothetical, a client visited the subject for advice regarding a different problem. For each of the three cases, subjects were asked to rank in importance: (1) a list of problem characterizations; (2) actions to be taken in response to the interview; and (3) lawyering skills important to handling the case. Responses were classified by the authors and their research staff as "problem" or "person" oriented. All subject groups indicated approximately the same strong tendency toward "problem" rather than to

11. *Id.* at 59.
12. The authors summarize their data in the book. Statistical data have been collected in a supplement to the book which may be obtained from the authors at a modest additional cost. A description of the authors' test population appears therein. *Id.* at Table 1 supp.
13. *Id.* at 193.
14. See, e.g., Kennedy, *supra* note 2, at 75-78.
"person" orientation. The authors expressed some surprise at the results. Certainly the data contradict the view that the law school experience is tangibly destructive to humanistic impulses. The authors, however, suggest that this research demonstrates that law schools are unsuccessful in refining and integrating humanistic values and that the law school experience is, at best, irrelevant to humanistic growth.

2. Law School Admissions Policies Do Not Pose an Obstacle to Humanistic Learning

Students are admitted to law school primarily on the basis of LSAT scores, undergraduate class rank, or some combination of the two. Are student bodies gathered on these bases sufficiently diverse and open to humanistic learning to make reform meaningful without a basic change in admissions policy? To examine this question, Shaffer and Redmount compared humanistic test data of students within the authors' research population on the basis of sex, family location, father's education, religion by birth, undergraduate class rank, graduate school attendance, and LSAT scores. Their objectives appeared to be to determine ranges of diversity within law school student bodies and to determine relationships, if any, between personal characteristics and humanistic orientation. While their data suggest some interesting contrasts in humanistic orientation, the authors conclude that students are a varied group, open to opportunities for humanistic growth, but stifled by the narrowness of the range of experiences provided by legal education and the law profession.

Shaffer and Redmount collected statements from law students concerning their attitudes and feelings about themselves and law school. They found that students are competitive and often inclined to dominate and organize the lives of other people. But these attitudes were often, if not invariably, accompanied by a concern for justice and an altruistic desire to use developing skills to help others. The authors note the emphasis on LSAT scores and undergraduate class rank in admissions policies, yet they conclude that reform in law school admissions toward "value-centered admissions will not change law-school

15. T. SHAFFER & R. REDMOUNT, supra note 1, at Tables 18-27 supp. The authors state that they "were struck by the uniformity of results among law students at every stage of legal education, among practitioners, and among teachers." Id. at 116-17.

16. For example, students with relatively high undergraduate class rankings tended to be more "problem" centered while students with relatively low undergraduate class rankings tended to be "person" centered. Students with relatively low LSAT scores tended to be "problem" centered while students with relatively high LSAT scores tended to be "person" centered. Id. at 143-44; id. at Tables 18-27 supp.
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climates . . . because it is clear that law students admitted in the traditional way already have more humanism than legal education can put to use." 17 It is possible, however, that many teachers and others who are troubled by what they perceive as a predisposition toward narrow thinking in students admitted through the traditional process 18 will not be persuaded that value-centered admissions policies will not improve law school climates.

The authors' conclusions would have been more convincing if they had undertaken research comparisons between their law student population and non-law student groups. Each additional group could be composed of subjects with characteristics suggesting that they were capable of graduating from law school. One group could be composed of applicants denied admission to law school (it has become commonplace to observe that the number of qualified law school applicants far exceeds the number that can be admitted). Another group could be made up of individuals with no expressed desire to go to law school although they are qualified to do so. Comparisons in humanistic orientation between these groups would be most interesting. If levels of humanistic orientation in non-law student groups were roughly the same as the law student group, this data would tend to verify Shaffer and Redmount's contention that the failure of legal education to produce sufficiently humanistic lawyers is not significantly attributable to traditional law school admissions policies. If, on the other hand, humanistic orientation among the nonstudent groups were appreciably higher, this might suggest a present need for reform in admissions to achieve goals of humanistic orientation. An even more fundamental reevaluation of the problem would be required in the event that only the nonapplicant group indicated higher levels of humanistic orientation. Moreover, admitting more humanistic students would increase the chances of producing more humanistic lawyers if, as the authors conclude, humanistic orientation is not diminished by the law school experience.

The book suggests that the authors might answer the criticism expressed above by challenging the underlying premise. Law students are perceived by their teachers as narrow and unimaginative because law teachers are unaware of what their students would be capable of if the classroom and school climate were more conducive to learning. The authors' "law-school climate," that is, sterile classroom experiences and the absence of support or stimulation in a larger setting, causes

17. Id. at 194.
students to conceal their feeling, concern, and commitment from their teachers, and often from themselves. Yet, it is the feeling, concern, and commitment of the students that makes learning exciting to both student and teacher.

3. Opportunities for Humanistic Learning Are Lost Through Failures of Law Teaching and Failures of Law Schools to Provide a Climate for Humanistic Learning

This portion of the book represents a significant contribution to the literature. The authors and their staff conducted research on law teaching by questioning students about their classroom experiences. They also observed law school classes taught at the three schools in their Indiana test group and observed tapes of classes taught at a fourth law school. From their observations, the authors developed three types of teaching style:

(a) The accepting style, in which the teacher takes his cue from student interest and development. He accepts feelings and ideas, encourages, and praises. Educational theory might associate this teaching style with John Dewey; psychological theory would associate it with modern humanistic psychologists—Carl Rogers, for example.

(b) The probing style, which emphasizes interrogation and criticism, and which legal education has built up from the Langdell case method. The teacher asks questions, gives directions, criticizes, and justifies his own authority.

(c) The lecture, in which the teacher gives facts or opinions about content and procedure; expresses his own ideas; and asks rhetorical questions.¹⁹

The authors concluded from their research that the vast majority of law school teaching is done by lecture and that the "Socratic method" (closely associated with the authors' "probing style") is seldom used. They further concluded that teachers infrequently adopt an "accepting style." Most observers would probably agree with the view of Shaffer and Redmount that a lecturing approach leaves students bored and passive and tends to result in examination-oriented learning.

Partial transcripts of some observed classes are printed in the book followed by the authors' critiques concerning the style and effectiveness of the teaching. Regrettably, the book makes no effort to correlate student opinions about teaching with classes observed by the authors and their staff. The reluctance of law teachers to be observed is noted in the

¹⁹ T. SHAFFER & R. REDMOUNT, supra note 1, at 165.
book, and perhaps even the more cooperative teachers would not have permitted their students to be interviewed after their classes had been observed.

Shaffer and Redmount advocate the use of the accepting style of teaching. They suggest that to a large degree the teacher decides what is important in the course, not only through the learning materials he or she chooses to assign, but by the importance or approval that the teacher attaches to types of student participation during the class. If students feel that the more intimate aspects of their personality—their feelings, values, and commitments about the learning material—are irrelevant or inappropriate to class work, they will not risk exposing them. The authors are persuasive in urging that students who take such risks learn more and are more likely to take them if the teacher generates an accepting atmosphere.

The book suggests that humanistic learning in law school will be accomplished only if one looks beyond the style and quality of teaching to the “law school climate.” By this, the authors seem to mean virtually anything that could affect the breadth and congeniality of learning from the placement of student lockers to faculty tenure policy. Shaffer and Redmount propose several strategies for establishing a humanistic climate. Schools should provide support and direction for their faculties, as well as encouraging collaborative relationships between students for learning in and outside of the classroom. The authors, however, rely less on data here than elsewhere. This is noticeable primarily because, by this point in the book, the authors have cultivated in the reader a taste for something more than “poetic insight” to support conclusions. For example, the authors’ review of the aspirations of law faculty and the pressures under which they work would have been strengthened if developed with reference to statements from faculty members similar to student statements used earlier in the book.

One finishes the book troubled, perhaps, by the degree of responsibility the authors ask law schools to accept for the supposed lack of humanistic orientation among practicing lawyers. The alienation and distrust with which lawyers are popularly perceived in this country began before law schools played a significant role in lawyer training. 20

20. Historian Perry Miller noted the indifference of American lawyers and judges to the feelings of those involved in legal problems during the early nineteenth century, when “the lawyers of the young Republic began to mobilize the forces of the Head against the anarchic impulses of the American Heart . . . .” P. MILLER, THE LIFE OF THE MIND IN AMERICA 105 (1965). Evidence of early discontent may appear from the observations of a traveller to Walpole, Massachusetts, in 1831, who saw the office of a lawyer “which had been sadly mangled and mutilated by
The authors criticize the pressures of professional accreditation groups on the law school curriculum and criticize the distracting effect that bar examinations have on student attitudes about learning. Little is said, however, about the professional pressures that might inhibit the law school graduate's opportunities or inclinations for humanistic lawyering. Do the economics of the delivery of legal services make it difficult for the law graduate to advance (to make money or to be promoted) without exercising the power to control, manipulate, and abbreviate attorney-client relationships which is antithetical to humanistic lawyering? How effective will humanistic reform in legal education be until we have a better idea of whether, or to what extent, there are real opportunities to practice humanistic law?

The book raises more questions than it tries to answer and will stimulate the reader to ask even more. Though the response of my professor friend indicates that resistance to criticism dies hard, this book will be difficult to ignore. It is a remarkable and important book, less because it will settle controversies over legal education than because it creates a radical improvement in the quality of the dialogue. Of American legal education, Shaffer and Redmount note: "The principal motivation for our study is that no one has systematically looked at this process, even if one concedes its effectiveness"; Shaffer and Redmount have realized their objective. Their book is also a work of considerable conscience and one that is likely to spark disagreement. But responses to this book—and one hopes that it will stimulate many—will undoubtedly be influenced by the framework it provides for perceiving legal education and by the approach and example of its authors in seeking to verify their conclusions.

having a cannon, charged with brick-bats, chain links, broken iron and earthen fired through it. It was placed before the door and a slow match set it off, sending its miscellaneous contents completely through the tenement. The Lawyer had done something that gave offense to a couple of miscreants who took this course to revenge their injury." C. Finnelly, The Country Lawyer in New England 37 (1968).