



1989

## A Law Student's Responsibility for a Liberal Education

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### Recommended Citation

Thomas E. Baker, *A Law Student's Responsibility for a Liberal Education*, 20 *Tex. Tech L. Rev.* 1153 (1989).

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Citation: 20 Tex. Tech L. Rev. 1153 1989



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# A LAW STUDENT'S RESPONSIBILITY FOR A LIBERAL EDUCATION\*

by Thomas E. Baker\*\*

Liberal education is education in culture or toward culture. The finished product of a liberal education is a cultured human being.<sup>1</sup>

This definition is from Leo Strauss. Strauss was a German Jew who emigrated from Germany to the United States in the 1930s.<sup>2</sup> After World War II, Strauss joined the department of political science at the University of Chicago and remained a professor there and at other liberal arts colleges until his death in 1973. Strauss wrote more books than some professors read, mostly dealing with Western political philosophy. His scholarly emphasis ranged from classical antiquity to medieval Judaism to early modern Europe. He did not focus on the American regime, although he held the deeds and thoughts of the Framers in high regard.<sup>3</sup> But more important for our course, through his teaching Professor Strauss influenced a large

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\* AUTHOR'S NOTE: Last spring my colleague James E. Viator and I were selected to receive a SmithKline Beckman Bicentennial Award in Legal Education, one of six awarded nationwide. The Award is funded by the SmithKline Beckman Foundation, a private foundation financially supported by the corporation of the same name, and is administered by the Institute for Educational Affairs, a non-profit educational foundation based in Washington, D.C. The purposes of the Award were to commemorate the two-hundredth anniversary of the Constitution of the United States and to restore the study of the Constitution to a prominent position in the law school classroom. We developed a course on the intellectual history of the founding generation entitled "The Framers' Constitution." See Baker & Viator, *Not Another Constitutional Law Course: A Proposal to Teach A Course on the Constitution* (forthcoming). The last class session of the course involved a roundtable discussion on "perspectives." We went around the room to summarize what each of us would take away from the semester's effort. The session proved to be one of the most profound and revealing class discussions I have participated in, as a student or as a ten-year veteran law teacher. At the encouragement of my colleague and my students, I have set down my own "homily" which follows, with few editorial changes. This is a way for me to thank Jim and our students for a special teaching experience.

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1. L. STRAUSS, *LIBERALISM ANCIENT AND MODERN* 3 (1968).

2. See G. S. Wood, *The Fundamentalists and the Constitution*, THE N.Y. REV. BOOKS 33 (Feb. 18, 1988); see also Weisberg, *The Cult of Leo Strauss: An Obscure Philosopher's Washington Disciples*, NEWSWEEK, Aug. 3, 1987, at 61.

3. See L. STRAUSS, *NATURAL RIGHT AND HISTORY* 1 (1953).

number of graduate students who have conveyed his teachings to succeeding generations. Indeed, many of his students have made their life's work the study of the American political regime. While we have not read much original work by Strauss in this course, his influence is directly felt in the work of many of the authors we have read, including: Walters Berns, David Broyles, Martin Diamond, Harry Jaffa, William Kristol, Ralph Lerner, Gary L. McDowell, Thomas Pangle, and Herbert J. Storing.<sup>4</sup>

Professor Strauss taught:

[L]iberal education consists in listening to the conversation among the greatest minds. But here we are confronted with the overwhelming difficulty that this conversation does not take place without our help—that in fact we must bring about that conversation. The greatest minds utter monologues. We must transform their monologues into a dialogue, their “side by side” into a “together” . . . . Since the greatest minds contradict one another regarding the most important matters, they compel us to judge of their monologues; we cannot take on trust what any one of them says. On the other hand, we cannot but notice that we are not competent to be judges.<sup>5</sup>

We have been striving for this kind of conversation all semester. This is what this course has been about—ultimately. This is what I hope my students are about in all my courses, but especially in this course. This is what I am about as a teacher.

Today we have been listening to what each of us has learned, to what each of us is taking away from “The Framers’ Constitution.” Now it is my turn. I must admit, your commentaries give me pause. There is always the prudent caution to avoid “preaching to the choir.” My own compulsiveness usually is enough to overcome prudence. In this course, and during this class hour, I feel the intensity I bring to my teaching more deeply than I care to admit.

During the “cerebration” of this semester, I have felt a certain frustration which today I hope to exorcise. I am not frustrated by the overwhelming number of you who have been so successful in your course of study, as exemplified in your class discussion and your papers. I celebrate you. My frustration is for the remaining few. You might find me to be “unrealistic” or “naive,” and perhaps

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4. See generally Wood, *supra* note 2, at 13.

5. L. STRAUSS, *supra* note 1, at 7.

I am, although I would prefer the more euphemistic label "idealistic." My personal curse as a teacher is that my "failures" haunt me, even the modest failures, even the few.<sup>6</sup>

As a "student" alongside you, I have learned about the history and theory of the Constitution. Even after eight times teaching the basic course in Constitutional Law, how much this course has taught me is remarkable. I better understand the intellectual background of the Constitution, how it was written and ratified, and how the Framers themselves expected the Constitution to function as an experiment in self-government. My special thanks go to Professor Viator, a friend and a colleague, who has taught me a great deal. I have learned a great deal. My concern is that I have learned a great deal more than some of you, and my greater concern is why I have.

I have learned more than some of you because I have more ability than some of you, perhaps. I take to heart, however, Professor Strauss' entreaty on teaching: "'Always assume that there is one silent student in your class who is by far superior to you in head and in heart.' I mean[ ] by this: do not have too high an opinion of your importance, and have the highest opinion of your duty, your responsibility."<sup>7</sup> And if your failure results from my failure to observe this, I truly regret it.

I have learned more than some of you because I have made a greater effort, perhaps. But a liberal education, properly conceived, is a privilege and a duty. We in the learned professions hold an uncommon privilege from society to determine its rule and to exercise civic responsibility.<sup>8</sup> We lawyers must be determined students of "intellectual pursuits."<sup>9</sup> This effort cannot be worthwhile and at the same time be easy or simple. This study may be difficult and lonely, but it is ennobling.<sup>10</sup>

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6. "Suppose a man has a hundred sheep and one of them strays; will he not leave the ninety-nine on the hillside and go in search of the stray? I tell you solemnly, if he finds it, it gives him more joy than do the ninety-nine that did not stray at all." *Matthew* 18:12-14 (The Jerusalem Bible); see also *Luke* 15:4-7.

7. L. STRAUSS, *supra* note 1, at 9.

8. See *id.* at 13, 16-17.

9. *Id.* at 13. "If understood strictly, it means quest for the truth about the most weighty matters or for the comprehensive truth or for the truth about the whole or for the science of the whole." *Id.*

10. "Only when you have worked alone—when you have felt around you a black gulf of solitude more isolating than that which surrounds the dying man, and in hope and in despair have trusted to your own unshaken will—then only will you have achieved." O. W. HOLMES, *The Profession of the Law*, in *COLLECTED LEGAL PAPERS* 29, 32 (1920).

I have learned more than some of you because I am possessed of a deeper humility, perhaps. This third reason is my most important concern for this course, for your liberal education, and for your professional life. Professor Strauss explained, “[l]iberal education, which consists in the constant intercourse with the greatest minds, is a training in the highest form of modesty, not to say of humility.”<sup>11</sup> This course has offered you the gift of great teachers. This is not to claim greatness for myself or for my talented co-teacher, for we two have been pupils, as well. I do not refer to Judge John T. Noonan or Professor George Anastaplo, although their guest lectures contributed a great deal. I am referring instead to the writers and thinkers we have encountered: Plato, Aristotle, Locke, Jefferson, Bolingbroke, Madison, Montesquieu, Adams, and the many pseudonymous Federalists and Antifederalists. These have been our great teachers. Our study has not been easy, for we have been reminded how truly unworthy we are. We have been, at best, “eavesdroppers” on their conversations. Professor Strauss explained how this happens:

[T]he mind needs teachers. . . . But there cannot be an infinite regress: ultimately there must be teachers who are not in turn pupils. Those teachers who are not in turn pupils are the great minds or, in order to avoid any ambiguity in a matter of such importance, the greatest minds. Such men are extremely rare. We are not likely to meet any of them in any classroom. We are not likely to meet any of them anywhere. It is a piece of good luck if there is a single one alive in one's time. For all practical purposes, pupils, of whatever degree of proficiency, have access to the teachers who are not in turn pupils, to the greatest minds, only through the great books. Liberal education will then consist in studying with the proper care the great books which the greatest minds have left behind—a study in which the more experienced pupils assist the less experienced pupils, including the beginners.<sup>12</sup>

To be a responsible citizen—and an attorney rightly has a professional obligation to be a responsible citizen—one must practice civic responsibility. This means to aspire to no more nor no less than the status of being an informed participant in our culture. Once again, “[l]iberal education is education in culture or toward culture. The finished product of a liberal education is a cultured human

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11. L. STRAUSS, *supra* note 1, at 8.

12. *Id.* at 3.

being.”<sup>13</sup> James Wilson, delegate to the Constitutional Convention and one of the six original justices of the Supreme Court, made the argument for the study of law at his inaugural lecture as Professor of Law at the College of Philadelphia:

The science of law should, in some measure, and in some degree, be the study of every free citizen, and of every free man. Every free citizen and every free man has duties to perform and rights to claim. Unless, in some measure, and in some degree, he knows those duties and those rights, he can never act a just and an independent part.<sup>14</sup>

There you have it, a Hohfeldian paradigm: rights and responsibilities, the privilege of joining the lawyers' guild carries duties to client and community.

So then, what do you carry away from this course in particular and law school in general? Or better, what do I hope you should carry away from my teaching? For one thing, I trust that in this course more than in some others, you have become more “aware of the dignity of the mind.” This awareness is essential for members of our guild, for “[b]y becoming aware of the dignity of the mind, we realize the true ground of the dignity of man and therewith the goodness of the world . . . which is the home of man because it is the home of the human mind.”<sup>15</sup> The popular saying notwithstanding, the world of the mind is as “real” a world as I can understand or imagine. For some of you, the irony is that this course in intellectual history is the first such opportunity in nineteen years of formal education. The criticism of that state of higher education and the pity that some choose to graduate to life never having taken advantage of such an opportunity, I leave for others.<sup>16</sup> However, I do sound the alarm so that you will resist the misshaping effects of the education funnel. Higher education and professional education can influence a narrowing which is at odds with the grand purpose of liberal education. Your interests and imaginations already may have begun to atrophy. My worry for you is that your soul will shrink in

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13. *Id.*

14. J. WILSON, *Lectures on Law*, in 1 THE WORKS OF JAMES WILSON 72 (R. McCloskey ed. 1967).

15. L. STRAUSS, *supra* note 1, at 8.

16. See A. BLOOM, *THE CLOSING OF THE AMERICAN MIND* (1987). *But see* Macey, *Allan Bloom and the American Law School*, 73 CORNELL L. REV. 1038 (1988).

law school and disappear altogether in the practice of law, if you are not careful. And it *is* up to you.

As for ability, the double helix marks the potential of each of us. As is true of other disciplines and pursuits, some are better suited to law than others. As for effort or motivation, again, this is in your control. There is a paradox facing you here. Too much effort, too much focused purpose can retard a liberal education. Professor Strauss explained:

Originally a liberal man was a man who behaved in a manner becoming a free man, as distinguished from a slave. "Liberality" referred then to slavery and presupposed it. A slave is a human being who lives for another human being, his master; he has in a sense no life of his own: he has no time for himself. The master, on the other hand, has all his time for himself, that is, for the pursuits becoming him: politics and philosophy. Yet there are very many free men who are almost like slaves since they have very little time for themselves, because they have to work for their livelihood and to rest so that they can work the next day. Those free men without leisure are the poor, the majority of citizens.<sup>17</sup>

I need not belabor the obvious parallel here with the fate of the law firm associate on the two thousand plus billable-hour treadmill to partnership. You must live for yourself. You must make time for yourself, your mind, and your spirit. Or else you will be no better off than a slave. This is not meant to be some sermon to decry materialism. You have heard enough criticisms of Mercedes-Benz goals coming from Volvo-driving professors. My fear is that you might succeed and still end up poor, the way Professor Strauss described: poor in spirit.

I urge you to make some time for nurturing the dignity of your mind. This should be a continuing commitment—to spend "quality time," to use the hackneyed phrase—pursuing education in your culture. Besides ability and motivation, you will need humility and self-discipline:

Liberal education, which consists in the constant intercourse with the greatest minds, is a training in the highest form of modesty, not to say of humility. It is at the same time a training in boldness: it demands from us the complete break with the

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17. L. STRAUSS, *supra* note 1, at 10-11.



noise, the rush, the thoughtlessness, the cheapness of the Vanity Fair of the intellectuals as well as of their enemies.<sup>18</sup>

I have a real world example, lest you dismiss this as the idealistic entreaty of a dweller of the ivory tower. Warren K. Anderson, Jr., is a dear friend of mine, a former classmate who practices law today in Jacksonville, Florida. Warren is a member of the Order of the Coif. We became friends, in part, because of our shared passion for Constitutional Law. Our review sessions were more difficult than the final examinations, and much more enjoyable. Warren is above all an individual. He told the Law Review to "forget it" when he was selected because it would have distracted him from his education. He typed out one resume and cover letter for the one job he wanted, and did not even keep a copy. He got that job. If yuppies followed Catholic ritual, Warren would be canonized for he is by all measures a success. He is married to a lovely wife and they have two fine sons. He owns his own building. He is a scratch golfer. His practice is at the point where he is in full control of his own destiny professionally and financially. He contributes of his time to *pro bono publico* cases and his firm plays a visible and active role in the cause of children's rights. In short, before he hit forty, Warren began to "live happily ever after." I am proud of him. But I also admire him. With his many obligations and achievements, Warren quietly and intently has pursued the dignity of the human mind. Given his humility, only his closest friends know "the rest of the story" about Warren. A few years ago, he was on trial representing the plaintiff in one of those David v. Goliath law suits that to win means a quality of life for client and a lifetime professional security for counsel. He turned down an offer of settlement that would have set a new record in his county. He won the case and he won it big, against the odds and despite all the advantages of his opponent. What is most admirable in all of this is that every morning Warren rises at five a.m. to read the great books. During this career-marking trial he was reading Aristotle's *Nicomachean Ethics*, in the original Greek which he taught himself. I hold him up to you as a role model: a successful attorney and a liberally educated person.

This then is my concern, that you possess the discipline and the humility to aspire to be liberally educated, that you not view that

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18. *Id.* at 8.

aspiration as somehow irrelevant to professional accomplishment or inconsistent with personal success. My concern is for your souls, that some may be lost already and that others may be in danger of being lost. What I want for you—what I as a teacher want for you as a student—is that you aspire to the pupilage of Warren K. Anderson. This course ultimately is not about the Framers or their Constitution. It is about you and your liberal education, ultimately. My hope for each and every one of you is that this course has helped you to “learn[ ] to listen to still and small voices” for the rest of your lives.<sup>19</sup> If you will have “ears to hear, of human greatness,” you have learned this most important lesson and you will be well on the way to becoming a cultured human being.<sup>20</sup> And you and the world will be better for it. I say not good luck, but Godspeed.

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19. Liberal education of adults must now also compensate for the defects of an education which is liberal only in name or by courtesy. Last but not least, liberal education is concerned with the souls of men and therefore has little or no use for machines. If it becomes a machine or an industry, it becomes undistinguishable from the entertainment industry unless in respect to income and publicity, to tinsel and glamour. But liberal education consists in learning to listen to still and small voices and therefore in becoming deaf to loud-speakers. Liberal education seeks light and therefore shuns the limelight.

*Id.* at 25.

20. “Liberal education reminds those members of a mass democracy who have ears to hear, of human greatness.” *Id.* at 5.