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# Freedom to Do What? Institutional Neutrality, Academic Freedom, and Academic Responsibility

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Our topic is whether law schools should remain institutionally neutral, presumably concerning the fundamental political and moral issues that besiege our society. The answer depends on several competing considerations, including one's concept of the university as either ivory tower or critical force obligated to serve the society that sustains it. I opt in the direction of the university as social force while also accepting the validity of the passive mode and seeing the dispassionate search for knowledge as a means to serve important human needs. The abstract formulation of the university as institutionally neutral is in many ways illusory because it stops short of understanding the true functions of knowledge, power, and mission.

The formulation I offer goes directly to the very conception of what we mean by institutional neutrality. What is it the university is to be neutral about? Obviously not knowledge, truth, precision of method, and the excitement of discovery. We must therefore be discussing the extent to which universities take stands on significant political and moral issues. And, realistically, we are not talking about institutions taking specific positions on volatile issues but about individual faculty doing so in their scholarship, their teaching, or both.

For our purposes I assume that the institutional university seeks a balanced neutrality and does not take a corporate position in favor of much of anything other than its basic values and mission. The university, then, functions much like the institutional foundations of the free market in a capitalist economy, in which an overarching structure and set of dynamic values allow the free operation of human judgment. As with the free market's invisible hand, the premise is that the weight of the individual decisions of faculty concerning what to research and teach will move the system in the direction it ought to go. A critical presumption is that academic freedom serves this function in the "marketplace of ideas." The question then becomes that of the degree of freedom of choice on the part of individual academics, and the extent to

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which they have the right to take controversial positions in their teaching and research.

The issue is not whether faculty have that right, because in fact it is their responsibility when their chosen work leads to it, but whether the right is essentially unbounded. Are there limiting principles, and to what extent does the idea of academic freedom protect individual academics from the consequences of others' qualitative judgments about the positions they have taken? That is, what if the work is generally agreed to be stupid; false, misleading, or—more troubling—outside the primary tenets of the controlling academic orthodoxy?

It is ironic that for much of our history academic freedom had little relevance to what law schools and law faculty did. It is even fair to ask what the law schools were doing in the university. Certainly the formal connection served the interests of both the universities and the legal profession, but for all practical purposes the elite university law schools served a narrow segment of the legal profession, the large corporate law firms. Their intellectual souls were already bought and paid for in a Faustian bargain that lasted a century and still has significant influence. It mattered little whether academic freedom existed, because law faculty did virtually nothing to challenge or offend, or to require invoking academic freedom as a protection. The faculties were homogeneous. Their treatment of legal doctrine was not only neutral but neutered. Controversies were few and generally trivial.

This is no longer true. For virtually the first time in the history of the American law school, the idea of academic freedom has meaning and significance. The law schools are now being subjected to such intense stresses from both internal and external forces that there is a risk of intellectual and political repression just at the point when many legal scholars are finally seeking to extend their discipline. The fragile protection afforded by academic freedom is one of the only available defenses.

To determine the importance of academic freedom we must understand the changing context of the university institution of which the law schools are a part. We must address five fundamental questions:

1. What are the valid purposes of the university as we move into a period filled with immense challenges?

2. What core of knowledge must be preserved and insulated against the pressures created by short-term societal demands?

3. What areas of inquiry are no longer vital or valid?

4. What new areas of inquiry should take priority?

5. What skills, values, and methodologies do academics need to fulfill their responsibilities within the university?[1]

1. I have attempted to address these questions in a series of articles. They include Prophets, Priests and Power Blockers: Three Fundamental Roles of Judges and Legal Scholars in America, 50 U. Pitt. L. Rev. 127 (1988) [hereinafter Prophets]; The University Ideal and the American Law School, 42 Rutgers L. Rev. 109 (1989) [hereinafter University Ideal]; The Revolution in American Law Schools, 37 Clev. St. L. Rev. 227 (1989) [hereinafter Revolution]; The Purposes of the University in the First Quarter of the Twenty-first Century, 22 Seton Hall L. Rev. 1124 (1992) [hereinafter Purposes]; The Justice Mission of American Law Schools, 40 Clev. St. L. Rev. 285 (1992).

**Academic Freedom as Purposive Responsibility**

Assume for purposes of this discussion that academic freedom ought to exist. Granting this premise does not mean that university faculty are achieving the goals that justify the great privilege of academic freedom and its corollary, tenure. Academic freedom is not an end in itself; it exists only so that higher ends may be achieved. If those higher ends are not being achieved—or, as in most law schools until recently, rarely even thought about—then there is no reason to worry much about academic freedom for law faculty. The tragedy is that there has been a shocking paucity of important controversial work that has challenged an often unjust system.

My point is not that mainstream doctrinal scholarship of the kind that has dominated academic discourse in the law schools is illegitimate or useless. Some unquestionably has been, but doctrine is an important lens through which justice, morality, and power are translated and applied from the dimensions of abstract theory and preference to the concreteness of law in action. Mainstream doctrinal scholarship surely has a contribution to make to an efficiently operating system of law. But, as traditionally done, it is not inherently intellectual, nor is it in fact "scientific." Our problem is not that we have taken doctrine as the central focus of our work, but that we have done such an injustice to the richness and complexity of doctrine. Much of the doctrinal scholarship we produce would have been generated even if the law schools had been honest professional schools owing no obligation to the university. The scholarship might have been done more concisely and clearly, without the intellectual pretension that tends to characterize our work, but its tenor and quality would have been very similar. If this is a reasonably accurate observation, then it seems obvious that academic freedom has mattered little to legal scholars, and that American law faculty have failed to serve the mission of the university, whether we speak of the ivory tower of the "pure" scholar or the more active ideal.

Academic freedom is a privilege and a responsibility, not a personal and unfettered license for the misuse of the increasingly scarce social resource represented by each faculty position. Academic freedom nurtures the intense desire to know, create, and serve our society in some meaningful way.[2] It should be used to develop and refine knowledge, confront injustices and abuses of power, and seek solutions to fundamental dilemmas. It is abused when used to conceal lack of honest commitment to the basic mission of the university.

Academic freedom is intended to allow university scholars to fulfill their intellectual mission without fear of reprisals. It imposes a duty on administrators and other powerful interests to keep their distance. The power to keep hostile or incompatible forces at arm's length is becoming increasingly important as the inhabitants of the academic world are pressured to serve specific agendas. The fact is that academics in many disciplines, and particularly law, must know about and respond to important social needs. But if they become

2. See, e.g., University Ideal, *supra* note 1.

dominated by administrators, politicized movements, and special interest groups, academics' ability to perceive and adapt intelligently will be undermined. Unfortunately, many academics are quite happy to serve external masters and, in this strange new world we have created, would wonder what is wrong in their doing so.

We seldom allow ourselves to remember that academic freedom is purposive, and its purposes are nearly all human-centered in some way. We speak as if there were a Platonic form of the university located somewhere in a nonexistent dimension of absolute reality to which we nonetheless aspire, divorced from any necessary connection to humanity. The truth is both more basic and more useful. The university is a social organism that has little reason for existing unless it contributes in fundamental ways to its society.[3] Truth seeking is an undeniable and exciting element of that process. So is preserving and transmitting knowledge, learning clarity of thought and expression, contributing to the specific social needs of the moment, and anticipating the needs of the emerging society.[4]

Institutions of higher learning are responsible for helping our increasingly beleaguered society adapt to change and challenge.[5] Those universities which do not adapt risk becoming sterile museums of arcane dogma much as occurred several centuries ago at Oxford and Cambridge, forcing the British to create a new, more vital, university system in the nineteenth century.[6] Regardless of impassioned rhetoric about the medieval university, the university in history has always served important societal needs. Of course, who possesses the power to define those needs is a critical issue. While existing universities tend to be resistant to change, they have nevertheless adapted or become largely irrelevant. Such a shift in perspective must happen again because few, if any, institutions other than the university possess the organizational scale, resources, continuity, or energy to focus systematically and critically on fundamental social needs.

Universities, fields of knowledge, and societies go through cycles in which the intensity of their need for knowledge varies radically.[7] The cycles are never congruent because of an inevitable lag between a society's need for knowledge and the time in which the universities and relevant disciplines recognize the emerging needs and are able to adjust. Society, the various disciplines, and the university are therefore always to some extent out of synch. In a period like the present, when we need new approaches, skills, and insights, the backward-looking orientation of most academics (stemming variously from our arrogance, ignorance, outmoded perceptions, natural resistance to change, and fear) does not serve the purposes of the university as vital social organism.

3. See Purposes, *supra* note 1.
4. See, e.g., Carnegie Commission on Higher Education, The Purposes and the Performance of Higher Education in the United States: Approaching the Year 2000, at 1 (New York, 1973).
5. See Purposes, *supra* note 1.
6. See Frederick Binkerd Artz, Reaction and Revolution, 1814-1832, at 102 (New York, 1963).
7. See Charles David Axelrod, Studies in Intellectual Breakthrough 2-3 (Amherst, 1979).

The five questions I posed earlier are particularly difficult to answer because an immediate response by many academics will be that in criticizing our failure to fulfill the underlying purposes of academic freedom and tenure, I am calling for an abandonment of the traditional core of Western knowledge in favor of full immersion in socially relevant issues of the kind that polarized the university world in the 1960s. This is not at all what I am urging. Historical, literary, moral, and philosophical insights provide both context and living principles. At a minimum such traditions join us together culturally. Far beyond that minimum they provide an inexhaustible core of principles that can guide our best judgments and teach us how to think. In my own teaching and research, for example, I continually draw on such sources as Aristotle, Plato, Locke, and Hobbes in discussions concerning the functions of society, the meaning of justice and injustice, and the lighter and darker qualities of human nature. These sources provide a shared vocabulary that allows us to penetrate to the central meaning of critical concepts and dilemmas and to communicate with each other about fundamental concerns. Law schools have failed intellectually in large part because they ignored these sources, disdaining not only the philosophical and moral roots of law but the concrete realities of law practice and law in action. Instead of understanding law as a richly textured human process, law faculty have settled for an almost static, two-dimensional system that fails even to understand doctrine adequately.

For an academic discipline such as law, one that is inextricably tied to social action and the application of power, the refusal to address concerns of justice and injustice, social needs, and institutional politics and policies is a fundamental abuse of academic responsibility to seek truth and challenge the injustices of vested interest and power. The extreme preoccupation with appellate doctrine that dominated discourse among legal scholars for more than a century is a pseudo-intellectual episode about which legal academics ought to be embarrassed.[8] We refused to examine the more important and interesting elements of particular doctrinal systems; we remained oblivious to the nature of doctrine as a vital political construct.[9] When we accept that doctrine has intrinsic political and distributional consequences, it becomes obvious that "neutrality" has already fallen victim to power: by being silent we inevitably support the values and political choices that underlie particular doctrines, either accepting them totally or refusing to challenge them.

### The University Ideal, Truth Seeking, and Academic Freedom

Assume the only legitimate justification for the privilege of academic freedom and tenure is to allow academics to pursue and communicate truth. This demands the strongest commitment both to pursuit and to communication.[10]

8. See, e.g., Robert Stevens, Law School: Legal Education in America from the 1850s to the 1980s, at 16 (Chapel Hill, 1983) (characterizing legal scholarship as unimpressive "regurgitation" of doctrine).

9. The structure and potential of doctrine is outlined and discussed in University Ideal, *supra* note 1.

10. "The intellectual's duty is to look 'at the political sphere from without, judging it by, and admonishing it in the name of, the standards of truth accessible to him. He speaks, in the biblical phrase, truth to power.'" Arthur Schlesinger, Jr., Intellectual's Role: Truth to Power? Wall St. J., Oct. 12, 1983, at 28 (quoting Hans J. Morgenthau).

The means of pursuit vary widely depending on the discipline, as do the types of knowledge and insights sought. Even the definition of what is true will vary with the discipline's subject matter. But at the center of the quest in all academic disciplines must be the desire to *know.*

While the truth-seeking mission is easily described in general terms, the reality is far from the ideal. For too many academics, *freedom* has become *privilege,* freedom without true responsibility. Universities are afraid to deal with this problem.[11] Many academics, I hope the majority, fulfill their obligations to seek truth with honor. But too many are abusing their privileged positions. Too many, and this is certainly a problem in legal scholarship, fail to ask themselves what it is that would be worth pursuing, not for personal aggrandizement but in order to make contributions of intellectual and social consequence. They have been acculturated into pre-existing research and teaching agendas defined by the subpart of their particular discipline, which subpart itself rarely asks why this discipline exists, and in what way it should contribute to the world of knowledge. Others have increasingly chosen to ally themselves with specific schools or movements and are allowing those ideologies to substitute for their individual pursuit of truth. This I discuss below.

The rules of the research and teaching games are already set for most academics when they enter a discipline's ranks. None of us comes to an academic position with John Locke's *tabula rasa.* Our slates are filled with information, chiseled deeply with the rules of the disciplinary medium in which we will spend our lives. Its principles and methods are firmly established during the period of graduate education and reinforced in the promotion and review processes that lead to a tenured appointment.

This process of acculturation means that academic "freedom" is not really freedom in the sense of creativity and wide-ranging intellectual curiosity, but a bounded process that operates only within tight little boxes of orthodox concepts. We are unwilling or even unable to think of truly provocative matters.[12] We accept the primary rules of our discipline's mainstream thinkers because that is the path of least resistance, and we perceive our task only from within an already organized system of thought.[13] We have, for example, long urged the importance of interdisciplinary linkages. But the efforts have been halting at best in some disciplines, nonexistent in most. We fail to examine the connections that would help us build bridges between related or overlapping disciplinary constructs. We are little more than pieces of an unassembled puzzle, strewn about on a cluttered tabletop of knowledge. Academics trapped

11. For examples see William G. Hollingsworth, Controlling Post-Tenure Scholarship: A Brave New World Beckons? 41 J. Legal Educ. 141 (1991); see also Daniel S. Greenberg, Tenure's Cushy Bunkers Under Fire, Clev. Plain Dealer, Dec. 21, 1989, at 9-B; Anthony DePalma, Rare Dismissal on California Faculty, N.Y. Times, Aug. 14, 1991, at A17 (first dismissal of tenured professor in 123 years).

12. See Axelrod, *supra* note 7.

13. Jacques Ellul warns us: "Education . . . is becoming oriented toward the specialized end of producing technicians; and, as a consequence, toward the creation of individuals useful only as members of a technical group, on the basis of the current criteria of utility . . . ." The Technological Society, trans. John Wilkinson, 349 (New York, 1964).

unknowingly within the puzzle are convinced they are at the center of knowledge because in their ignorance they are unaware of the limits of their concepts. Even worse, they are unable to recognize truly meaningful new material that fails to fit into their pre-existing conceptual structures. Many academics seem to operate from an inchoate faith that somehow, somewhere, there exists a God of Knowledge who is monitoring their efforts and assembling the puzzle, thus relieving them of the responsibility.

If incoherence and lack of connection describe one part of our problem, another part is that academic systems define what will be or should be almost entirely in a context of what is and was. As I have suggested elsewhere, we have entered a cycle in which the university must redefine the way it serves our society.[14] But instead of leading, our academic systems are hiding behind the rhetoric of academic freedom while refusing to accept the burden of their academic responsibility. We began with the assumption that academic freedom is a vital element of the university. But if academics refuse to use their freedom to examine emerging needs, to differentiate among different approaches, and to integrate alternative perspectives and skills so that they can guide their societies, they are failing to lead the way into the next generation.

The problem of achieving creative change is exacerbated because academics who have risen to leadership in the law schools have tenure and, consequently, the power to impose overt and covert sanctions on younger academics. This often has a chilling effect on the creative energy of newer faculty. If there is to be a creative break in such a system, it often must come by direct confrontation. This unfortunately produces schisms that become rigidly ideological. It becomes more a political conflict than an intellectual one, and the new positions are defined (and distorted) by their opposition to the orthodox traditions they are challenging rather than by their own inherent quality. This politicization of knowledge has happened in American law schools.

### Academic Freedom and American Law Schools

What do academic freedom and responsibility, the politics and behaviors of orthodox disciplines threatened by demands for change, and the politicization of knowledge mean in the context of American law schools? First, as Peter Byrne observed in his paper, law schools are in a deceptive period of abundance. Enrollments, once thought to be in serious decline, have surged during the past decade. Law faculty have a good thing going. Professors in other disciplines consider us to be pampered and privileged: paid more than most other academics, yet responsible for fewer classes, able to teach whatever we choose, subject to less interference from our administrations, and evaluated according to less stringent tenure and promotion standards. We have also had enormous freedom to take time off and to consult extensively. Simply put, American law faculty have one of the cushiest jobs in the entire world.

If academic freedom does in fact drive an academic system toward the highest levels of creativity and productivity, we should be able to examine the

14. See Purposes, *supra* note 1.

intellectual contributions of law schools to find out whether academic freedom works as intended: to what extent has the body of knowledge produced by scholars in American law schools offered new insights, improved the conditions of American society, and developed efficient and effective solutions?

The answers are not obvious. As recently as fifteen years ago they were in many ways both obvious and embarrassing, but that is no longer so.[15] There are various factors involved in the unfolding of the often sterile Langdellian tradition as well as the revolutionary changes law schools are currently experiencing, few of which can be dealt with in this brief commentary. One factor is of course the always uneasy dualistic nature of law schools as both academic/professional and academic/graduate institutions.[16] We organize the curriculum the way we do because that is how we have always done it, not because we are continually seeking the best ways to facilitate learning and organize our subject matter. Academic freedom has been used to protect us from changing.

Another serious problem is that while law schools have immense academic freedom *within* universities, which neither understand nor care much about what the schools are doing as long as they do not cost more than they earn, they are clearly intellectually inhibited when the influences of the organized bar and bar examiners are factored in. The subject matter requirements of bar examinations and the curricular regulations of the American Bar Association help anchor the schools to a structure of subject matter that lacks internal intellectual logic. It does not even reflect how law works in practice, nor can it be justified from a serious intellectual perspective. Unfortunately, the control by the profession suits most law faculty quite well because it justifies their failure to innovate.

For almost a century of the Langdellian era, legal scholars proclaimed law to be a science, value-neutral and apolitical, distinct from morality and justice.[17] All that was real and human about the law was placed in a tightly sealed box labeled "notlaw." Consequently, academic law as taught and written about by legal academics erected barriers to the academic freedom of those who sought to challenge what they perceived as its sterility. As with most powerful orthodox systems, the barriers were for the most part invisible, accepted because they were the unstated values of the system within which we were all trained. The fact that the law schools bothered to name a movement Legal Realism when its main premise was the simple and obvious assertion that human attitudes and values were an inevitable part of law that needed study does much to expose the inadequacy and rigidity of the "scientific" Langdellian approach to the study of law. The box into which academic thought forced law was really a pressure cooker that could not possibly hold all that law represents. The cooker exploded about fifteen years ago and we are now trying to put it back together.

15. See generally Revolution, *supra* note 1.

16. 2 Anton-Herman Chroust, The Rise of the Legal Profession in America 197 (Norman, 1965).

17. See Prophets, *supra* note 1.

## The Scholarship of Rage

The last twenty years have been revolutionary for American law schools. Transformations have occurred in what is taught as well as what is being written.[18] There is a fundamental tension between the ways various interest groups among law school faculty perceive and seek to fulfill their vision of legal education and scholarship. The conflict emerges from the competing desire to be academically or intellectually legitimate in the traditional sense, and the often incompatible desire to use the power of law to alter the conditions of society, after first altering the conditions of the law schools to fit whatever image is preferred.

The revolution in legal scholarship has not been coherent or always substantive as much as it has been political. Many law faculty are pursuing personal intellectual and political agendas beneath the umbrella of legal scholarship.[19] In the process, intellectual curiosity and vision have often been subordinated to desired consequence. The activist/reformist agenda is, for example, to some extent being driven by tacit alliances between interest groups in American society and law faculty who share their vision. Another thread of this process seeks the theoretical roots of law and social justice. This theoretical strand is energized, ironically, both by relatively pure intellectual desires to know and by the awareness that the political group able to dominate discourse on deep principles controls an important aspect of the political system.[20] Such goals seem admirable on first impression—many of them compatible with my own preferences and beliefs. But the existence of such powerful personal preferences should immediately warn us of the dangers of extreme subjectivity and the pursuit of personal agendas.

The problem with this behavior is that the university has no special meaning unless scholars are committed, above all, to finding the truth. The university is a time machine of sorts, one that spans the past, present, and future. Each element must be honored or we risk corrupting the very institution that sustains us. This does not mean that we must be apolitical, but that we are obligated to seek truth and balance in our teaching and scholarship, regardless of what we do in our public interest lives as aggressive advocates.

At base, however, there is an even deeper problem that can obscure truth and reason. Much of the change in law schools and legal scholarship is being generated by deep-seated and entirely understandable anger about the dehumanizing treatment of particular categories of people by social and political institutions, treatment in which law and its institutions (including law schools) have often been tacit partners. A dominant dynamic is rage at injustice, not only vicariously experienced injustice, but—for many of the new scholars—directly experienced injustice. Perceived discrimination against people who are black, Hispanic, female, gay, or lesbian often leads to an experientially based form of scholarship and teaching, a form very different from what we

18. See Revolution, *supra* note 1.

19. See *id.*

20. See Prophets, *supra* note 1.

have seen in any historical model of the university. The current situation in legal scholarship, and to a lesser extent in law teaching, is as if clones of Thomas Paine had suddenly come to life on a hundred American law faculties and had begun to write political tracts aimed at legitimating their individual points of view and fomenting revolution.[21]

This is putting great pressure on law schools. We do not have a model that allows us to deal with the new scholarship. Many who engage in such scholarship, because of the power of their own negative experiences or the force of their empathy with others, can have great difficulty even considering the potential validity of positions not fully consistent with their own value systems.

Of course this also has much to do with the nature of political struggle, in which tolerance is taken for weakness and interpreted as concession. Because political ideologues cannot or will not see truth in others' analyses or flaws in their own, we have raging nondebates over political correctness. We also have scholarship that is intellectually empty but, like all forms of effective propaganda, uses the right slogans. The more traditional social activist scholars, many of whom emerged from the civil rights movement (I include myself in this group), are in some ways different from the new generation of scholars—a difference perhaps definable by the distinction between deep compassion and identification of self as victim. While the rage and resentment of the new breed is generally, but not always, buried in academic language, their distress and anger are deep, personal, and powerful. They are irreversibly altering the nature of scholarship and teaching in American law schools, as well as relationships among law faculty.

The scholarship of rage has flooded into the law schools as they have diversified their faculty. First women, and now African-Americans, Hispanics, gays, and lesbians have become increasingly forceful. Each group has formed into a political movement protesting conditions seen as unjust and intolerable, which in many instances are. There is little ground for compromise, and the schools have become battlegrounds of the movements. In one sense, this is about as free as an academic institution ever gets. It is also undisciplined and increasingly intolerant. It could destroy whatever intellectual legitimacy the law schools may lay claim to, but the only alternative is an at least equally destructive repression. The key point is that no one can stop what is occurring. We are all caught in the midst of a storm filled with sound, fury, an occasional burst of hot air, and, I hope, a cleansing force that will leave us revitalized if only we can survive the transition and mature in the process.

### Political and Institutional Neutrality

The topic of this panel concerns institutional neutrality in the university law school, but neutrality is a false and misleading concept in the process of seeking truth about law, politics, and justice. It is more valid to insist on

21. In The True Believer: Thoughts on the Nature of Mass Movements 120 (New York, 1951), Eric Hoffer observes that the *man of words* "undermines established institutions, discredits those in power, weakens prevailing beliefs and loyalties."

fairness, diversity, honesty, and tolerance. The simple fact is that neutrality or apoliticality is itself inevitably political in the context in which we operate. Politics and concern for just resolutions of fundamentally unjust situations have flooded into our teaching and legal scholarship. We cannot push back the tide, nor should we. But we have not yet learned how to cope with our new roles.

The questions are not about whether law schools ought to be politically neutral, but about the need to be intellectually honest and open, able to justify intellectually and morally every component of our work, every fundamental premise upon which we rely. This responsibility applies both to those who seek to preserve and those who challenge. Forcing ourselves toward intellectual honesty may lead us to truth but seldom should lead to neutrality. In this way we drive our intellectual processes, exposing ourselves to risks and to others' judgments.

A key point of our academic responsibility is to refuse to allow either ourselves or our students to tolerate intolerance. In my Jurisprudence course, for example, I try to help students develop a methodology that forces them to take nothing for granted, to challenge themselves and their own beliefs and assumptions as well as my own, and to understand the potential validity of others' positions even if they do not agree with them. We do this in the context of *Roe v. Wade*,[22] a case guaranteed to invite conflict and intolerance. As teachers we must challenge and be open to challenge—open to law students questioning our unstated premises and saying, "Explain your politics. Justify your politics. Why did you make that statement? Show us why you were able to reach that conclusion." In the climate of law and law schools, political and institutional neutrality is a mirage. We cannot do it.

As societal criticisms of lawyers and law schools intensify, the schools must be able to articulate in good faith the special and unique reasons they exist or should exist, and the contributions they can make to American society. Few of these contributions involve matters about which it is possible to be politically neutral. They involve making a series of judgments about what the society needs, in the process attempting to answer some difficult questions: What is the nature of justice? What is the nature of resisting injustice? How should law and lawyers respond to maldistributions of economic resources? How can the law be used to facilitate a fair allocation of resources, opportunities, rights, and privileges?

Contrary to the implications of an ancient Chinese curse, we have the good fortune to be living in an interesting time. When I first came into the law school world more than twenty years ago, it was abysmally homogeneous. In the next ten years the changes within the law schools were profound. For the last twenty-five years, in a process begun with the civil rights movement of the 1960s, we have been enmeshed in a dynamic process that has been politicized in dealing with issues of rights and justice. It is far from complete, and it is important that we view the law schools as unfinished institutions reflecting a

22. 410 U.S. 113 (1973).

rapidly changing moment in time. We are changing, and responding to political and social needs is part of that change. Redefining and challenging the role of the lawyer is part of that change. Redefining and challenging the role of the legal scholar is part of that change. Understanding how legal scholars and law schools can better contribute to society should be a special part of the changes we seek to achieve. All of these are things we must make explicit, and that is something we have never done very well.