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# Law and Society Perspectives in the Basic Law School Curriculum: Critique of an Interdisciplinary Experiment in Freshman Contracts

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# LAW SCHOOL DEVELOPMENTS

*Once a year this department will carry figures on law school registration. In addition it will provide a medium for the description of experiments in curriculum, teaching method, and administration. Like "comments," the typical law school development note will be characterized by brevity and informality; unlike them, it will be descriptive rather than argumentative and will deal primarily with devices which have been tested in actual operation. As a general rule, the authors will gladly answer inquiries and, to the extent available, upon request supply copies of materials referred to.*

## LAW AND SOCIETY PERSPECTIVES IN THE BASIC LAW SCHOOL CURRICULUM: CRITIQUE OF AN INTERDISCIPLINARY EXPERIMENT IN FRESHMAN CONTRACTS

ROBERT L. BARD \* and LEWIS KURLANTZICK \*\*

Contributing to the endless quest for the appropriate role of non-doctrinal input into legal research and law teaching, philosopher-law academic Ronald Dworkin has contrasted the approaches to and premises of legal research in England and the United States.<sup>1</sup> Brutally simplified, British legal scholars limit themselves to trenchant doctrinal analysis, while their American cousins claim a commitment to broad concerns with the interplay of law and society. Dworkin makes a persuasive case for the superiority of the American style while sharply delineating the difficulties inherent in its widespread adoption. These difficulties pertain to law teaching as well as legal scholarship. Our experience in teaching first-year Contracts suggests that interdisciplinary perspectives can be introduced into the basic law school curriculum without requiring superhuman intellectual feats by students and faculty. And the prime focus of this essay is to share our experience in this regard.

Though the "limited" British style of teaching and scholarship—as Dworkin terms it—is neither mechanical nor easy, it does narrowly focus on doctrinal analysis and generally restricts itself to materials available in a law library. The "broad" American approach differs most basically in its lack of delimitation and its willingness to recommend policy which extends beyond traditional legal concerns. Exemplified by recent work in the area of accident law, this approach reaches beyond doctrinal analysis (and law library materials) and seeks aid from social science disciplines such as economics, psychology and sociology to analyze legal problems and their potential solutions. Judging from the work of the most prominent American legal scholars, the broad approach has established itself in this country, first in scholarship, and increasingly in teaching. But the American style makes severe in-

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<sup>1</sup> Dworkin, *Legal Research*, Daedalus, Spring 1973, at 53.

tellelectual demands on the legal academic. Effective practitioners must be multi-faceted; philosophers as well as economists, psychologists and sociologists. As Dworkin puts it, the approach requires something of an academic superman, which may preclude large scale integration of law and other disciplines in the manner called for by the broad style. Conceivably, the attempt to apply interdisciplinary perspectives to all problems may undermine analytical rigor with respect to those problems best handled through application of traditional legal analysis. Indeed given the narrow focus of legal education and the relative scarcity of law professors with advanced degrees in other disciplines, it is quite possible that many American legal scholars purporting to recommend social policy on the basis of a broad inquiry are in fact incompetent to do so.

Another possible consequence of the limited interdisciplinary competence of most law professors and social scientists may affect joint degree programs. Faculty, by attitude and teaching method, may communicate a belief in the superiority of their own analytical methods, thereby discouraging integrated approaches. According to a student-participant in the joint public policy and law program at Harvard:

"For obvious reasons, law courses generally are taught by those who excel at legal analysis, public policy courses by those who excel at economic, statistical, or political analysis. As highly qualified specialists, these teachers often believe that their methods of analysis are the best methods available for approaching complex problems.

"Thus law teachers may unintentionally convey the impression that classroom discussions of policy questions in other than legal terms are intriguing but not particularly fruitful diversions from the serious and quite separate business of learning the law. Conversely, teachers in public policy courses frequently treat relevant statutes as inflexible outside constraints, as factors external to the solution of policy problems, rather than viewing them as dynamic instruments subject to shaping by administrative regulation, judicial construction, and the imposition of procedural requirements.<sup>2</sup>

Yet, so long as law remains one of the prime instruments of social ordering, public decision makers, and those seeking to influence such decision makers, must make maximum efforts to understand the interrelationships of law and society: how the law really works; how particular legal arrangements affect the various components of a society; and how they should be altered to achieve specified social goals. And to support these efforts, teachers and professional advisors must do their utmost to develop their competence in the relevant social disciplines and to include these perspectives in their teaching, writing, and consulting. At a minimum, to the extent particular problems require intellectual tools not found in the traditional legal scholar's kit, the self limiting scholar and teacher should explicitly denote the effect of such omissions on the validity of his conclusions and recommendations. Moreover, we see little support for the proposition that interdisciplinary analysis will be less "rigorous" than that achieved via traditional legal methods. The notion that disciplined philosophical or social science inquiry is

<sup>2</sup> Spector, *Student Urges Integrated Approach to Joint Law, Public Policy Degrees*, *Harv.L.Record*, Feb, 6, 1976, at 6.

inherently less rigorous than the traditional doctrinal study of law is, at best, ill-informed, and, at worst, arrogant.

If legal scholarship requires a broad approach, then legal education requires no less. But, as with scholarship, it is not always easy to integrate other relevant disciplines into coursework and classroom discussion. The severe intellectual demands on professors now must be imposed upon students. This kind of teaching and learning must cope with the general lack of student background and sophistication in the disciplines to be employed. One response to the recognition of the relevance of a particular discipline and the lack of student background therein is the introduction of coursework in the required disciplines directly in the legal curriculum. This process has gone furthest with respect to economics.<sup>3</sup> Lack of student and faculty training, though, is only part of the problem. The question remains of where and how the broader approach should fit in a curriculum primarily designed for the education of practicing lawyers. Under these circumstances, particularly in a tight job market, hostile student reaction, particularly among first-year students, becomes a severe problem. "Teach us the kind of law we need to get good grades and pass the Bar rather than irrelevant 'social slush'".

But withall, if a thorough understanding of law as a basic tool of social ordering requires the introduction of other disciplines, law schools are obligated to do their utmost in this regard. At a minimum, students should be apprised of the full intellectual requirements for effective thinking about complex problems and afforded some idea of the dangers inherent in policy recommendations solely based upon traditional legal analysis. Our experience with an intensive effort to use interdisciplinary perspectives in a freshman Contracts class to analyze door-to-door encyclopedia sales convinces us of the feasibility of such exercises. It also may typify the possibilities and pitfalls of one sort of interdisciplinary enterprise. Hopefully it will encourage others into similar ventures and give some guidance to facilitate the enterprise.

#### *Door to Door Encyclopedia Sales as an Interdisciplinary Pedagogic Vehicle*

The unit concentrates on door-to-door sales of encyclopedias. It is designed both to convey the impossibility of developing normative standards for the appraisal of alternative legal regimes for such transactions without recourse to other disciplines—economics and moral philosophy—and to counteract the predominantly inverted law teaching format. That is, unlike most academic inquiry which starts with the problem and then examines alternate solutions, law school teaching starts with a particular solution and

<sup>3</sup> Professor Lovett has described the extent to which such courses have entered law school curricula and the different common forms these courses take. Lovett, *Economic Analysis and its Role in Legal Education*, 26 J. Legal Ed. 385 (1974). For a succinct summary by one economist/law academic of the types of contributions economic theory can make to law—to legal decision making, to the study and development of legal doctrine, and to the study and analysis of legal structure—see Klevorick, *Law and Economic Theory: An Economist's View*, American Economic Review, May 1975, at 237. For a witty description of the intellectual context underlying and feeding the "lust" for economic analysis among legal scholars, in particular the effects of the Realist movement and the modern development of normative philosophy, see Leff, *Economic Analysis of Law: Some Realism About Nominalism*, 60 Virginia L. Rev. 451-59 (1974).

then, sometimes, attempts to evaluate the extent to which the solution fits the problem. With respect to door-to-door encyclopedia sales we start by analyzing the legal needs of all potentially interested parties, and then proceed to identify legal arrangements which would best serve the interests of the parties and the relevant social interests. In considering this issue the students could rely only on rudimentary comprehension of the general mechanics of offer and acceptance and general familiarity with the concept of executory agreements.

We began by identifying all parties potentially interested in the transaction. These include, in addition to buyers and sellers, the public interest in conserving resources and the societal interest in the widest possible dissemination of the knowledge incorporated in the encyclopedias. Next, we tried to determine the needs and desires of each of the parties and the kinds of help each might seek from the legal system. Functionally, what protection do buyers and sellers in this context really require? Obviously the claims would conflict, and we tried to find resolutions which met the minimum needs of buyers and sellers, and which were consistent with third party interests. For one, we attempted to determine how much buyers benefited from rules upholding *promises* to buy and sell—would they trade their right to hold the seller to his promise to sell if they could free themselves of their obligation to buy? The informed consumer might be more anxious to assure a firm price than consumers prone to rash purchase decisions.

We also tried to ascertain the minimum legal protection necessary to permit the seller to stay in business. We concluded that the crucial point in the transaction was the delivery of the goods. Moreover, though at some point the seller must be assured of a firm deal, we suggested that for encyclopedia sales his need for legal protection of the enforceability of an executory promise is less than in other transactions, *e. g.* wheat sales, and that standard expectation damages probably overcompensates sellers. In addition, we explored the consequences of legal and economic arrangements permitting increasingly long periods in which purchasers could return purchased goods for proportional refunds of the purchase price. This led to a discussion of the consequences of moving toward a total rental system whereby people need not keep or pay for any goods beyond their use for them and the legal and institutional changes required to achieve this.

Up to this point the analysis had generally assumed a homogeneity among buyers and among sellers. Next we explored the relevance of the sellers' size and economic power and the implications of disparities among buyers with respect to their capacity to make wise purchase decisions and their vulnerability to the consequences of mistaken decisions. Thus, looking at the situation from the buyer's perspective we exposed the often overlooked "hidden" cost involved in a transaction where the buyer obligates himself to purchase something he does not want under a legal regime requiring substantial payments to annul "mistaken" purchase agreements. In this context the cost to the class affected is the reduction in consumer satisfactions, which in turn depends upon the price of the good, the probability of mistaken purchase decisions, and the income levels of the erring consumers.

How might the more poorly informed be helped, we asked. One commonly proposed remedy is a cooling-off period. Our next step, then, was con-

sideration of the consequences of enacting cooling-off period legislation for door-to-door sales—a person agreeing to purchase a product may rescind the agreement without legal penalty within x number of days. Obviously cooling-off period enactments are part of the broader issue of whether the binding wholly executory contract should apply to certain categories of buyers and sellers. State and FTC rules permitting cancellation can be viewed as efforts to protect consumers from the “trap” of the binding executory contract.<sup>4</sup>

At this point we introduced economic theory to determine the insights available from this discipline for assisting us in choosing among alternate legal policies. A short economics lecture seemed to provide sufficient grounding for the students to follow and, for some at least, to participate in the class discussions. First, we tried to evaluate the impact of a cooling-off period on the seller's operations, particularly his costs. We applied micro-economic theory taking account of the particular economic features of book production and distribution. Through application of price theory we concluded the expansion of buyers' legal rights would result in a rise in costs and this would be reflected in higher prices to all purchasers. In exchange for the higher prices all potential buyers would receive increased legal protection against rash agreements to purchase. The number of mistaken purchases should decrease and we traced the consequences of that. But not everyone would want or need such protection. More sophisticated buyers would rather have lower prices since they could protect themselves against mistakes. The net economic and social effect would depend upon the distribution of sophistication among potential customers of door-to-door encyclopedia salesmen. We estimated the consequences under a number of alternate distributions of purchaser sophistication.

At this point students began to perceive that the decision on a cooling-off period required a value judgment. According to our economic analysis, the legislation would permit those needing protection to shift part of the cost of their protection to the entire group through higher prices; the benefits achieved in these circumstances are enjoyed only by those members of the population who avail themselves of the legal right to withdraw from executory purchase contracts while the costs are paid by all consumers of the product including those who do not require additional legal protection against rash purchases. Our economic analysis certainly drove home the Chicago school wisdom about no free lunches and that making social adjustments through legal changes is often more complicated than it may initially seem. It also helped pose in stark form the value choices inherent in the competing policy alternatives. We took the opportunity to stress that the policy dilemma illustrated here was not an uncommon one. The perceptive product safety regulator, for example, recognizes that through increased cost a mandatory standard for the flammability of mattresses penalizes those who do not smoke in bed as well as protects those who do.<sup>5</sup>

<sup>4</sup> See C. Reitz, *Cases and Materials on Contracts as Basic Commercial Law* 623-28 (1975).

<sup>5</sup> See Kelman, *Regulation by the Numbers—the Consumer Product Safety Commission*, 36 *The Public Interest* 83, 86-90 (Summer 1974). See generally A. Alchian & W. Allen, *University Economics* 364-67 (3rd ed. 1972).

We could have stopped with exposure of the underlying value choice. The students would have gained an awareness of the ethical dimensions of policy choice and would realize that once the impact on each affected group is assessed, a social philosophy is required to make the final decision. We can understand why teachers would hesitate to proceed further; we are uneasy about possible indoctrination and most of us are not professional moral philosophers (Dworkin's problem again of the academic *superman*). But caution here is much too expensive. Responsible law teachers cannot shirk their duty to explicitly confront the truth that value-free analysis is impossible with respect to law which is the embodiment of a society's most important values. Moreover, values are not beyond the reach of systematic intellectual inquiry which can clarify, if not finally resolve, our most difficult and most basic choices.<sup>6</sup> Therefore if law schools are to accord value analysis its proper role in the study of law we must swim in these murky waters. Accordingly, we proceeded to subject the students' value preferences to thoughtful assessment by inquiries and comments and also to inform them of philosophical endeavors to develop general principles to guide our choices.

Moreover, the meaning of a value is necessarily modified or refined by each context in which it is encountered. Until a student sees one or more values put to the test in the setting of a particular legal issue, he cannot fully comprehend that value or group of values. According to Dean St. Antoine, "It is one thing for a conscientious teacher to refrain from making a student's ultimate value choice for him, and quite another to refuse so totally to come to grips with these fundamental issues that the student is left to infer that value judgments are no significant part of a lawyer's function."<sup>7</sup> In fact, carefully employed economic analysis combined with reasonably accessible concepts of moral philosophy can help the student to refine the crude value judgments with which he often starts and to fashion legal arrangements which will effect the substance, rather than the illusion, of movement towards a more just society.

Naturally, we offer the required obeisance to the limits of economic theory, and are duly fearful of exaggerated claims for microeconomic theory as an instrument for positive and normative analysis.<sup>8</sup> Nevertheless, we deem door-to-door sales a particularly rewarding area for demonstrating the poten-

<sup>6</sup> Professor Tribe persuasively argues that the fact-value dichotomy and the perception of values as fixed rather than fluid narrows the role of rationality and significantly impoverishes the potential contribution of intellect to problems of choice. Tribe, *Policy Science: Analysis or Ideology?*, 2 *Philosophy and Public Affairs* 66, 98-102 (1972).

<sup>7</sup> St. Antoine, *Some Comments on Attitudes About, and Values in, Legal Education*, Law Quadrangle Notes, Spring 1974, at 3.

<sup>8</sup> For a clever, if somewhat heavy handed cautionary tale about the pitfalls awaiting those who take too much economics too seriously see Leff, *Economic Analysis of Law: Some Realism About Nominalism*, 60 *Virginia L.Rev.* 451 (1974). Even the great Grant Gilmore harbors considerable doubts about the insights of social science and the value of empirical studies. Gilmore suggests that the attempt to restructure our legal thinking in the light of the theories and methods of the social scientists will run into a dead end in the 1970's as it did in the 1930's. See Gilmore, *Book Review*, U.Chi.Law Alumni J., Summer 1975, at 40. See generally, G. Gilmore, *The Death of Contract* 3-4 (1974); Gilmore, *The Storrs Lectures: The Age of Anxiety*, 84 *Yale L.J.* 1022, 1036-37 (1975).

tial benefits of simple economic analysis. At a minimum, systematic economic analysis forces attention on the central questions of the cost of increased legal protection, who will pay, and who should decide these kinds of questions and how.<sup>9</sup> Here price theory structures thinking about the size and distribution of benefits and burdens attributable to the adoption of one rule rather than another. Richard Posner notwithstanding, economics alone cannot answer the bottom line question—is a cooling-off period a hot idea? But discriminating use of economics here shapes the necessary value judgment by costing out the consequences under varying distributions of consumer savvy thereby focusing the issues underlying the cooling-off period problem.

Moreover, the analytical process should sensitize students to the complexity of most legal problems thereby moderating the prevalent "omnicompetent confidence of law graduates that there is nothing, except perhaps a patent case, which a good lawyer cannot get up in a matter of a few weeks."<sup>10</sup> David Riesman, one of our most perceptive social thinkers and a law school graduate, bemoans the stampede of gifted young people into law schools. Reisman believes that the country needs managers and planners: women and men trained in demography, economics, statistics, history and some knowledge of other cultures. And most law schools, he thinks, do not attempt to teach these things, or do not teach them well.<sup>11</sup> Whether they should and can, and how to do it, is what this article is all about.

After exposing the value choices, we pushed our luck by calling upon moral philosophy for aid and comfort. More particularly, following our elaboration of the probable economic consequences of establishing a cooling-off period we tried to test these consequences under 1) a utilitarian analysis and 2) the difference or "maximin" principle articulated by John Rawls in his book, *A Theory of Justice*. We commenced by outlining the essence of utilitarian and Rawlsian thinking in this regard. Utilitarianism and Rawls, we suggested, reached different results under most of the more likely factual assumptions. The comparison of utilitarian and Rawlsian analyses was carried out in part through classroom discussion and in part through a take-home written exercise. We have appended a copy of that exercise at the end of this article. Our final effort in this unit took the form of some lecturing on the amount of analysis necessary for a full comprehension of most important legal issues. Our point was that although few legal problems get the kind of treatment we had applied to door-to-door sales, in fact most "legal" issues require it.

### *Evaluation of the Experiment*

We think that this teaching unit is relatively well designed and capable of successful execution. Students require relatively little contract doctrine to cope with the work. And we found the "academic superman" problem, though formidable, sufficiently manageable to make the effort worthwhile.

<sup>9</sup> Even Professor Leff recognizes the value of economics in always focusing attention on these three key questions. See Leff, *supra* note 8, at 460. As one of our colleagues has told his class—the fact that economic analysis is fashionable does not necessarily mean that its insights are irrelevant!

<sup>10</sup> Reisman, *Some Questions About Discontinuities in American Society*, in *The Uses of Controversy in Sociology* 16 (L. Coser & O. Larsen Eds. 1976).

<sup>11</sup> *Id.* at 14-17.

Most of the students seemed able to absorb the economic analysis we offered and to profit by the insights this analysis provided. It was not beyond their capabilities nor did the core of important ideas overwhelm them, though, obviously, we see such rudimentary exposure to economic theory as a complement to rather than a substitute for the burgeoning "economics for lawyers" courses. At a minimum students better understood the relevance of other disciplines to many of the problems they will face in their legal careers. And, perhaps now have a better idea of where to look for help in these regards. Most importantly we altered student attitudes towards non-practice oriented courses in Law School such as "Law and Ethics", "Social Justice", etc.; perhaps they now seem a bit more "relevant".

Certainly the experiment was not an unqualified success. Students have widely divergent economic and philosophical backgrounds and some undoubtedly had difficulty in following and more importantly participating in the class discussions. Perhaps worse, we have no solid evidence on the pedagogic impact of the unit—as usual, we have to rely upon a *a priori* hypothe-cation. Moreover, the unit as initially taught was deficient in its failure to deal adequately with the empirical dimension. While we identified the relevant empirical factors we did little to quantify them and to deal with the actual effect of enacted cooling-off period legislation.

But sensitivity to the need for particular empirical studies constitutes a major potential contribution of theoretical economics to legal problems. The economic theorist often can provide "an indication of the kinds of empirical guesses that are needed in order to use his theoretical investigation for policy formulation in the world in which lawyers actually operate."<sup>12</sup> The unit should cover these matters as well as the methodological difficulties which would be encountered in trying to answer them. Fortunately, there exists considerable work on this problem in the context of cooling-off legislation.<sup>13</sup> More broadly, attention paid to the identification of empirical questions and the difficulties of empirical investigation helps to focus the key factors in any social decision: 1) what assumptions are being made about the effect of legal intervention on all relevant variables; 2) what will be the side effects of proposed legal changes; 3) how long will it take for the achievement of the full effect of legal changes, *i. e.*, what time period constitutes my frame of reference.<sup>14</sup>

In the first-year Contracts course, our unit would seem to fit neatly, and without logical interruption, into a section on consumer protection. This facilitates the introduction of extant reading materials in this area.<sup>15</sup> More-

<sup>12</sup> Klevorick, *supra* note 3, at 240-41.

<sup>13</sup> For a concise discussion of methodological issues in empirical studies in commercial law and of different approaches to the crucial questions of what can be known and how can it be known, see Shuchman, *Empirical Studies in Commercial Law*, 23 J.Legal Ed. 181 (1970). This article is particularly useful in the consumer protection area on which our unit focuses in that it contains a criticism of an empirical study conducted to determine the effects of the Connecticut statute which introduced a cooling-off period for home solicitation sales.

<sup>14</sup> Leff, *supra* note 8, at 476.

<sup>15</sup> Several short excerpts bearing on the economic effects of changing the governing legal rules are available. *E. g.*, R. Posner, *Economic Analysis of Law* 54-55 (1973); A. Alchian & W. Allen, *University Economics* 364-65 (3rd ed. 1972); Sher,

over, the basic pedagogic technique we employ seems appropriate for the introduction of any nonlegal analysis into the law school teaching-learning process. Allied disciplines are introduced by first attempting to resolve a problem about existing legal arrangements through conventional legal tools—analogy, inference, precedent, etc.; demonstrating that these tools are inadequate; then introducing additional disciplines; and concluding by demonstrating that though employment of nonlegal methodologies narrows and sharpens the choices, it does not resolve them and value choices must still be made.

Our unit focussed upon a transaction which readily lent itself to straightforward application of undergraduate price theory. The only economic truths required in our unit were that cooling-off periods raise the sellers' costs, and cost increases ultimately cause price increases. Product safety problems also can be handled with rather rudimentary economic tools. But this will not always be the case. Where "nonstandard" "commodities" are involved—for example, slum housing and the impact of housing code enforcement—simple familiarity with standard theory is insufficient for the imaginative analysis required. Rather standard price theory must be adapted to the highly nonstandard supply and demand conditions featured by the slum housing market as it is affected by varying levels of enforcement of housing codes. Since this kind of analysis requires Ph.D. level economic capacity with a flair for price theory, errors are likely, and theoretical errors by lawyer-economists not only lead to bad policy recommendations but tend to discredit all efforts to break out of the traditional legal methodologies.<sup>16</sup> But embarrassment and frustration for the law professor may be incentive for the theoretical economist searching for meaningful applications of his delicate analytical instruments. Gary Becker's work on marriage and discrimination is a prime example. In our work on the phonograph record industry we have found it extremely easy to interest economists in the intricate microeconomic behavior of two atypical industries—music and broadcasting.

But law professors, in fact, have been very responsive to the need for interdisciplinary training. Much of this training has been through self-education, and law professors deserve special praise for these efforts since their formal education was likely to be grossly deficient for anything but conventional legal scholarship.<sup>17</sup>

#### *Interdisciplinary Perspectives and the Purpose of Legal Education*

The appropriateness and extent of nonlegal input into legal education entirely depends upon the perceived purpose of law school education. We believe that the prime function of law school education is to elucidate the na-

*The Cooling-Off Period in Door-to-Door Sales*, 15 U.C.L.A.L.Rev. 717, 733-734 (1968). For extensive analysis of the reasons for cooling-off rules, the commercial background of door-to-door sales, and summary of the evidence received by the FTC in support of and in opposition to its proposed cooling-off period for door-to-door sales rule, see 37 Fed.Reg. 22934 (1972).

<sup>16</sup> The possibility for error is enhanced by the fact that law reviews are edited by students who are generally not competent to evaluate interdisciplinary work. This differs from journals in other disciplines where referees with competence in the area select articles for publication. See generally Samuelson, *The Convergence of the Law School and the University*, 44 *The American Scholar* 256, 260 (1975).

<sup>17</sup> Allen, *The Causes of Popular Dissatisfaction with Legal Education*, 62 *A.B.A.J.* 447, 449 (1976).

ture and capacity of law as an instrument of social ordering. To the extent elucidation of this problem requires other disciplines, they must be provided. We reject the attitude of lawyers and law professors that philosophical or social science inquiry is inherently less "rigorous" than the traditional limited doctrinal approach and thereby undermines the intellectual rigor resulting from conventional legal training. Traditional legal teaching may be more fact and process sensitive than other disciplines, but it is also far less rigorous in exposing its hidden assumptions. For what it is worth, we have given standard law school exams in unconventionally taught Contracts courses, and can perceive no differences in performance.

If law schools are obliged to provide significant amounts of interdisciplinary work, what kind of institutional action is necessary to permit the most effective introduction of other disciplines into the curriculum and to secure personnel qualified for the broader approach to scholarship and teaching? With respect to curricular planning, Professor Ackerman, the editor of a highly effective, though uneven, set of interdisciplinary materials relevant to Property, argues that since it is impossible to do everything in any single course—to employ all the relevant analytical and evaluative disciplines—it is desirable for a school to employ its resources so that the student is exposed to some *systematic* interdisciplinary analysis rather than to a large series of fragments. Thus in planning a course and/or a curriculum, a key job is to mark out certain legal areas as most promising for interdisciplinary work.<sup>18</sup> Perhaps the unit we have outlined meets this criterion.

With respect to personnel there are a number of possible approaches. But decisions on ends must precede consideration of means to achieve them. How interdisciplinary should a law professor be? Enough to undertake interdisciplinary scholarship and teaching? Or would we be satisfied with sufficient independent expertise to use interdisciplinary materials prepared by others? Ideally, every law professor should meet the second standard and a few the first. Indeed, over time consumers may make themselves into producers. Henry Manne's summer institute for law professors provides a good base for developing sophisticated consumers but not producers of economic theory. Quære, though, whether this does the job. The basic familiarity with another discipline provided by such enterprises, particularly under Manne's faculty-busting philosophy—priority for invitations to the institute for law professors on faculties which include professors who are alumni of the institute—is useful, particularly in providing a lingua franca for faculty interchange. But it isn't enough to permit application of economic theory to nonstandard commodities and economic institutions. The same applies to the SSMILE (Social Science Methods in Legal Education) program, now in uncertain status, which pioneered in efforts to arm law professors with social science tools and perspectives.<sup>19</sup>

The best solution would be for law schools to change their standards for hiring faculty. The demand for teaching jobs is sufficiently intense to per-

<sup>18</sup> Ackerman, *Introduction: On the Role of Economic Analysis in Property Law*, in *Economic Foundations of Property Law*, xiv-xv (B. Ackerman ed. 1975).

<sup>19</sup> While the SSMILE Institute provides law professors with a good introduction to social science literature and methodology, it generally has not provided rigorous in-depth training to equip participants to undertake empirical studies.

mit us to demand an advanced degree in another discipline or from an advanced law program with an interdisciplinary emphasis.<sup>20</sup>

It may be, however, that arming law faculties with the union of skills, learning, and talent demanded by the broader style requires much more radical institutional changes. Dworkin thinks so. He recommends that at a minimum the major law schools should consider offering two different programs, a shorter one for those who wish to begin practice and a longer one, much more integrated with other departments in the university, for those who want a career in academic law. Moreover, he suggests more might be gained by reversing the present efforts to instruct lawyers in the social sciences, and instead teach law to the philosopher and economist rather than philosophy and economics to the lawyer. Dworkin outlines the basic curricular and institutional changes a movement in this direction would require. In training nonlawyers in the broad style of legal research he envisions "programs that are aggressively and systematically interdisciplinary, and that are organized around problems rather than contributory departments of a university." He goes on to sketch the content of several graduate seminars structured in this fashion.<sup>21</sup>

In theory, the broad approach to legal scholarship has won the day in this country, and a convincing case can be made for the utility of its triumph (and a much less convincing case for its successful implementation). But its implications for legal education and for the training of law school faculty have not yet been adequately examined. It is to such an examination, and to any necessary institutional and practical changes, that our attention should now be directed. Our own efforts in these directions have convinced us that significant success is possible. Our professional responsibility as teachers tells us that the effort must be made.

#### *Postscript*

Recognition of the relevance and utility of other disciplines also poses significant institutional questions for the legal process. Thus, if these disciplines—*e. g.*, economics—are relevant, how do we go about informing decision-makers? Can we devise institutional mechanisms to better inform them—*i. e.* to collect and analyze data in usable form—at a tolerable cost? Can the decision-maker—judge, legislator, administrator—make good use of the information and analysis or will the inability of decision-makers to effectively use these kinds of data and methodologies lead to worse decisions? If so, should we exclude such materials or try to better educate decision-makers?

There has been insufficient thought devoted to these questions. Yet as the relevance of other disciplines is recognized and the broad style of scholarship gains acceptance, these questions assume increasing importance. Professor Breyer has faced this issue through a paper on the limits of the appli-

<sup>20</sup> See generally, Report of the Committee on Faculty Appointments and Recruitments, Separate Statement of George E. Glos, AALS 1973 Annual Meeting Proceedings, Part One, at 16. ("I would . . . turn our attention to the qualifications of the applicants and recommend higher standard of scholarship and experience required of the applicants. . . . I would recommend that an applicant for a teaching position should hold a higher law degree over and above the basic LL.B.—J.D. degree.")

<sup>21</sup> Dworkin, *supra* note 1, at 62-64.

cation of economic analysis to matters of administrative regulation.<sup>22</sup> Professor Breyer evaluates the suggestion that we can procure better results from the economic regulatory agencies by improving the quality of the economic information and analysis submitted to the agency or by improving its ability to understand economic analysis. He also tries to identify possible changes in the structure and/or procedures of the agencies that would significantly improve the quality of their performance by improving their ability to deal with economic information or analysis.

#### APPENDIX

Several state legislatures are considering giving consumers increased protection with respect to door-to-door sales. Available evidence indicates that consumers in lower socioeconomic classes yield to high pressure sales pitches and often agree to purchase products that they subsequently realize they do not want or need or cannot afford. There is also evidence that other classes of consumers are significantly less prone to agree to unwise purchases. Approximately 40% of all consumers fall into the first class and 60% fall into the second. One proposed law would give consumers who have agreed to purchase a good or service on the basis of door-to-door solicitation a five-day period in which to rescind their agreement.

A. You have been retained by Encyclopedia Britannica, and your partner has been retained by MENSA to represent them in hearings before the legislature. What arguments would you make for each group in opposition to this legislation and in favor of continuing existing law in this area?

B. Utilitarian philosophers argue that just legislation is that which achieves the greatest good for the greatest number. John Rawls, in his *Theory of Justice* proposed an alternate test for just legislation: all legislation must affect all classes of consumers equally, except that inequalities are justified if the least advantaged group is better off with the inequality than without it.

Analyze the proposed legislation from the perspective of each of these principles.

<sup>22</sup> See S. Breyer, *Introducing Economic Analysis* (1973) (unpublished paper prepared for the Administrative Conference).