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## Moral Imperative - Legal Requirement: Why Law Schools Should Require Poverty Law and International Human Rights

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ARTICLE

**MORAL IMPERATIVE—LEGAL  
REQUIREMENT: WHY LAW SCHOOLS  
SHOULD REQUIRE POVERTY LAW  
AND INTERNATIONAL HUMAN  
RIGHTS**

ERIC J. BOOS, MA, PH.D, JD, LL.M\*

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ABSTRACT

This paper argues that the growing undercurrent of discontent in this nation, which has manifested in increasing levels of civil unrest, violence, crime, mass shootings, and political chaos, is symptomatic of the ever-increasing disparity in wealth that political philosophers, sociologists, economists such as Alan Greenspan, and politicians such as Bernie Sanders, have warned against. This paper further argues that this disparity is, in large mea-

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sure, facilitated by the legal establishment. Lawyers are at the heart of the global financial crisis, the restructuring of the criminal justice system as a “for-profit” enterprise, the 900+ police shootings since 2014, the \$2 billion of property confiscated under civil forfeiture rules, the mass incarceration policies, the recent environmental scandals, the protection of monopolies in agribusiness, pharmaceuticals, and telecommunications, the dysfunctional system of immigration and deportation, and the deplorable and racially biased legal processes for capital crimes and the death penalty. Unfortunately, the response to the increasing levels of discontent has been a predictable increase in policing tactics, legalistic controls, political fearmongering, social vitriol, and intolerance against targeted populations. Society is ripping apart at the seams, and the response has been a fascist-like clampdown—a trajectory first predicted by Mortimer Adler in 1938. Citing the deplorable state of higher education, Adler averred that America would become the next great fascist state in the World. This paper applies Adler’s critique of higher education to America’s law schools and argues that what is needed to change the trajectory is a different approach to legal education. The justification for a restructuring of American legal education is rooted in the fact that lawyers have a special obligation under the Constitution of the United States to achieve justice and to vitiate the tendency of economic and social stratification that occurs in society. The restructuring would ideally include a comprehensive overhaul of the curriculum so that each course addresses the issue of justice (in the Platonic sense and in the sense our Founders used it), but at a minimum it should require courses in Poverty Law (because of our deplorable track record in that area) and International Human Rights (because we live in a global society and justice is a universal goal).

#### STATEMENT OF THE PROBLEM

Eminent economist and former Chairman of the Federal Reserve from 1987 to 2006 under four different presidential administrations, Alan Greenspan, warned that the increasing disparity in wealth is “the most dangerous part of what’s going on in the United States.”<sup>1</sup> This is not a new claim for Greenspan.<sup>2</sup> He has been making this same argument for ten years straight, and it continues to fall on deaf ears. The political and legal establishments

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1. Dan Weil, *Greenspan: Income Inequality ‘Most Dangerous’ Trend in US*, NEWSMAX (Feb. 25, 2014), <http://www.newsmax.com/Finance/StreetTalk/Greenspan-income-inequality-dan-gerous/2014/02/25/id/554685/> (quoting Greenspan at the National Association of Business Economist Conference).

2. Greenspan has been warning against the negative trajectory of our fiscal policies and, in particular, the dangers of income inequality since 2007 when he released his book, *The Age of Turbulence*. He dedicates a complete chapter to “Education and Income Inequality” in the US, and he makes it clear that our brand of capitalism with its “unforgiving market competition, clashes with the human desire for stability and certainty.” ALAN GREENSPAN, *THE AGE OF TURBULENCE* 268 (2007).

continue to pass laws that favor the wealthy and stifle the cries of the poor.<sup>3</sup> You would think after the Global Financial Crisis we might learn our lesson, but the economic indicators don't show that. According to the Pew Research Center, incomes for the middle and lower classes remained relatively stagnant for three decades, while personal debt rose.<sup>4</sup> According to Greenspan, "household debt as a percentage of assets, for example, reached 19.3 percent by the end of 2006, compared with 7.6 percent in 1952."<sup>5</sup> At the same time, "income concentration has been rising since 1980,"<sup>6</sup> adds Greenspan, and "a majority of Americans . . . reported significant dissatisfaction with the state of the economy."<sup>7</sup> This makes sense when one considers, as Greenspan has, that "[h]appiness depends far more on how people's incomes compare with those of their perceived peers, or even those of their role models, than on how they are doing in any absolute material sense."<sup>8</sup> In that case, social divisions are exacerbated by things like income concentration. As Greenspan points out in his research, in "2007, the supervisory workforce had average hourly salaries of approximately \$59 per hour, compared with \$17 per hour for the non-supervisory employees. That means that one-fifth of the total number of employed Americans earned 46 percent of total wages and salaries."<sup>9</sup>

So, while middle- and lower-class wages stagnated and their debt rose, the top 1% saw their incomes increase by 275% over that same time span.<sup>10</sup> According to the Congressional Budget Office, "income received by the 20 percent of the population with the highest income exceeded the after-tax income of the remaining 80 percent [from 1979–2005]."<sup>11</sup> That trend, according to Katherine Schaeffer, has an even broader context:

Over the past 50 years, the highest-earning 20% of U.S. households have steadily brought in a larger share of the country's total

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3. See Alan Greenspan, Speech at the National Association for Business Economics Conference (Feb. 24, 2014), <https://www.c-span.org/video/?317941-1/national-association-business-economics-conference>.

4. According to the Pew Research Center, "From 1970 to 2018, the share of aggregate income going to middle-class households fell from 62% to 43%. Over the same period, the share held by upper-income households increased from 29% to 48%. The share flowing to lower-income households inched down from 10% in 1970 to 9% in 2018. These trends in income reflect the growth in economic inequality overall in the U.S. in the decades since 1980." Juliana Menasce Horowitz, Ruth Igielnik & Rakesh Kochhar, *Trends in Income and Wealth Inequality*, PEW RSCH. CTR. (Jan. 9, 2020), <https://www.pewresearch.org/social-trends/2020/01/09/trends-in-income-and-wealth-inequality>.

5. GREENSPAN, *supra* note 2, at 359.

6. GREENSPAN, *supra* note 2, at 392.

7. GREENSPAN, *supra* note 2, at 392.

8. GREENSPAN, *supra* note 2, at 269.

9. GREENSPAN, *supra* note 2, at 394.

10. Alexander Eichler, *Income Inequality Reaches Gilded Age Levels*, *Congressional Report Finds*, HUFFINGTON POST (Oct. 26, 2011), [http://www.huffingtonpost.com/2011/10/26/income-inequality\\_n\\_1032632.html](http://www.huffingtonpost.com/2011/10/26/income-inequality_n_1032632.html).

11. *Id.* This statistic has since been reiterated.

income. In 2018, households in the top fifth of earners (with incomes of \$130,001 or more that year) brought in 52% of all U.S. income, more than the lower four-fifths combined, according to Census Bureau data. In 1968, by comparison the top-earning 20% of households brought in 43% of the nation's total income . . . .<sup>12</sup>

Princeton economist Paul Krugman labeled this post-1979 epoch the “Great Divergence.”<sup>13</sup> This divergence is more pernicious in the United States than in other democratically principled, capitalist-centered nations and is dangerous because it creates social anxiety and stress. As Greenspan explains: “If happiness were tied solely to material well-being, I suspect, all forms of capitalism would converge to the American model, which has been the most dynamic and productive. But it is also the one that creates the most stress . . . .”<sup>14</sup>

If we broaden the context beyond earning potential and income inequality to include household wealth (also known as net worth), or the value of assets owned by a family (such as a home or a savings account), minus outstanding debt (such as a mortgage or student loan) the problem appears to be getting much worse. In 1989, the richest 5% of families had 114 times as much wealth as poor families in the second quintile (one tier above the lowest), but by 2016, the top 5% held 248 times as much wealth as the poor.<sup>15</sup>

Sadly, the situation has worsened considerably in terms of personal/family wealth since the Global Financial Crisis. Since 2007, the richest families are also the only ones whose wealth increased. While the median net worth of the top 20% increased by 13%, to \$1.2 million, from 2007 to 2016,<sup>16</sup> the median net worth of families in the lower tiers of wealth decreased by at least 20%. More poignantly, families in the second-lowest fifth experienced a 39% loss of net worth (from \$32,100 in 2007 to \$19,500 in 2016).<sup>17</sup>

This divergence is dangerous, as Greenspan points out, because it leads to frustration, anger, and discontent, and destroys trust—which, argues Greenspan, is the basis of the capitalist system. “When trust is lost, a nation’s ability to transact business is palpably undermined,” concludes Greenspan.<sup>18</sup> More importantly, avers Greenspan, “a large segment of society feels a growing sense of injustice about the allocation of capitalism’s

12. Katherine Schaeffer, *6 Facts About Economic Inequality in the U.S.*, PEW RSCH. CTR. (Feb. 7, 2020), <https://www.pewresearch.org/fact-tank/2020/02/07/6-facts-about-economic-inequality-in-the-u-s/>.

13. Paul Krugman, *Introducing This Blog*, N.Y. TIMES BLOG (Sept. 18, 2007, 11:45 PM), <http://krugman.blogs.nytimes.com/2007/09/18/introducing-this-blog/>.

14. GREENSPAN, *supra* note 2, at 271.

15. Schaeffer, *supra* note 12.

16. Schaeffer, *supra* note 12.

17. Schaeffer, *supra* note 12.

18. GREENSPAN, *supra* note 2, at 256.

rewards.”<sup>19</sup> His conclusion: “Competition, capitalism’s greatest force, creates anxiety in all of us.”<sup>20</sup>

### RACE MATTERS

The economic issues eroding our socioeconomic trust are further complicated by issues of race. According to Robert Manduca, “economic inequality and racial inequality are fundamentally intertwined.”<sup>21</sup> Suffice to say, racial tensions in America are about as bad as any time in our history while few have bothered to identify the underlying economic component.<sup>22</sup> Schaeffer states that “the difference in median household incomes between white and black Americans has grown from about \$23,800 in 1970 to roughly \$33,000 in 2018 (as measured in 2018 dollars).”<sup>23</sup> Median black household income was 61% of median white household income in 2018, down from 63% in 2007.<sup>24</sup> As Manduca points out, “[o]ver the past 50 years, a fairly large improvement in the relative position of African Americans was entirely undone by national economic shifts.”<sup>25</sup> Manduca states categorically that the gains made by African Americans were “counteracted by the national trend of rising income inequality, which resulted in a much larger share of the national economic pie going to the richest few percent of the country, who remain disproportionately white.”<sup>26</sup> These shifts were, by and large, the result of “institutional [policy] changes to the labor market and the economy at large that reduced the bargaining power of the less affluent and increased the bargaining power of the very rich.”<sup>27</sup>

By way of specific example, Manduca points out that, “over the past 40 years, there has been a dramatic increase in the share of economic resources going to the very wealthy combined with income stagnation for everyone else. This shift has disproportionately harmed African Americans,

19. GREENSPAN, *supra* note 2, at 268.

20. GREENSPAN, *supra* note 2, at 268.

21. Robert Manduca, *How Rising U.S. Income Inequality Exacerbates Racial Economic Disparities*, WASH. CTR. FOR EQUITABLE GROWTH (Aug. 23, 2018), <https://equitablegrowth.org/how-rising-u-s-income-inequality-exacerbates-racial-economic-disparities>.

22. As Harvard scholar Robert Manduca proffers, “once groups are stratified, their relative positions can be altered by facially neutral processes,” and this has been particularly true for African Americans. Robert Manduca, *Income Inequality and the Persistence of Racial Economic Disparities*, 5 SOCIO. SCI. 182 (2018), <https://sociologicalscience.com/articles-v5-8-182/>.

23. Schaeffer, *supra* note 12.

24. Schaeffer, *supra* note 12.

25. Manduca, *supra* note 21.

26. Manduca, *supra* note 22, at 194–95.

27. Manduca, *supra* note 22, at 186. Manduca further asserts that “[s]tarting in the 1970s, changes to the economy and to public policy began concentrating a larger and larger share of national income in the pockets of the richest members of society.” Manduca, *supra* note 21. This is especially important for the purposes of this article because certainly those policy changes were worked on by a multitude of attorneys. This author contends that a more complete law school education would have given attorneys a more complete knowledge and a different perspective on the likely impact of such policies on society and perhaps they would have changed them.

who remain overrepresented in the less affluent portions of the income distribution.”<sup>28</sup> This reality expresses the fundamental concern of the present project. Manipulation of the social and political structures that control income distribution and the accumulation of wealth through policy initiatives involves a broad range of professionals, especially members of the legal community. In short, lawyers engaged in macroeconomic policy initiatives with a mere three years of law school training under their belts is a poor strategy for achieving the type of “justice” the Founders intended. To that end, law schools should require a course in Poverty Law in anticipation of the role their graduates will play in shaping the socioeconomic trajectory of the nation.

Many people are familiar with lawyers’ struggles for “justice” after the political apparatus has disenfranchised people and forced them into bankruptcy, poverty, and crime, but few look to the participation of lawyers in the formation of that apparatus.<sup>29</sup> “Understanding the causes of rising income inequality is important,” contends Manduca, “because to the extent that the income distribution is shaped by political action, the income that accrues to any particular person is a function of political choices made by society,” and the policies that adversely affected African Americans were “a departure from the institutional framework of the mid-twentieth century, and many were actively pursued by organized interest groups starting in the 1970s, which is exactly when income inequality began to rise.”<sup>30</sup> In short, “today’s high levels of income inequality further encumber the difficult struggle for racial economic equality,”<sup>31</sup> and until we change the education of those engaged in developing the mechanisms that systematically oppress and exploit others, we cannot hope for peace and justice.

Income inequality and the massive disparity in wealth between whites and blacks is not simply the result of macroeconomic manipulation at the hands of lawyers and other professionals and politicians. The problem is deeply rooted in our educational structures—especially law schools as Mor-

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28. Manduca, *supra* note 22, at 183.

29. One scholar who has written extensively about the role lawyers play in creating wealth and inequality is Columbia Law Scholar Katharina Pistor. Pistor details the development of legal instruments over time that are specifically aimed at protecting, consolidating, and growing capital. She hammers out the “legal modules namely contract, property rights, collateral, trusts, corporate, and bankruptcy law,” and more, that facilitate wealth and she points out the complicity states have shown by “offering their coercive law powers to enforce the legal rights that have been bestowed on capital.” KATHARINA PISTOR, *THE CODE OF CAPITAL: HOW THE LAW CREATES WEALTH AND INEQUALITY* x (2019). Pistor refers to the process of ensconcing protections for capital in the law as “coding,” and it is a process that is taught in every law school in America in its contracts, property, trusts and estates, tax, and other courses—many of which are required courses. This fact perpetuates the exact imbalance in society that is seen in the wealth and income inequalities we address here, and it reinforces the precise claim made in this paper; namely, that these legal modules should be balanced in the law school curriculum by requiring Poverty Law and International Human Rights.

30. Manduca, *supra* note 22, at 186 (citation omitted).

31. Manduca, *supra* note 22, at 183.

timer Adler pointed out in 1939 and as Katharina Pistor pointed out more recently.<sup>32</sup> Adler’s estimation of our dysfunctional education system in 1939 looks prophetic. He held that many people have been so poorly educated “that they will be ready to follow the first demagogue who seeks to beguile them.”<sup>33</sup> He also held that those who have received a college education are so “deeply indoctrinated with the local prejudices of their professors” that they are neither disciplined nor liberated, and only superficially literate.<sup>34</sup> “They produce skeptics about reason and knowledge,” continued Adler, “relativists about morals, sophists in political matters, in short, liberals in that worst sense of the word . . . .”<sup>35</sup> Believing themselves to be “educated,” they labor under the delusion of “false liberalism”<sup>36</sup> because of incomplete educations and pander to the institutional structures to secure their place within the political economy even while intermittently denouncing its oppressive nature.

The “legal modules,” as Pistor refers to them, constitute the mechanism of oppression and inequality, and they are perpetuated by false liberals—quite often with righteous indignation—because these modules were taught in college or law school. These legally derived policies function as macroeconomic barriers that exacerbate the income and wealth inequality that is dividing our nation. Furthermore, they put more people into conditions of poverty—which by all sociological accounts is a prime underlying factor in a majority of crimes.<sup>37</sup>

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32. See MORTIMER J. ADLER, *Liberalism and Liberal Education*, in REFORMING EDUCATION: THE OPENING OF THE AMERICAN MIND 40 (Geraldine Van Doren ed., Collier Books 1988); see also PISTOR, *supra* note 29.

33. ADLER, *supra* note 32, at 46.

34. ADLER, *supra* note 32, at 47.

35. ADLER, *supra* note 32, at 47.

36. “False liberalism,” avers Adler, “misconceives the role and extent of liberty in human affairs.” ADLER, *supra* note 32, at 47. False liberalism results when highly educated individuals are not adequately immersed in a critical analysis of the educational method they are part of. That is to say, they lack sufficient training in epistemological analysis to the extent that they adopt the pedagogical methods they are subjected to uncritically—which has been a problem for as long as there has been formal education. Adler points out that this false liberalism can be found in “our 18th century heritage as the good democratic institutions which we have preserved and developed.” ADLER, *supra* note 32, at 47. Breaking the incestuous thought process inherent in such formalized education is a primary purpose of “Critical Legal Theory.” On that account, this specific project could also be extended to include Critical Legal Theory as another law school course that should be required for all law students.

37. A full account of the relationship between poverty and crime is beyond the scope of this paper. Sociologists, psychologists and economists have pushed this particular connection for decades and there is no shortage of scholarly work available demonstrating the veracity of the connection. For an excellent account of this relationship and the impact of mass incarceration on American society, see Rebecca Vallas & Sharon Dietrich, *One Strike and You’re Out: How We Can Eliminate Barriers to Economic Security and Mobility for People with Criminal Records*, CTR. FOR AM. PROGRESS (Dec. 2014), <https://cdn.americanprogress.org/wp-content/uploads/2014/12/VallasCriminalRecordsReport.pdf>. This paper corresponds extremely well with the fundamental economic concerns Alan Greenspan shares in his research, and it also develops the same trajectory for society that this paper argues. Its core thesis is that “a criminal record serves as both a



This is compounded by the fact that in recent years we have progressively criminalized poverty.<sup>38</sup> On any given day in the United States, there are 500,000 people sitting in jails, presumed innocent, but unable to pay their bail.<sup>39</sup> Furthermore, they are unable to pay the not-so-nominal fee of \$240 for a public defender—if their state even allows for that, because 13 states do not have a structure for providing a public defender.<sup>40</sup> Consequently, 95% of criminal cases result in a plea bargain, and people who couldn't pay for bail and remained in jail were four times more likely to get a prison sentence.<sup>41</sup> It is estimated that up to 8% of the federal prison population is comprised of people who are innocent of the crimes they were charged with but who were coerced into pleading guilty.<sup>42</sup> So, poverty leads to crime, and crime leads to poverty—which leads to more crime, etc., etc.

The net effect of the structural mechanisms (legal modules) in our legal system is that they protect wealth and punish poverty. It is no surprise, then, that we have the highest per capita prison population in the World (2.2 million people behind bars), which accounts for 25% of the World's prison population.<sup>43</sup> On top of that, we have an additional 4.5 million people on probation or parole.<sup>44</sup> This is a fairly new phenomenon since, in 1980, there were only 500,000 people in America's prisons.<sup>45</sup>

What is important to note about these numbers is that they correspond directly to the increase in income concentration and the widening disparity in wealth since 1979 that Greenspan cites as his major concern for America and that Krugman cites as the “epoch of the Great Divergence.”<sup>46</sup> African Americans suffered a theoretical and practical “double whammy”! The structural mechanisms put in place that led to mass incarceration and the jailing of our poor were developed almost in tandem with structural mechanisms such as deregulation of the financial and investment banking sectors

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direct cause and consequence of poverty,” and that the structural mechanisms in the American legal system are exacerbating the problem. *Id.* at 1. Like Greenspan, and like this author argues in this paper, education is a key to correcting the problem.

38. We shall give a more detailed account of this claim later in the paper, but in general, many municipalities, and even states, have taken to incarcerating people who are too poor to pay their fines. Furthermore, many municipalities and states now charge board and room for people's stay in jails; they charge for their legal defense; they charge for the ankle monitors; they charge for their probation services; and the failure to pay on any of these lands people back in jail. *See* HUM. RTS. WATCH, PROFITING FROM PROBATION: AMERICA'S “OFFENDER-FUNDED” PROBATION INDUSTRY (2014), [https://www.hrw.org/sites/default/files/reports/us0214\\_ForUpload\\_0.pdf](https://www.hrw.org/sites/default/files/reports/us0214_ForUpload_0.pdf).

39. Bill Quigley, *40 Reasons Why Our Jails Are Full of Black and Poor People*, HUFFINGTON POST (June 2, 2015), [http://www.huffingtonpost.com/bill-quigley/40-reasons-why-our-jails-are-full-of-black-and-poor-people\\_b\\_7492902.html](http://www.huffingtonpost.com/bill-quigley/40-reasons-why-our-jails-are-full-of-black-and-poor-people_b_7492902.html).

40. *Id.*

41. *Id.*

42. Jed S. Rakoff, *Why Innocent People Plead Guilty*, 61 N.Y. REV. BOOKS (Nov. 20, 2014), <http://www.nybooks.com/articles/2014/11/20/why-innocent-people-plead-guilty/>.

43. Quigley, *supra* note 39.

44. Quigley, *supra* note 39.

45. Quigley, *supra* note 39.

46. Krugman, *supra* note 13; *see also* GREENSPAN, *supra* note 2.

that moved African Americans backward into poverty again. While the top 1% of wealthy families experienced a 275% increase in income,<sup>47</sup> the poor (especially African Americans) saw millions go to jail.<sup>48</sup> Indeed, a “great divergence,” facilitated primarily by the legal establishment that writes, enforces, and adjudicates the laws that comprise the structural mechanisms of society, has taken place. And if we understand Greenspan, Krugman, Schaeffer, Manduca, Adler, and Pistor correctly, this divergence will eventually collapse our system. To understand the implications, we must look deeper into the connections.

#### DEVELOPING A PHILOSOPHY OF ECONOMICS

As Aristotle said, the fundamental goal of the human person is “happiness.”<sup>49</sup> Our Founding Fathers thought enough of this dictum to incorporate it into the fabric of society by proclaiming the “pursuit of Happiness” an inalienable right.<sup>50</sup> If Aristotle and our Founding Fathers are right, then what was proclaimed an inalienable right by the Founders, and the fundamental goal of human persons by Aristotle, is indeed being vitiated by the structure and policies of our government. This disparity in wealth is fueled in part by policies that allow unconstrained risk-taking by the wealthy false liberals, and according to Greenspan, this “increases the concentration of income and wealth” and that leads to greater stress in society.<sup>51</sup> Stress obviates happiness, and increasing numbers of people are therefore discontent.

“If happiness were tied solely to material well-being,” avers Greenspan, “all forms of capitalism would converge to the American model, which has been the most dynamic and productive.”<sup>52</sup> In spite of its productivity, however, “it is also the one that creates the most stress,” concludes Greenspan.<sup>53</sup> That stress manifests in a plethora of social evils that are ripping our society apart; hence the reason it is “the most dangerous part of what is going on in the United States” today.<sup>54</sup>

The fundamental problem is that we see the consequences of this stress but fail to identify the root cause; or, rather, we see the cause but fail to make any institutional modifications to the system that facilitates the increase of that stress. We seem to have a vague, if not intuitive, understand-

47. Eichler, *supra* note 10.

48. See HUM. RTS. WATCH, PUNISHMENT AND PREJUDICE: RACIAL DISPARITIES IN THE WAR ON DRUGS (2013), <https://www.hrw.org/reports/2000/usa/Rcedrg00-01.htm>.

49. Arthur Dobrin, *Happiness is How You Are, Not How You Feel*, PSYCH. TODAY (Jan. 25, 2013), <https://www.psychologytoday.com/us/blog/am-i-right/201301/happiness-is-how-you-are-not-how-you-feel#:~:text=Aristotle%20said%2C%20%E2%80%9CHappiness%20is%20the,which%20was%20your%20moral%20character>.

50. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

51. GREENSPAN, *supra* note 2, at 272.

52. GREENSPAN, *supra* note 2, at 271.

53. GREENSPAN, *supra* note 2, at 271.

54. Weil, *supra* note 1.

ing that there is a connection to the disparity in wealth, our social problems, and our capitalistic model. But we are socially and systematically conditioned to embrace and espouse an aversion to any other system. This is evident by the vilification of intellectuals such as Noam Chomsky, who consistently challenges our economic system and our tendency toward imperialism, and of political figures such as Bernie Sanders, who is besieged by epithets of “socialist” and “communist.” It is likewise evident in our polarization and politicization of the social evils stemming from the stress. Issues are cast in an “us” versus “them” context, and our treatment of the issues follows a false dichotomy: either an extension of Republican “tough love,” or an expansion of the Democratic “welfare state.” Real solutions are more likely to take a “both-and” approach rather than an “either-or” approach because this accommodates the psychology of wealth more completely and forces a rethinking of the need for institutional change.

Greenspan himself intimates the need for a “both-and” approach because it embraces the psychology of wealth affecting our culture. There is, according to Greenspan, a general “ambivalence toward the accumulation of material wealth that has a long cultural history and that pervades society to this day.”<sup>55</sup> It is accompanied by a modicum of guilt, rooted in theological and religious values that contribute to an ethical antipathy toward wealth accumulation.<sup>56</sup> The attendant degrees of risk aversion, however, stem largely from the choice of legal limitations imposed on competition.<sup>57</sup> Following the thesis of this paper, if law students were better educated, they might work to develop laws, policies, and procedures that inhibit more of the risky behavior that is dividing society.

There is a certain irony in Greenspan’s thought process, however, if not a blatant contradiction. He stated categorically in 2014 that the disparity in wealth is the most dangerous thing going on in America,<sup>58</sup> and in his book, *The Age of Turbulence* (2007), he made it clear that the increasing disparity in wealth in America is due to unconstrained risk-taking.<sup>59</sup> His conclusion is this: the greater the risk, the greater the reward but the more the stress on the system as a whole.<sup>60</sup> As Greenspan says, “a large segment of society feels a growing sense of injustice about the allocation of capitalism’s rewards.”<sup>61</sup> Yet, Greenspan argues that “the degree of willingness to take risks . . . is the major defining characteristic that separates countries

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55. GREENSPAN, *supra* note 2, at 272.

56. GREENSPAN, *supra* note 2, at 272.

57. GREENSPAN, *supra* note 2, at 273. This is consistent with the Hobbesian approach the Founding Fathers took in structuring the Constitution after the Articles of Confederation specifically failed to control trade and manage commerce—a point discussed in the final section of this paper.

58. See Weil, *supra* note 1.

59. GREENSPAN, *supra* note 2, at 272.

60. See GREENSPAN, *supra* note 2, at 272–73, 394.

61. GREENSPAN, *supra* note 2, at 268.

into the various modes of capitalism,”<sup>62</sup> and America’s version is best.<sup>63</sup> He is openly critical of other democratic-capitalist states “[t]o the extent that governments ‘protect’ portions of their populations from what they perceive as harsh competitive pressures, they achieve a lower overall material standard of living for their people.”<sup>64</sup> Then he contradicts this notion by concluding, “regrettably, economic growth cannot produce lasting contentment or happiness.”<sup>65</sup> So at the same time he decries the socialist and anti-materialistic ethic that suppresses capitalism and promotes a welfare state, he concludes that the unconstrained risk-taking that capitalism desires results in more stress and less happiness anyway.<sup>66</sup> Our version of capitalism in America has resulted in “nearly thirty-seven million Americans living in poverty”<sup>67</sup> and many millions more dwelling within a week’s wage of poverty.<sup>68</sup>

So why would anyone opt for a system that is more stressful, causes deeper divisions in society by increasing income concentration and a massive disparity in wealth, and contributes to poverty and crime, when it doesn’t translate into human happiness?<sup>69</sup> More specifically, how is it possible that Greenspan can acknowledge a danger to society that virtually all of his policies, especially deregulation of the financial sector and investment banking,<sup>70</sup> contributed to and still promote our brand of capitalism as

62. GREENSPAN, *supra* note 2, at 273.

63. GREENSPAN, *supra* note 2, at 273; *see also* GREENSPAN, *supra* note 2, 267–93.

64. GREENSPAN, *supra* note 2, at 269.

65. GREENSPAN, *supra* note 2, at 269.

66. *See* GREENSPAN, *supra* note 2, at 272.

67. *Poverty and Hardship Affect Tens of Millions of Americans*, CTR. ON BUDGET & POL’Y PRIORITIES (Dec. 20, 2007), <https://www.cbpp.org/sites/default/files/archive/12-20-07pov.pdf>.

68. Natasha Bach, *Millions of Americans Are One Missed Paycheck Away From Poverty*, FORTUNE (Jan. 19, 2019), <https://fortune.com/2019/01/29/americans-liquid-asset-poor-prosperity-now-report/>.

69. Greenspan asks a version of this question. *See* GREENSPAN, *supra* note 2, at 277–78. But I dare say his answer is flippant and undermined by his own research. By any comprehensive quality of life indexes used to measure the overall happiness of citizens, European capitalist-democracies are faring much better on Greenspan’s notion of happiness. The specific points Greenspan misses on include the facts that: the United States does not enjoy a longer lifespan or better health than our European counterparts; their educational systems are better; they have more social mobility; they enjoy better work conditions; and they are far more environmental than Americans. Greenspan concludes this section with a statement that is so far off it is almost comical. He says, “At a fundamental level, Americans have used the substantial increases in wealth generated by our market-driven economy to purchase what many would view as greater civility.” *Id.* The ridiculousness of this statement is completely confounded by our crime rates, our cancer rates and poor health, our poverty issues, our deplorable education system, our corrupt corporate practices, etc. If anybody other than Greenspan made such audacious claims, they would probably not get published.

70. For a good review of how de-regulation has consistently failed and led to massive scandals in the financial and investment banking sectors, *see* GEORGE R. TYLER, *WHAT WENT WRONG: HOW THE 1% HIJACKED THE AMERICAN MIDDLE CLASS. . . AND WHAT OTHER COUNTRIES GOT RIGHT* (2013).

the best while at the same time warning that “we need to address increasing income inequality now”<sup>71</sup>

The short answer is a failure in education. We have consistently placed education (as a social institution) in the service of the political economy instead of in the service of humanity—in the sense that education should focus on liberating the individual first, as a rational, free being, rather than focusing on producing the most technically competent working class possible. From Thomas Jefferson on down, we have consistently channeled people into a dual-track structure: liberal arts or servile arts. This has resulted in a bifurcated society in which the vast majority of citizens lack any semblance of critical thinking skills and are politically inept and a much smaller class of “highly educated” citizens are suffering under the delusions of a “false liberalism.” The education of both classes has been directed toward economic outcomes in the sense that schools have become nothing more than job-training facilities, and the most important benchmark (at least for colleges and graduate schools and especially law schools) is job placement rates for recent graduates. The ivory tower is coming down!

#### A VICIOUS CYCLE: POVERTY CAUSES CRIME AND CRIME CAUSES MORE POVERTY

Aristotle famously quipped that “poverty is the parent of all crime and revolutions.”<sup>72</sup> The way we are responding to poverty and crime in the United States might be leading us toward a revolution. America has addressed the consequences of income inequality insofar as poverty contributes to crime by getting “tough on crime” over the past thirty years. As we stated earlier, America’s economic trajectory and its criminal justice trajectory have been corollary since 1980. As we deregulated various industries, especially the banking industry and the financial sector, we simultaneously announced a war on drugs/crime and began a process of mass incarceration.<sup>73</sup> Unfortunately, our policies of mass incarceration did not seem to include white-collar criminals who perpetrated corporate frauds and crimes

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71. GREENSPAN, *supra* note 2, at 505.

72. ARISTOTLE, *POLITICS* bk. II, at 1265b, p. 70 (B. Jowett trans., Oxford, Clarendon Press, rev. ed. 1920; Internet Classics Archive, n.d.), <http://archive.org/stream/aristotlespolit00aris#page/69/mode/1up>.

73. Manduca, Greenspan, Krugman, and others make reference to the period of the 1970’s through 2010 with the structural and policy changes to banking and other financial institutions as discussed previously. As for the mass incarceration policies that had a disparate impact on African Americans, this began with the Nixon administration’s “war on drugs,” got expanded by Reagan’s “War on Drugs,” and was consistently followed by Bush, Clinton, and Bush, Jr. See *United States – Punishment and Prejudice: Racial Disparities in the War on Drugs*, vol. 12, no. 2(a), HUM. RTS. WATCH (May 1, 2000), <http://www.hrw.org/legacy/reports/2000/usa>; see also Logan Cobb, *The Negative Impact of Mass Incarceration on Human Rights in the United States*, UAB INST. FOR HUM. RTS. BLOG (Feb. 5, 2021), <https://sites.uab.edu/humanrights/2021/02/05/the-negative-impact-of-mass-incarceration-on-human-rights-in-the-united-state>.

during the same thirty-year period.<sup>74</sup> While most law schools require criminal procedure courses, few of those courses include learning modules on white-collar crime. And in the elective, upper division courses such as Business Associations, Corporate Law, Transactions, etc., white-collar crime is rarely given adequate treatment—if any treatment at all. This phenomenon of the double standard for white-collar criminals likewise adds to the distrust of the legal system and politicians and the corporate sector for many Americans. In short, stress levels are high, and tensions are running high in America and have been so since 1980. From the assault on our capital to the frequent marches and protests against police violence to the spate of mass shootings in 2021, America is ripping itself apart.

Consider this: the Center for Disease Control projected that deaths from guns would exceed deaths from automobile crashes in 2015 and put the likely number of gun deaths around 33,500.<sup>75</sup> And if you thought it couldn't get worse, it did. The year 2020 ended as one of the most violent years in American history. According to *Time Magazine* correspondent Josiah Bates, “Gun violence and gun crime, in particular, has risen drastically, with over 19,000 people killed in shootings and firearm-related incidents in 2020. That’s the highest death toll in over 20 years, according to data from the Gun Violence Archive (GVA).”<sup>76</sup> Bates goes on to state that, according to a report from the NCCJJ, “homicides increased by 36 percent across 28 major U.S. cities—including Los Angeles, Atlanta, Detroit, and Philadelphia—between June and October 2020, when compared to the same time period last year.”<sup>77</sup> “Per the GVA, 2020’s total gun homicides had, by the end of October, already exceeded that of the past four years.”<sup>78</sup>

In terms of workplace violence and other mass shootings, there were 116 between 1980 and 2013, or nearly three times as many as there were in the previous 100 years.<sup>79</sup> And it has only gotten worse since 2013. “The number of mass shootings—which are classified as an incident in which four or more people are shot and injured or killed—has actually risen, drastically, to over 600, the most in the past 5 years and a nearly 50% increase in 2019’s total.”<sup>80</sup> As Jack Brewster reported for *Forbes* magazine, “The U.S. was wracked by a record high 610 mass shootings in 2020, the most of any year since the organization began tracking the number in 2014.” As of

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74. Nigel Barber, *Why White Collar Criminals Rarely Go to Prison*, PSYCH. TODAY (Mar. 5, 2010), <https://www.psychologytoday.com/us/blog/the-human-beast/201003/why-white-collar-criminals-rarely-go-prison>.

75. Adrienne LaFrance, *America’s Top Killing Machine*, ATLANTIC (Jan. 2017), <https://www.theatlantic.com/technology/archive/2015/01/americas-top-killing-machine/384440>.

76. Josiah Bates, *2020 Ends As One of America’s Most Violent Years in Decades*, TIME (Dec. 30, 2020), <https://time.com/5922082/2020-gun-violence-homicides-record-year>.

77. *Id.*

78. *Id.*

79. Jasmine Henriques, *Mass Shootings in America: A Historical Review*, GLOB. RSCH. (Oct. 29, 2013), <http://www.globalresearch.ca/mass-shootings-in-america-a-historical-review/5355990>.

80. Bates, *supra* note 76.

April 16, 2021, the United States “averaged more than one mass shooting per day.”<sup>81</sup>

It is fair to say that the increase in mass shootings since 1980 correlates to the economic trajectory we have defined in this paper. And the increase in violence doesn’t stop there. Bates offers evidence that “experts . . . cite systemic issues long apparent in disenfranchised communities—a lack of opportunities, access to suitable education, food and healthcare—as causative factors, as well as widespread perceptions that police departments have stepped back from their responsibilities in response to this year’s racial justice protests.”<sup>82</sup>

This is perhaps the most troubling reality we face. An utter lack of epistemological analysis on both sides of the issue makes conciliatory progress impossible. Both sides are acting out of fear that stems from decades of mischaracterizations, and the “legal modules” we have referenced play a huge role in this crisis. Case-in-point, there were 994 police shootings in 2015 (at the time of the report),<sup>83</sup> and this was the start of a very bad trend.

By the end of 2015, officers had fatally shot nearly 1,000 people, twice as many as ever documented in one year by the federal government . . . . The next year, however, police nationwide again shot and killed nearly 1,000 people. Then they fatally shot about the same number in 2017 — and have done so for every year after that, according to *The Post’s* ongoing count. Since 2015, police have shot and killed 5,400 people.<sup>84</sup>

There is no doubt that violence has increased since 1980 and so has animosity toward law enforcement and the legal institutions. Part of the reason is a perceived double standard. According to a *New York Times* report,

Law enforcement officers kill about 1,000 people a year across the United States. Since the beginning of 2005, 121 officers have been arrested on charges of murder or manslaughter in on-duty killings, according to data compiled by Philip M. Stinson, a criminal justice professor at Bowling Green State University in Ohio.

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81. Jack Brewster, *More Than One Mass Shooting Per Day Has Occurred in 2021*, FORBES (Apr. 16, 2021, 1:39 PM), <https://www.forbes.com/sites/jackbrewster/2021/04/16/more-than-one-mass-shooting-per-day-has-occurred-in-2021/?sh=65c7f8446493>. As of May 10, 2021, NPR puts the number of mass shootings in 2021 at 194. See Saeed Ahmed, *On Average 10 Mass Shootings Each Week in the US*, NPR (May 10, 2021, 1:02 PM), <https://www.npr.org/2021/05/10/995380788/there-have-been-on-average-10-mass-shootings-in-the-u-s-each-week-this-year>.

82. Bates, *supra* note 76.

83. *National Police Shootings*, WASH. POST DATABASE, <https://www.washingtonpost.com/graphics/national/police-shootings/> (last updated Jan. 22, 2020).

84. Mark Berman, John Sullivan, Julie Tate, & Jennifer Jenkins, *Protests spread over police shootings. Police promised reforms. Every year, they still shoot and kill nearly 1,000 people*, WASH. POST (June 8, 2020, 8:44 AM), [https://www.washingtonpost.com/investigations/protests-spread-over-police-shootings-police-promised-reforms-every-year-they-still-shoot-nearly-1000-people/2020/06/08/5c204f0c-a67c-11ea-b473-04905b1af82b\\_story.html](https://www.washingtonpost.com/investigations/protests-spread-over-police-shootings-police-promised-reforms-every-year-they-still-shoot-nearly-1000-people/2020/06/08/5c204f0c-a67c-11ea-b473-04905b1af82b_story.html).

Of the 95 officers whose cases have concluded, 44 were convicted, but often of a lesser charge, he said.<sup>85</sup>

In *Tennessee v. Garner*, the Justices ruled that it was not justifiable for officers to shoot simply to prevent a suspect's escape.<sup>86</sup> The Court held that a suspect had to pose a significant threat of death or serious harm to either law enforcement or innocent bystanders for the shooting to be legally justified. But in half the criminal cases identified by *The Washington Post* and researchers at Bowling Green State University, prosecutors cited forensics and autopsy reports that showed this very thing: unarmed suspects who had been shot in the back.<sup>87</sup> One-third of these cases showed video evidence that the suspects posed no threat of harm; and in one-fifth of cases, prosecutors alleged officers either planted or destroyed evidence to exonerate themselves.<sup>88</sup> Information like this undermines the credibility of the police and the legal establishment that is charged with protecting people's civil liberties and constitutional rights.

Worse yet, the release of various video recordings of police shootings in the United States has further eroded public trust. In Chicago, the release of a video showing police shooting a suspect led to calls for the police chief and the mayor to step down.<sup>89</sup> More recently, the police officer shooting of Breonna Taylor in her own home and the utterly gruesome murder of George Floyd at the hands of police have fanned the flames of division, discontent, and distrust into a bonfire of social unrest.

Again, the social unrest we see daily is part of the larger issue of social inequality across the board. This inequality is driven by "legal modules," which by and large are developed by members of the legal community. There can be no doubt that these policies have a deleterious effect on communities and individuals. As Alia Dastagir points out, "[t]hrough high-profile Black deaths such as Taylor's and Floyd's can make racism seem episodic, decades of data show racism is structural, interpersonal and omnipresent, exacting a profound physical and emotional toll."<sup>90</sup> For members of the legal community not to see the connections between their laws and

85. Shaila Dewan, *Few Police Officers Who Cause Deaths Are Charged or Convicted*, N.Y. TIMES, <https://www.nytimes.com/2020/09/24/us/police-killings-prosecution-charges.html> (last updated Nov. 30, 2021).

86. 471 U.S. 1 (1985).

87. Kimberly Kindy & Kimbriell Kelly, *Thousands Dead, Few Prosecuted*, WASH. POST (Apr. 11, 2015), <http://www.washingtonpost.com/sf/investigative/2015/04/11/thousands-dead-few-prosecuted>.

88. *Id.*

89. Wayne Drash, *Video Released of Deadly Chicago Police Shooting*, CNN, <http://www.cnn.com/2016/01/14/us/chicago-police-shooting-cedrick-chatman-video> (Jan. 14, 2016, 9:12 PM).

90. Alia E. Dastagir, *Breonna Taylor Has Been Gone a Year. Why We Need to Talk More About the Racial Trauma of Black Death*, USA TODAY (Mar. 3, 2021, 11:34 AM), <https://www.usatoday.com/story/life/health-wellness/2021/03/11/breonna-taylor-george-floyd-and-racial-trauma-black-death/4630148001>.



policies and the ever-widening socioeconomic disparities that are manifesting in social unrest and violence is unbelievable. And for law schools not to begin to address these problems systematically through their curriculums, clinics, and corporate positions, is unacceptable. While some law schools did sign “position” statements after George Floyd’s death and after the assault on our capitol, the stand to end inequality was far from uniform or effective.<sup>91</sup>

Aggressive and violent tactics by law enforcement led to protests across the nation and then, unfortunately, to a misguided social backlash.<sup>92</sup> Adding insult to injury, a Blue Lives Matter campaign emerged—further fraying the fabric of society. “Few subjects are as polarizing, the supposed stakes laid out in small-town rallies and presidential debates: You either support police and the rule of law, or . . . you risk riots and mayhem in your back yard. It’s pitched as Black Lives Matter versus Blue Lives Matter, peace versus anarchy,”<sup>93</sup> concluded Milton Valencia of the *Boston Globe*.<sup>94</sup> Blue Lives Matter spread misinformation about the Black Lives Matter campaign as being about anarchy through social media, and this only served to substantiate social inequality between races.<sup>95</sup>

As Andrea Cabral, a former sheriff and prosecuting attorney, said,

“Supporting police and supporting good policing shouldn’t be two separate things . . . .” [T]he social justice movement that is taking hold is based on historic demands for equality and against oppression, two intrinsic rights that have gone overlooked. “There’s context to these protests, there’s history to these protests, there’s deaths and suffering behind these protests that has nothing to do with good policing.”<sup>96</sup>

Protests have happened all over the United States of late. And even though a report by the *Huffington Post* shows the number of police officers

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91. One small movement on these issues did occur in June 2020, when the AALS launched the *Law Deans Antiracist Clearinghouse Project*, a webpage for law deans, faculty, and the public that contains resources and information related to addressing racism and police reform to help develop remedies for these and other complex issues. The webpage was developed and curated by five Black women law deans: Danielle M. Conway (Penn State Dickinson Law), Danielle Holley-Walker (Howard Law), Kimberly Mutcherson (Rutgers Law), Angela Onwuachi-Willig (Boston University Law), and Carla D. Pratt (Washburn University Law). See *Law School Deans Create Antiracist Clearinghouse*, ASS’N OF AM. L. SCHOOLS, <https://www.aals.org/about/publications/newsletters/aals-news-summer-2020/law-deans-create-new-resource-to-help-law-schools-address-systemic-racism>.

92. See Milton J. Valencia, *How the Blue Lives Matter Trend Has Emerged as the Politics of the Right*, BOS. GLOBE, <https://www.bostonglobe.com/2020/11/01/metro/how-blue-lives-matter-trend-has-emerged-identity-politics-right> (Nov. 1, 2020, 5:24 PM).

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

charged with murder or manslaughter for on-duty police shootings had tripled by 2015, public trust in law enforcement is at an all-time low.<sup>97</sup>

Beyond the mass shootings and police shootings, America's "war on drugs/crime" over the past 40 years has radically increased our use of prisons and jails to combat crime. Since 1980, our prison population grew by 700 percent.<sup>98</sup> As a result, the USA now accounts for 5 percent of the World's population and holds 25% of the World's prison inmates—that's 2.29 million of the 10.1 million prisoners around the world.<sup>99</sup> This is an expensive proposition, especially considering how many inmates are not violent offenders. Half of all inmates at federal prisons are there on drug-related charges, and the costs for incarceration, which average about \$31,000 nationally per inmate per year, are now well beyond what it would take to provide drug rehabilitation services.<sup>100</sup> States are also rethinking the war on drugs approach. Texas spent over \$2 billion between 1983 and 1997 adding prison space, and now they need another 900 million, according to Richard Jerome of the Public Safety Performance Project.<sup>101</sup>

The cost of this mass incarceration has been passed on to the public and more commonly, concludes Lauren-Brooke Eisen of the Brennan Center for Justice, to those incarcerated.<sup>102</sup> "By 1988, forty-eight states authorized some form of correctional fees."<sup>103</sup> "For years, counties and states have authorized prison officials to charge inmates for costs associated with incarceration dubbed 'pay-to-stay' programs," continues Eisen.<sup>104</sup>

These charges range from "per-diem" for their stays to charges for meals, toilet paper, clothing, medical co-pays, and dental fees. Many jurisdictions have begun charging inmates fees in order to collect any money they can to offset staggering correctional costs. In an effort to curry favor with voters, many policymakers and sheriffs tout the advantages of charging inmates fees to decrease the taxpayers' need to foot the bill for incarceration.<sup>105</sup>

As it stands, "an estimated 10 million people owe more than \$50 billion in debt resulting from their involvement in the criminal justice sys-

97. Nick Wing & Julia Craven, *More Cops Have Been Charged for Shootings This Year, but There's Much More Work to Be Done*, HUFFINGTON POST (Oct. 27, 2015, 4:32 PM), [https://www.huffpost.com/entry/police-officers-charged\\_n\\_562f6f9ce4b00aa54a4b0fba](https://www.huffpost.com/entry/police-officers-charged_n_562f6f9ce4b00aa54a4b0fba).

98. See Drew Disilver, *Feds May Be Rethinking the Drug War, but States Have Been Leading the Way*, PEW RSCH. CTR. (Apr. 2, 2014), <http://www.pewresearch.org/fact-tank/2014/04/02/feds-may-be-rethinking-the-drug-war-but-states-have-been-leading-the-way>.

99. Roy Walmsley, *World Prison Population List (Ninth ed.)*, INT'L CTR. FOR PRISON STUD. 1, 3 (2011), [https://www.prisonstudies.org/sites/default/files/resources/downloads/wpp1\\_9.pdf](https://www.prisonstudies.org/sites/default/files/resources/downloads/wpp1_9.pdf).

100. Disilver, *supra* note 98.

101. Disilver, *supra* note 98.

102. See Lauren-Brooke Eisen, *Paying for Your Time: How Charging Inmates Fees Behind Bars May Violate the Excessive Fines Clause*, 15 LOY. U. NEW ORLEANS COLL. L.J. PUB. INT. L. 319 (2014).

103. *Id.* at 322.

104. *Id.* at 321.

105. *Id.*

tem.”<sup>106</sup> In the last few decades, additional fees have proliferated, such as charges for police transport, case filing, felony surcharges, electronic monitoring, drug testing, and sex offender registration.<sup>107</sup> Unlike fines, which are intended to punish, and restitution, which is intended to compensate victims of crimes for their loss, user fees are intended to raise revenue.<sup>108</sup>

This “policing-for-profit” phenomenon is not an isolated or irregular occurrence. “A Justice Department investigation into the shooting and racial unrest in Ferguson, Missouri, drew attention to the fact that some towns in St. Louis County derived 40 percent or more of their revenue by repeatedly nailing citizens with traffic fines and fees for petty violations.”<sup>109</sup> In 2010, the municipal court generated \$1.3 million in fees and fines, and they expected that to go up to around 3 million per year.<sup>110</sup>

The investigation also made it clear that this was happening across the nation. Some of the examples of this “policing-for-profit” constitute an egregious abuse of power. A lawsuit filed by the Institute of Justice against Pagedale, Missouri shows a 500% increase in tickets to citizens since 2010.<sup>111</sup> Pagedale’s municipal court heard 5,781 cases in 2013—which is astonishing since the town only has 3,300 residents.<sup>112</sup> All that those cases did was generate a quarter of a million dollars in revenue for the town<sup>113</sup>—but at what cost? When poor people can’t pay their bogus fines, they end up in jail—and then fined again for their jail time, board, and room.

The policy of charging inmates for their incarceration is counterproductive across the board. As Eisen points out, “[s]hifting even just a portion of the burden of the cost to inmates, eighty percent of whom are indigent, is not only bad fiscal policy, but also provides less incentive to policymakers to keep down costs associated with incarceration.”<sup>114</sup> Likewise, if inmates are charged for every item they touch, they are more likely to go without hygiene products. Institutional black markets emerge, and this leads to social degradation behind bars. Also, if inmates are charged for medical services, they are more likely to avoid getting medical exams, thereby increasing the spread of communicable diseases and generally making life more difficult for everyone else in the institution. Finally, with a

106. LAUREN-BROOKE EISEN, CHARGING INMATES PERPETUATES MASS INCARCERATION 1 (2015), <https://www.brennancenter.org/publication/charging-inmates-perpetuates-mass-incarceration>.

107. Eisen, *supra* note 102, at 321–22.

108. See Eisen, *supra* note 102.

109. Editorial, *Policing for Profit in St. Louis County*, N.Y. TIMES, Nov. 15, 2015, at SR10.

110. Stephen Deere, *DOJ Finds Ferguson Targeted African-Americans, Used Courts Mainly to Increase Revenue*, ST. LOUIS POST-DISPATCH (Mar. 5, 2015), [http://www.stltoday.com/news/local/crime-and-courts/doj-finds-ferguson-targeted-african-americans-used-courts-mainly-to/article\\_d561d303-1fe5-56b7-b4ca-3a5cc9a75c82.html](http://www.stltoday.com/news/local/crime-and-courts/doj-finds-ferguson-targeted-african-americans-used-courts-mainly-to/article_d561d303-1fe5-56b7-b4ca-3a5cc9a75c82.html).

111. *Policing for Profit in St. Louis County*, *supra* note 109.

112. *Policing for Profit in St. Louis County*, *supra* note 109.

113. *Policing for Profit in St. Louis County*, *supra* note 109.

114. Eisen, *supra* note 102, at 328–29.

criminal record, one is less likely to find gainful employment in order to pay down the newly acquired debt. This leads to more crime and more incarceration.

All of this is happening in spite of the Supreme Court ruling that said “[j]udges cannot send people to jail just because they are too poor to pay their court fines.”<sup>115</sup> That decision came in a 1983 case called *Bearden v. Georgia*, which held that a judge must first consider whether the defendant has the ability to pay but “willfully” refuses.<sup>116</sup>

NPR surveyed laws in 50 states and the District of Columbia and found that defendants get charged for a long list of government services that were once free—including ones that are constitutionally required. In at least 41 states, inmates can be charged room and board for jail and prison stays; in at least 44 states, offenders can get billed for their own probation and parole supervision; and in 49 states, there’s a fee for the electronic bracelet that monitors people when they’re out of jail. The survey also found, with the help of the Brennan Center for Justice at New York University School of Law, that in at least 43 states, defendants can be billed for a public defender.<sup>117</sup>

By contrast, consider NPR’s investigation into the world of coal mine operators.<sup>118</sup> NPR found that there are 2,700 mining company owners who have failed to pay nearly \$70 million in delinquent penalties over the last twenty years.<sup>119</sup>

Mines that don’t pay their penalties are more dangerous than mines that do, with injury rates 50 percent higher. Delinquent mines reported close to 4,000 injuries in the years they failed to pay, including accidents that killed 25 workers and left 58 others with permanent disabilities. Delinquent mines continued to violate the law, with more than 130,000 violations, while they failed to pay mine safety fines.<sup>120</sup>

It would seem as though there is a double standard in our criminal justice system.<sup>121</sup>

115. Joseph Shapiro, *Supreme Court Ruling Not Enough to Prevent Debtors Prisons*, NPR (May 21, 2014, 5:01 AM), <http://www.npr.org/2014/05/21/313118629/supreme-court-ruling-not-enough-to-prevent-debtors-prisons>.

116. 461 U.S. 660 (1983).

117. Shapiro, *supra* note 115.

118. Howard Berkes, *Coal Mines Keep Operating Despite Injuries, Violations and Millions in Fines*, NPR (Nov. 12, 2014, 3:35 PM), <http://www.npr.org/2014/11/12/363058646/coal-mines-keep-operating-despite-injuries-violations-and-millions-in-fines>.

119. *Id.*

120. *Id.*

121. We might further consider the plight of the poor people in Flint, Michigan, who were consistently told to go ahead and use the water out of their taps in spite of the fact that several officials knew the water contained unsafe levels of lead. There seems little doubt that their poverty played a role in the public deceptions. The situation is so bad that it might result in manslaughter charges against some public officials. See Michael E. Miller, *Manslaughter Charges Possible in*

Another source of public mistrust of the legal system stems from the recent push for Civil Asset Forfeiture. This tactic was designed during the “War on Drugs” as a strategy to deter and even stop the drug trade by encumbering the “tools” of the trade: cars, houses, boats, airplanes, and especially cash money. The legal notion is that these tools serve a nefarious purpose and are therefore themselves instruments of illegality. This practice, as it was conceived, was upheld as constitutional by the US Supreme Court. In *Bennis v. Michigan*, the Court held that property owners do not have a constitutional right to an “innocent owner” defense in civil forfeiture actions where their property has been used as an instrument to a drug crime.<sup>122</sup> The concept was expanded upon after the 9/11 terror attack to include instrumentalities for the purpose of perpetrating terror.<sup>123</sup> After this expansion, it didn’t take long for police departments to realize that the determining factor on “instrumentality” was, in fact, the police officer’s personal discretion. In an investigative report, the *Washington Post* found that “[t]here have been 61,998 cash seizures made on highways and elsewhere since 9/11 without search warrants or indictments.”<sup>124</sup> Police have confiscated more than \$2.5 billion without so much as a search warrant or indictment.<sup>125</sup> “State and local authorities kept more than \$1.7 billion of that while Justice, Homeland Security, and other federal agencies received \$800 million. Half of the seizures were below \$8,800.”<sup>126</sup>

What is particularly troubling is that these seized assets are being used to fund police departments—which further incentivizes the illicit police behavior. As the *Washington Post* investigation points out,

Hundreds of state and local departments and drug task forces appear to rely on seized cash, despite a federal ban on the money to pay salaries or otherwise support budgets. The Post found that 298 departments and 210 task forces have seized the equivalent of 20 percent or more of their annual budgets since 2008.<sup>127</sup>

Even Alan Greenspan acknowledges the genuine danger of institutional abuses such as civil forfeiture. “As living requires physical property—food, clothing, homes—people need the legal protection to own and dispose of property without the threat of arbitrary confiscation by the state,” warns Greenspan.<sup>128</sup>

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*Flint Water Crisis, Says Top Investigator*, WASH. POST (Feb. 10, 2016), <https://www.washingtonpost.com/news/morning-mix/wp/2016/02/10/manslaughter-charges-possible-in-flint-water-crisis-says-top-investigator/>.

122. 516 U.S. 442, 446 (1996).

123. See Michael Sallah, Robert O’Harrow, Jr. & Steven Rich, *Stop and Seize*, WASH. POST (Sept. 6, 2014), <https://www.washingtonpost.com/sf/investigative/2014/09/06/stop-and-seize/>.

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. GREENSPAN, *supra* note 2, at 251.

More important than laws, which “at best can prescribe only a small fraction of the day-by-day activities,”<sup>129</sup> is “trust in the word of others.”<sup>130</sup> Those “others” would include individuals as well as those in authority and the institutions they represent. Indeed, as Greenspan sees it, “capitalism cannot be sustained without the support of a large proportion of society.”<sup>131</sup> That support comes in the form of trust for the rule of law, which is the foundation for capitalism, and by means of the legal framework. That framework, under which capitalist institutions function, “must be perceived as ‘fair’ if these institutions are to continue to receive broad support,” concludes Greenspan.<sup>132</sup>

But trust in institutions has declined precipitously over the last half century for a variety of reasons, not the least of which is that the legal establishment, far from protecting civil liberties and constitutional rights, has actually helped institutionalize the injustices we mentioned above and many more. There seems little doubt that this is, in part, the failure of the law schools, which play a major role in the legal establishment.

There is an interesting historical parallel here. In 1939, American educator and philosopher, Mortimer Adler, predicted that the deplorable state of American higher education would have us goose-stepping our way down the path of fascism when he concluded, “a generation which has been educated in [this] manner . . . will pass from a faith in democracy to a faith in fascism simply because outward circumstances will have sufficiently attenuated the one and strengthened the other.”<sup>133</sup>

Though there is no universally agreed upon definition of fascism, it is fairly well accepted that a fascist state “exalts nation and often race above the individual and that [it] stands for a centralized autocratic government headed by a dictatorial leader, severe economic and social regimentation, and forcible suppression of opposition.”<sup>134</sup> On any fair reading of the aforementioned injustices, it would appear that Adler’s fears are being realized.<sup>135</sup> At the least, faith in democracy has been sufficiently attenuated in recent years by the fascist-like clampdowns on crime and the criminalization of the poor. We find further evidence in the failed Wall Street Protests and the bailout of the banks and major industries, and if the rise of Donald

129. GREENSPAN, *supra* note 2, at 256.

130. GREENSPAN, *supra* note 2, at 255.

131. GREENSPAN, *supra* note 2, at 396.

132. GREENSPAN, *supra* note 2, at 396.

133. MORTIMER J. ADLER, *This Prewar Generation, in REFORMING EDUCATION: THE OPENING OF THE AMERICAN MIND*, *supra* note 32, at 3, 20.

134. *Fascism*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/fascism> (last visited Sept. 4, 2022).

135. The fact that the Federal Government has now filed a lawsuit against Ferguson, Missouri, to halt its racist police practices, is an indication of the trajectory we are on. See Associated Press, *Federal Government Sues Ferguson, Missouri*, FOX NEWS (Feb. 11, 2016), <http://www.foxnews.com/us/2016/02/10/federal-government-expected-to-sue-ferguson-missouri.html>.

Trump's presidential candidacy is any indication, faith in fascism might be on the rise. "In a contest between Hitler and people who are wondering why they shouldn't be Hitlers, the finished product is bound to win," concludes Adler.<sup>136</sup>

#### ACADEMIC ACTIVISM AS A SOLUTION

The best way to reverse the trend of distrust is to reverse the policies that facilitate injustice. This would require a new generation of legal thinkers, which would require fundamental change in legal education. This paper argues that the first step is to require a Poverty Law course for all law school students.

The idea of requiring law students to take a class on Poverty Law is not new. It has been around at least since Professor Llewellyn chided his students to stop focusing on making money a hundred years ago.<sup>137</sup> It has survived several ebbs and flows, receiving impetus from various social circumstances, perhaps the largest of which was the formation of the Interuniversity Consortium on Poverty Law in 1989.<sup>138</sup> The current impetus is a combination of economic factors like the global economic crisis and current rates of poverty and crime in the USA. These factors notwithstanding, the idea is likely to be met with skepticism, and any gains (flows) are likely to be met with retrenchment (ebbs), just as the Interuniversity Consortium on Poverty Law's strides have ebbed.<sup>139</sup>

The contempt with which this idea of requiring a Poverty Law and/or Human Rights class is met is not new either. There is perhaps no better example than Justice Scalia's sardonic comments that Poverty Law is "made-up stuff" in the legal curriculum and that students should not "waste their time" with such courses but should instead "take real classes."<sup>140</sup>

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136. ADLER, *supra* note 133, at 20 (quoting President Hutchins).

137. In a series of lectures at Columbia University, Professor Karl Llewellyn observed: "There is a brand of lawyer for whom law is the making of a livelihood, a competence, a fortune. Law offers a means to get ahead. It is so viewed. Such men give their whole selves to it. Coin is their reward. Coin makes it possible to live. Coin is success, coin is prestige, and coin is power." Robert Hornstein, *Teaching Law Students to Comfort the Troubled and Trouble the Comfortable: An Essay on the Place of Poverty Law in the Law School Curriculum*, 35 WM. MITCHELL L. REV. 1057, 1070 (2009) (citing K.N. LLEWELLYN, *THE BRAMBLE BUSH: ON OUR LAW AND ITS STUDY* (1960)).

138. With a grant from the Ford Foundation, Harvard, UCLA and the University of Wisconsin explored the role of legal education in responding to poverty. According to Lois Johnson and Louise Trubek, "The Consortium's goal is to foster academic awareness of poverty in the nation's law schools by mobilizing poverty law educators and advocates to develop creative model projects." Lois Johnson & Louise G. Trubek, *Developing a Poverty Law Course: A Case Study*, 42 WASH. U.J. URB. & CONTEMP. L. 185, 186 (1992).

139. *Id.*

140. Hornstein, *supra* note 137, at 1058 (citing Abdon M. Pallasch, *Scalia Says U. of C. Has Gone Liberal*, CHI. SUN TIMES (Sept. 17, 2008), <https://chicago.suntimes.com/news/education/1168064,scalia091708.article>).

As Robert Hornstein points out, “poverty law and the broader concern of social justice have always held a sort of second-class citizenship within the modern architecture of the law school curriculum and in the legal academy as well.”<sup>141</sup> In spite of the strong practical and philosophical connections between poverty and justice, as well as the simple, pragmatic concerns for a more stable society, Poverty Law has not gained traction in the legal academy. This is due in part to its “lack of commonly recognized or agreed substantive boundaries,” which keeps it from being a “neatly fenced-off doctrinal subject area.”<sup>142</sup>

Poverty Law’s lack of respect within the curriculum is also due in part to the kind of professors who teach the subject and the kind of students who take the course. Offered primarily as an elective seminar and in conjunction with some kind of clinical experience, Poverty Law suffers from the stigma of being a “fluff course” (as Scalia intimated) for students of lesser academic capability. In their analysis of such courses for the Interuniversity Consortium on Poverty Law, Johnson and Trubek identify this precise limitation. “[S]tudent presentations resulted in loose and unfocused class discussions and intruded upon the professor’s ability to probe beyond the text and pull together the seminar’s themes.”<sup>143</sup> Hence, the demographics of the Poverty Law course seemed to reiterate the social stereotypes the class was designed to challenge,<sup>144</sup> and this had a chilling effect on in-class discussions and debates.<sup>145</sup> As Johnson and Trubek reveal, “[m]ost of the class participants already had some sensitivity to the issues of poverty before signing up for the course and did not need to be ‘converted’ to the perspective that racism and sexism are pervasive and inherent in discussions of poverty.”<sup>146</sup> Thus, the composition of the students in the class “gave minority students an opportunity to participate actively and meaningfully in the law school curriculum.”<sup>147</sup>

While this was an opportunity for minority and female students to be more vocal and share personal experiences, it also had a negative effect on others. “The emotional, provocative, and often threatening nature of discussion about systemic racism and poverty upset and angered some course participants,” confessed Johnson and Trubek.<sup>148</sup> According to Johnson and Trubek, this led to some “deep issues of silence in the class. . . . [S]ome majority students [white males] feared that their personal experiences

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141. Hornstein, *supra* note 137, at 1059.

142. Hornstein, *supra* note 137, at 1073.

143. Johnson & Trubek, *supra* note 138, at 193.

144. Johnson & Trubek, *supra* note 138, at 196. Johnson and Trubek point out that a “greater number of minority and women students take the seminar than take other law school courses.”

145. Johnson & Trubek, *supra* note 138, at 193.

146. Johnson & Trubek, *supra* note 138, at 193.

147. Johnson & Trubek, *supra* note 138, at 199.

148. Johnson & Trubek, *supra* note 138, at 200.



would be devalued by the other class members.”<sup>149</sup> Trubek and Johnson previously concluded that some “students were afraid to speak at all,” and white male students “did not want to seem racist and some did not want to appear ignorant of the problems of poverty.”<sup>150</sup>

In sum, Poverty Law courses (of the kind analyzed by Johnson and Trubek) became their own worst enemy. They reinforced dangerous stereotypes, discouraged students who were not as directly connected to the issues as others, and served to perpetuate an “us” versus “them” social dichotomy. Worse yet, concluded Johnson and Trubek, the students

came to view poverty, racism, and sexism as systemic barriers that the law itself reflects and probably could not knock down. . . . [S]tudents in the new seminar were already critical about the use of law for social change and appeared ambivalent about legal solutions for poverty. The students believed that the legal system merely offers limited and incomplete solutions to institutional and societal problems.<sup>151</sup>

A simple rejoinder to Johnson and Trubek’s indictments of the Poverty Law courses they analyzed is that those courses suffered from being elective seminar courses. They lost focus and turned into venting sessions for students whose place in the legal academy was already dubious for too many others. As one student commented about the Poverty Law course, “the class often turned into the ‘Phil Donahue’ hour.”<sup>152</sup> The simple solution would have been to require the course for all students. But herein lies the problem: structuring the curriculum to include new courses demands that courses be run “successfully” as electives before they are permanently added to the curriculum. And since most law schools do not have departments, changing the required courses is a Herculean task. Tradition for mainstream legal topics has dictated the curriculum for a long time partly because it is done in the context of competitive constraints. Law schools are in a race for students, and each school has to graduate its students as fast as all other law schools and for a similar amount of money (given the relative value of its reputation compared to its peer institutions). No law school is going to increase the amount of courses its students must take to graduate in an era of paring back requirements as a cost-saving measure.

This curricular conundrum is all the more tragic when one considers the impact of poorly educated legal thinkers on society. The whole purpose of

requiring students to take a poverty law course is to expose them to the complexity of the legal interests of the poor, the promise of

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149. Johnson & Trubek, *supra* note 138, at 200.

150. Johnson & Trubek, *supra* note 138, at 200.

151. Johnson & Trubek, *supra* note 138, at 202.

152. Johnson & Trubek, *supra* note 138, at 200. This is a reference to a 1980’s talk show that allowed people to vent on social issues.

the law as an institution capable of addressing and remediating injustice, and the richness of lawyering on behalf of the poor in a nation committed by its written constitution to equal justice.<sup>153</sup>

It is this precise point that merits a reconsideration of Poverty Law as a required course in every law school in America. There can be no denying that poverty invokes a consideration of justice, and justice is a primary purpose of our entire legal establishment. Lawyers, judges, and politicians swear an oath to uphold the Constitution of the United States, and the purpose of the Constitution is stated clearly in its Preamble:

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.<sup>154</sup>

Though justice is specifically stated as a primary goal of the Constitution, we must further establish the connection to poverty, or more broadly, economic interests. What was the Founding Fathers' operative definition of justice when they adopted the Constitution and assumed its Preamble as its purpose?

The Constitution came into existence precisely because the governing legal framework at the time, The Articles of Confederation, was failing. The central weakness of The Articles of Confederation was its failure to regulate trade.<sup>155</sup> This failure led to uncertainties in the market, fluctuations in local economies, and social instability. Thus, the liberties the Constitutionalists hoped to gain were chiefly negative. They wanted freedom from fiscal uncertainty and irregularities in the currency, from trade wars among states, from economic discrimination by more powerful foreign nations, from attacks on the creditor class or on property, from popular insurrection. They aimed to create a government that would act as an honest broker among a variety of propertied interests, giving them all protection from their common enemies and preventing any one of them from becoming too powerful. "The [Constitutional] Convention was a fraternity of types of absentee ownership . . . . To protect property is only to protect men in the exercise of their natural faculties."<sup>156</sup> Following the philosophy of John Locke,<sup>157</sup> who Jefferson copied in writing the Declaration of Independence,<sup>158</sup> the Founders assumed that "[g]overnment . . . is based on prop-

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153. Hornstein, *supra* note 137, at 1074.

154. U.S. CONST. pmbl.

155. RICHARD HOFSTADTER, *THE AMERICAN POLITICAL TRADITION* 14 (1989).

156. *Id.* at 15.

157. CARL L. BECKER, *THE DECLARATION OF INDEPENDENCE* 27 (1958).

158. *Id.* at 79.

erty,”<sup>159</sup> and therefore the primary purpose of government must be the protection of property. Locke’s philosophy grants a natural property right of persons in themselves, and then, by logical extension, to that “he hath mixed his labour with.”<sup>160</sup> The Constitution thus provides, on at least thirty separate points, various protections of people’s property. The concern of the Founding Fathers regarding property was two-fold: “they were especially fearful that the poor would plunder the rich, but most of them would probably have admitted that the rich, unrestrained, would also plunder the poor.”<sup>161</sup>

On this account, it seems fairly obvious that the constitutional republic the Founders settled on followed an idea first developed by Plato: that the entire focus and function of the Republic is “justice.” And “justice,” fairly elaborated by Plato in his book, *Republic*, is “balance” or “harmony” of the different parts of society and the different economic interests.<sup>162</sup> Therefore, as Professor Bryan Stevenson rightly stated, “the opposite of poverty is not wealth . . . [but] justice.”<sup>163</sup>

That said, we have a moral imperative and a legal requirement to teach Poverty Law in our law schools, not as an elective course, but as a required core course. Furthermore, law schools should work to integrate the complete Platonic notion of justice across the curriculum. “There are just as many opportunities to build poverty law issues and concerns into conventional courses such as torts, property law, remedies, and virtually any other course,” concludes Robert Hornstein.<sup>164</sup> Lawyers, judges, and politicians, who pledge an oath to serve and protect the Constitution, are the instruments within the legal establishment for achieving justice. This can only be accomplished when they have been educated completely on all the social and economic factors that are tipping the balance and only when they have heard it repeatedly in a majority of their courses. There has never been a more important time in our history to work for justice. As Greenspan points out, the disparity in wealth now is different, and much worse, than the disparity that existed in the so-called gilded age.<sup>165</sup>

In light of the “global economic collapse,” it is now obvious that we live in a global society and the decisions made by attorneys, judges, and

159. HOFSTADTER, *supra* note 155, at 17.

160. See JOHN G. LOCKE, *SECOND TREATISE ON GOVERNMENT*, ch. V, § 25 (C. H. Wilson and R. B. McCallum eds., A. R. Moberly & Co., 1946) (1690), for his full account of private property.

161. HOFSTADTER, *supra* note 155, at 11.

162. See D.R. Bhandari, *Plato’s Concept of Justice: An Analysis*, in 3 THE PAIDEIA ARCHIVE: TWENTIETH WORLD CONGRESS OF PHILOSOPHY 44, 44–47 (1998), <https://www.bu.edu/wcp/Papers/Anci/AnciBhan.htm#:~:text=Plato%20says%20that%20justice%20is,individual%20as%20well%20as%20social>.

163. Andrea Saenz, *Hundreds Gather for Celebrations of Public Interest*, HARV. L. REV. (Mar. 8, 2008), <https://hlrecord.org/hundreds-gather-for-celebration-of-public-interest/>.

164. Hornstein, *supra* note 137, at 1080.

165. GREENSPAN, *supra* note 2, at 397–98.

politicians here in the United States truly impact the World. Therefore, our revision of American law school curriculums should also include at least one course on International Law and Human Rights. We must keep in mind, however, it is not the content of the courses we teach that makes the difference in students' lives as much as it is the spirit with which our instructors and administrators commit to the subjects.

#### THE WRONG PRIORITY FOR EDUCATION

Education has always served a dual purpose. As educational theorist Mortimer Adler says, "education is a process that aims at the improvement of humans, in themselves and in relation to society."<sup>166</sup> Education serves the individual good by improving a person's rational capacity for happiness,<sup>167</sup> and it serves the common good by providing individuals with the basic tools needed to participate meaningfully in the political economy. The former of these improvements is intrinsic to the individual, and the latter improvement is extrinsic. Yet, in either case, a person is made better, and

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166. MORTIMER J. ADLER, *Labor, Leisure, and Liberal Education*, in REFORMING EDUCATION: THE OPENING OF THE AMERICAN MIND, *supra* note 32, at 93, 94. I follow Adler's view here that learning refers to an epistemological process of the human person as a rational (moral) being, and education refers to a systematic process that facilitates learning through structured curricula. Adler follows the basic Aristotelian model in which humans have the dual capacity to acquire knowledge and develop understanding. These are two different capacities that occur as a unified process within the person. The former capacity involves experience (sentience) and recollection (memory) and results in "knowledge." This is "non-liberal" in the sense that the content of knowledge is external to the knower. The latter process involves ratiocination (abstracting universal ideas from particular experience), judgment (comparison to other ideas in the mind by means of the acquisition of knowledge), and synthesis (categorizing the knowledge in the mind) and this results in "understanding." Understanding something presupposes that a person can "demonstrate" the phenomenon or idea. This is "liberal" in the sense that it demands an extra mental step within the mind (a separate process of abstraction) to demonstrate the idea. Thus, a person can "know" something without understanding it. I know the quadratic equation in math, but I do not understand it. This is particularly important when it comes to "metaphysics," (first principles or ideas that are fundamental to humans) such as truth, justice, peace, love, courage, honor, dignity, respect, freedom, democracy, etc. The type of learning it takes to "understand" these important ideas is different than the type of learning it takes to build a house. A person can understand how to build a house and yet lack the ability as a human to turn it into a home if s/he does not understand how to facilitate dignity, respect, truth, love, friendship, etc. among its occupants. To be fully human is to engage creatively (i.e., "freely") in the definition and pursuit of goals appropriate to our nature as rational (moral) beings. This is why Aristotle links human happiness to the intellectual virtues, and Adler follows suit. Education, as a human institution, must ensure both types of learning take place. And education should follow a simple progression from more non-liberal instruction to more liberal instruction as students mature in the process. Adler's fundamental criticism of American education, which is the thesis I develop in this paper, is the influence of the political economy has pushed education too much towards a "knowledge-based," "non-liberal" enterprise all the way through graduate school; the consequences of which are disastrous.

167. I use happiness here in the Aristotelian sense; the pursuit of which is manifest in the Declaration of Independence as an inalienable right. It is beyond the scope of this paper to provide a complete explication of Aristotelian happiness (*eudaimonia*, in the Greek), but for a most complete analysis of this concept and its relationship to education, see MORTIMER J. ADLER, *Education and the Pursuit of Happiness*, in REFORMING EDUCATION: THE OPENING OF THE AMERICAN MIND, *supra* note 32, at 81.

therefore education is inherently political as better individuals make up a better society.

All educational structures include a measure of both goods, but the preponderant emphasis in the United States has always put education in the service of the political economy, and this is the basis for the liberal/non-liberal distinction in the tradition of education. Emphasizing the individual good and personal, moral development has traditionally been the province of liberal learning (through the “liberal arts” curriculum) primarily at private institutions.<sup>168</sup> This liberal learning has usually been reserved for the few who have the means to pursue it. Emphasizing the common good has been the province of non-liberal learning (through the “servile arts” curriculum) primarily at “public” institutions, for the masses at little or no cost.

Problems arise when these categories are defined too narrowly, and educational structures (especially primary and secondary institutions) fail to educate the complete human with a curriculum that integrates both facets of learning. When liberal education focuses too narrowly on the intrinsic value of pursuing intellectual and moral virtue (to the exclusion of practical virtue) and limits itself to specific subjects and disciplines, students have difficulty plugging into the political economy. When non-liberal education focuses too narrowly on vocational or technical education (to the exclusion of intellectual and moral virtue), students have great difficulty managing their leisure time appropriately and achieving the happiness referenced in the Declaration of Independence.<sup>169</sup>

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168. Liberal education is an approach to learning that emphasizes personal, moral development and the acquisition of understanding by engaging students in a systematic exploration of ideas that results in extensive ratiocination. Liberal education is not content-centered, but process-centered. The Association of American Colleges and Universities provides a very useful expression of this idea and its goals in its Liberal Education and America’s Promise campaign: “Liberal Education is an approach to learning that empowers individuals and prepares them to deal with complexity, diversity, and change. It provides students with broad knowledge of the wider world (e.g., science, culture, and society) as well as in-depth study in a specific area of interest. A liberal education helps students develop a sense of social responsibility, as well as strong and transferable intellectual and practical skills such as communication, analytical and problem-solving skills, and a demonstrated ability to apply knowledge and skills in real-world settings.” Ass’n Am. Colls. & Univs., *Liberal Education and America’s Promise (LEAP)*, IND. COMM’N. HIGHER EDUC., <https://www.in.gov/che/files/LEAP.pdf> (last visited Jan. 5, 2023). See also Mortimer J. Adler, *The Deterioration of American Education*, RADICAL ACAD., <http://www.radicalacademy.org/adleramericaneducation.html> (last visited Oct. 10, 2022); Mortimer J. Adler, *The Foundations of the Philosophy of Education*, RADICAL ACAD., <http://www.radicalacademy.org/adlerphilofeducation2.html> (last visited Oct. 10, 2022).

169. As we shall see in the criticisms of American education by Mortimer Adler and others, the problem has been compounded by the fact that non-liberal education, which excludes the values of liberal learning, has left us with a working class whose minds are not agile enough to cope with the rapid changes in industry and technology. Furthermore, our over-emphasis on non-liberal learning is reflected in a division of labor and a division in earning capacity that is partially premised on intellectual capacity and social relations. This, according to economists such as Alan Greenspan, creates an unhealthy tension in society. See GREENSPAN, *supra* note 2. It is beyond the scope of this paper to address this specific issue, but I return to this point later in the paper when acknowledging that competition in higher education leads most institutions to rely on earning

While there is general agreement that a balanced education is the optimal circumstance, there is great debate about the structure and composition of the optimal curriculum to achieve that proper balance.<sup>170</sup> And because the majority of people are educated “publicly,” the political implications of curricula are extensive and pay great deference to the extrinsic goals of education and hence the “servile arts,” vocational instruction, and technical competence of graduates. These extrinsic goals are easier to assess, reflected in the decades of success the American educational system has had in terms of meeting the needs of a rapidly changing technological and industrial economy. Funding and budgets were linked to this success and began to shape curricula accordingly. More importantly, the measurable success of producing the most highly skilled workforce in the world changed the epistemological underpinnings of our educational system, with less emphasis placed on moral development and critical thinking and more placed on imparting information and increasing knowledge.

Given the United States’s success as the world’s leading economy and the large role public education plays, the United States’s processes of education show a consistent tendency to lean toward the objectively measurable and that which is connected to the industrial economy. Consequently, a large segment of the educational establishment tends to treat students as buckets to be filled or blank slates to be written upon—following the *tabula rasa* theory of John Locke based on the epistemological assumption that humans are born without any mental content and all knowledge comes from experience and perception.<sup>171</sup> This theory is rooted in the philosophy of Aristotle who posits, “what [the mind] thinks must be in it just as characters may be said to be on a writing tablet on which as yet nothing actually stands written.”<sup>172</sup>

While this approach proves more than functional in the economic period of industrialization, it has proven inadequate for an increasingly diverse population in a time of hyper-technology and a paring down of

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capacity statistics to promote degree programs. Adler avers to such problems in his critique of American Education. See MORTIMER J. ADLER, *Reforming Education: No Quick Fix*, in REFORMING EDUCATION: THE OPENING OF THE AMERICAN MIND, *supra* note 32, at 311; Adler, *The Deterioration of American Education*, *supra* note 168.

170. As Adler points out in “Labor, Leisure, and Liberal Education,” the goal of all education is the “good life . . . a life lived in the cultivation of virtue. . . . The good life depends on labor, but it consists of leisure. Labor and all the conditions that go with labor are the antecedent means of happiness. They are external goods, that is, wealth. Leisure activities are the ends for which wealth is the means. Leisure activities are the constituents of happiness. Leisure activities constitute not mere living, but living well. . . . It is clear, I think, that liberal education is absolutely necessary for human happiness, for living the good human life. The most prevalent of all human ills are a man’s discontent with the work he does and the necessity of having to kill time.” ADLER, *supra* note 166, at 108.

171. See JOHN G. LOCKE, AN ESSAY CONCERNING HUMAN UNDERSTANDING 163 (Kenneth P. Winkler ed., Hackett 1996) (1689).

172. Aristotle, *De Anima*, in INTRODUCTION TO ARISTOTLE 145, 219–20 (Richard McKeon ed., J. A. Smith trans., 1947).

industrial manufacturing requiring unskilled physical labor. Curricula based on this basic epistemology, however, will not facilitate the moral growth and development students need to be competitive in a rapidly changing, hyper-technical, global society. Treating the mind in such a simplistic fashion ignores important nuances of both Locke's and Aristotle's epistemological theories, resulting in a content-centered approach and putting some "letters on the tablets," as it were.

The reasons this epistemological approach ("filling buckets" or writing on "blank slates") is prolific in American education vary, but perhaps none is so strong as the politicization of education in the United States. From Thomas Jefferson to Barak Obama, politicians have proposed changes and influenced the educational system for the "common good" by emphasizing the need for a skilled workforce without any specific reference to the need for liberal education. Advances in education have therefore tended to focus on standardization of knowledge to produce an educated working class.<sup>173</sup> These advances in public education assume the availability of liberal education to the select few with the means to participate in private education but with little public concern for the possible problems of social integration for differently educated individuals.

Aided and abetted by the incorporation of entertaining technologies into the classroom in a vain attempt to keep pace with online programs, accelerated programs, hybrid programs, credit-for-prior-learning programs, etc., education has given way to instruction. Students are viewed as customers, and entertainment value is at a premium as tuition-dependent institutions fight for market share. This is not a new phenomenon. In 1941, Adler claimed,

that agencies of adult education baby the public . . . [t]hey have turned the whole [of education] . . . into a kindergarten. It must all be fun. It must all be entertaining. . . . We try to make adult education as exciting as a football game, as relaxing as a motion picture and as easy on the mind as a quiz program.<sup>174</sup>

Watering down the curriculum and increasing the entertainment value and the speed with which a person can get a degree is bad enough, but some colleges and even some law schools have played fast and loose with statis-

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173. For a more complete account of the evolution of education in America that takes into consideration all the political and economic variables, see MORTIMER J. ADLER, *The Schooling of a People*, in REFORMING EDUCATION: THE OPENING OF THE AMERICAN MIND, *supra* note 32, at 114. Adler points out that our educational philosophy has not been able to keep pace with the industrial, technological, and economic changes in our society. The impact is felt both quantitatively as the percentage of young people participating in education beyond primary school rose from 5% in 1850 to more than 85% in 1950, as well as qualitatively. Yet, this cannot serve as an excuse for failing "to see clearly the magnitude of the problems themselves." *Id.* at 127.

174. MORTIMER J. ADLER, *Invitation to the Pain of Learning*, in REFORMING EDUCATION: THE OPENING OF THE AMERICAN MIND, *supra* note 32, at 232, 233-34.

tics, such as in reporting the number of graduates employed immediately upon finishing their degree as a recruitment device.

Approaching education as entertainment, or business, and students as customers, or an audience, is premised on the belief that education is something externally added to the person.<sup>175</sup> Learning in this context is passive; it amounts to nothing more than a simple transfer of information that may or may not be retained long-term by the student. This is precisely the type of learning favored by a politicized educational system and precisely the type of learning that Adler fears most: convenient in the sense that it is content-centered, objective, and outcomes-based. It can be assessed easily, and students can track their progress according to the completion of required exercises. This passive learning approach reduces the educational act to a basic contract for the exchange of information, and the educator bears no responsibility for the use or misuse of the product beyond the context of the course. But it is a system geared toward mediocrity and, in Adler's view, a danger to us all. Tragically, Adler's words in 1941 have never been more true than today. Then, he said, "education . . . is the gold brick that is being sold in America today on every street corner. Everyone is selling it, everyone is buying it, but no one is giving or getting the real thing."<sup>176</sup>

In stark contrast to this politicized, content-centered, outcomes-based approach to education is liberal learning. Liberal learning involves an "interior transformation of a person's mind and character," according to Adler.<sup>177</sup> Liberal learning is always effective because "[it] can be effected only through his own activity."<sup>178</sup> However, such learning is difficult to assess and generally cannot be well accomplished with high student-teacher ratios. Inability to assess creates problems for accreditation and financial stability within the institution. But the alternative, to ignore the education of the complete human person in favor of political and economic expediency, leaves us with a lack of critical thinking and communications skills among graduates. If educational theorists are correct, the cumulative effect on our culture will be catastrophic. As Mortimer Adler predicted in 1939,

[A generation that has been educated in this manner] will pass from a faith in democracy to a faith in fascism simply because outward circumstances will have sufficiently attenuated the one and strengthened the other. . . . In a contest between Hitler and people who are wondering why they shouldn't be Hitlers, the finished product is bound to win.<sup>179</sup>

Even if Adler's dire prediction is hyperbole, the fact remains that our educational system is struggling mightily to produce the kind of graduates

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175. *Id.* at 234.

176. *Id.* at 236.

177. *Id.* at 234.

178. *Id.*

179. ADLER, *supra* note 133, at 20.



our society requires, creating a compelling argument for a return to the principles that treat the full range of epistemological operations of the human mind as rooted in the philosophies of John Locke and Aristotle. A return to such principles would constitute a return to “liberal learning,” much the same as Mortimer Adler advocated for between 1938 and 1988, and educational theorists such as Nussbaum, Anderson, Hanlon, Palmer, and others have advocated for more recently.

TOWARD A THEORY OF LIBERAL LEARNING  
THROUGH A MORE COMPLETE EPISTEMOLOGY

Treating students simply as “blank slates” and attempting to educate them with a content-centered curriculum is wholly inadequate, especially in law schools, when one considers the deeper and more complex nuances of human cognition. What is necessary for a complete education of the human person is a more complete epistemology. Content-centered education derives from an incomplete understanding of the philosophies of John Locke and Aristotle in the sense that the mind is devoid of content and must be filled from the outside. But, this does not do justice to the complexities of their epistemologies.<sup>180</sup>

Locke and Aristotle are similar in their epistemologies. They reject innate ideas but allow for innate faculties that receive and manipulate the content of experience.<sup>181</sup> The mind thus engages in three different types of action. The first is to synthesize perceptions into complex ideas. Complex ideas are either of substance or mode. Substances are independent existences such as God, angels, humans, animals, plants, and a variety of constructed things. Modes are dependent existences such as mathematical and moral ideas and the conventional language of religion, politics, and culture.

For Aristotle, a specific pedagogy emerges by necessity when one considers that human learning is the result of discursive thought, for “the thinking then of simple objects of thought is found in those cases where falsehood is impossible: where the alternative of true or false applies, there we always find a putting together of objects of thoughts in a quasi-unity.”<sup>182</sup> The importance of this understanding of human cognition is that it requires a dialectic pedagogy that aims at facilitating dialogue. As Aristotle concludes, “falsehood always involves a synthesis . . . and in every case that which unifies is mind.”<sup>183</sup>

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180. As shown later in this paper, others, such as St. Thomas Aquinas, and more recently Charles Anderson, base notions of liberal learning on “practical judgment,” consistent with the epistemologies of Locke and Aristotle.

181. See Douglas Greenlee, *Locke and the Controversy Over Innate Ideas*, 33 J. HIST. IDEAS 251 (1972); see also Jain Shubhank, *Key Concepts of Aristotelian Philosophy*, MEDIUM (Sept. 25, 2019), <https://jainshubhank8.medium.com/key-concepts-of-aristotelian-philosophy-8da73ae85a0f>.

182. Aristotle, *supra* note 172, at 221.

183. Aristotle, *supra* note 172, at 221.

The second action of the mind is to compare ideas, whether simple or complex, without combining them, which results in our idea of relations. This mental operation proceeds discursively, not intuitively, and is a directed reasoning. Aristotle uses the example of how we think about things such as “evil” or “black,” saying evil and black “are cognized, in a sense, by means of their contraries. That which cognizes must have an element of potentiality in its being, and one of the contraries must be in it. But if there is anything that has no contrary, then it knows itself and is actually and possesses independent existence.”<sup>184</sup> This is important to the formulation of a pedagogy because educators must recognize “the thinking of the definition in the sense of the constitutive essence [of objects without matter, like evil or black] is never in error nor is it the assertion of something concerning something.”<sup>185</sup>

By way of example, take this question from a standardized test. “Which one of these things does not belong to the group: a) axe b) saw c) scissors d) wood.” To answer this question moves the student beyond an intuitive response in the sense that a reason must be provided—at least in the mind even if an explanation is not called for (as so many of our test mechanisms fail to do). Analysis of this question reveals students from rural environments rule out scissors because they see a logical relation between the other three things—especially if one heats one’s home with wood—whereas students from an urban environment rule out wood because the other three are human-made implements for cutting and wood is a natural, organic substance. Aristotle’s response should be clear based on what has been said about his theory of epistemology: the thought process is what matters, not the answer.<sup>186</sup> Thus, we must move education away from the focus on “right answers” to a focus on “right thinking.” As he concludes, “in every case, the mind which is actively thinking is the objects which it thinks.”<sup>187</sup>

The third act of the mind is ratiocination, or the production of general ideas by abstraction from particulars. For Locke and Aristotle, this act omits circumstances of time and place that would limit the application of an idea to a particular individual. As Aristotle points out, “[T]hat which the mind thinks and the time in which it thinks are in this case divisible only incidentally and not as such. For in them too there is something which is indivisible . . . which gives unity to the time . . . this is found equally in every continuum whether temporal or spatial.”<sup>188</sup>

The main epistemological structure includes the faculties of synthesis, comparison, and ratiocination (abstraction). These faculties must be ac-

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184. Aristotle, *supra* note 172, at 222.

185. Aristotle, *supra* note 172, at 222.

186. Shubhank, *supra* note 181.

187. Aristotle, *supra* note 172, at 224–25.

188. Aristotle, *supra* note 172, at 222.

counted for in any complete pedagogy, and when they are, the educational structure will necessarily lend itself to “liberal learning,” in the sense that students’ minds will be “freed” from the contextual limitations by coming to an awareness of their own cognitive operations. Critical thinking is facilitated as students take conscious control of the process of ratiocination, and the end result is a higher degree of autonomy.

For educational theorists such as Adler, the most useful pedagogy utilizes a dialectic approach, as in Aristotle’s position on the essential nature of falsehoods leading to synthesis. This theory propels Adler to the model curriculum on the great books of Western Civilization as he believed these would lend themselves to the necessary dialectic structure. As Adler says,

Some basic truths are to be found in the great books, but many more errors will also be found there, because a plurality of errors is always to be found for every single truth. One way of discovering this is to detect the contradictions that can be found in the books of every great author. . . . Skill in reading and thinking is required to find them . . . [and] [t]he truth must lie on one or the other side of every contradiction. It is there for us to detect when we are able to resolve the contradiction in favor of one side or the other.<sup>189</sup>

According to Adler, this is nowhere more apparent than in philosophical and theological works. “If Aristotle’s political philosophy is thought to contain a number of fundamental truths, then errors must be found in Plato, Hobbes, Locke, Rousseau, Kant, and Hegel,” offers Adler.<sup>190</sup> This produces a very strong argument for requiring legal education to include the humanities—or at the very least, a class in Jurisprudence that contains the classic formulations of legal thought from the greatest minds throughout history. Some medical schools are now moving in this direction as they have seen the benefits of a more complete education for their medical students.<sup>191</sup> Law schools, as I am arguing here, on the basis of requiring Law and Poverty and International Human Rights courses as a start, must follow.

Such examples serve to demonstrate the right and wrong way to use the great books as the basis of a liberal education because the aim is to teach students “how” to think critically and how to pursue the truth, not “what” to think. Conscious effort should be made to avoid what Adler calls the “doctrinal method,” which aims to read as much truth into a particular author as possible.<sup>192</sup> Adler says the liberal learning educator seeks to “ex-

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189. MORTIMER J. ADLER, *Prologue: Great Books, Democracy, and Truth*, in REFORMING EDUCATION: THE OPENING OF THE AMERICAN MIND, *supra* note 32, at xxvi.

190. *Id.* at xxvii.

191. Allen Francis, *Putting Humanity and the Humanities Back into Medicine*, HUFFINGTON POST (July 28, 2015, 12:43 PM), [https://www.huffpost.com/entry/putting-humanities-back-into-medicine\\_b\\_7887136](https://www.huffpost.com/entry/putting-humanities-back-into-medicine_b_7887136).

192. ADLER, *supra* note 189, at xxvi.

ert an influence on . . . students, but only so far as a good use of their minds is concerned” and “to develop . . . the skills of critical reading skills, attentive listening, precise speech, and, above all, reflective thought. . . . and are prepared for continued learning.”<sup>193</sup>

This paradigm is rooted in Aristotle’s view in the *Nicomachean Ethics*, Book X, chapters 7 and 8 that:

[I]f happiness consist of virtuous activity, it must be the activity of the highest virtue, or in other words, of the best part of our nature . . . . Happiness extends, just so far as contemplation does and those to whom contemplation more fully belongs are more truly happy, not as a mere concomitant but in virtue of the contemplation; for this is in itself precious. Happiness, therefore, must be some form of contemplation.<sup>194</sup>

So, the virtuous life is also the philosophical life, and the most fully-human activity in such a life is “the self-conscious and systematic deliberation of purpose,” says Anderson in his book *Prescribing the Life of the Mind*.<sup>195</sup> This, it would seem, is a recapitulation of the fundamental project of philosophy as expressed by Socrates in two simple axioms: “the unexamined life is not worth living,” and “know thyself.”<sup>196</sup> Anderson continues, saying

[t]o be fully human is to be acutely conscious of purpose. This is the first premise of our intellectual tradition. This is a theme that persists through the ages. This is the idea that unifies Aristotle’s thought. This is what Kant celebrated as the capacity for moral and practical reason. This is what the American pragmatists—Pierce, Royce, James, and Dewey—underscored as the distinctive work of intelligence of the mind.<sup>197</sup>

Answering the basic axioms of Socrates is an exercise in practical reason, but the question is how do we come to know these axioms, let alone how do we actually go about fulfilling them? Aristotle posits that humans by nature desire to know, and it would seem that there are two ways of coming to know: discovery and instruction. Socrates emphasizes the necessity of instruction in Xenophon’s *Memorabilia* when he,

193. ADLER, *supra* note 189, at xxxi.

194. Aristotle, *Ethica Nicomachea*, in INTRODUCTION TO ARISTOTLE, *supra* note 172, at 308, 532, 536 (W.D. Ross trans.).

195. CHARLES W. ANDERSON, *PRESCRIBING THE LIFE OF THE MIND* 4 (1993).

196. *Socrates Quotes*, GOODREADS, <https://www.goodreads.com/author/quotes/275648> (last visited June 9, 2022).

197. ANDERSON, *supra* note 195, at 5. Anderson goes on to say that “this capacity to create purposes and to define good and evil, excellence and error, is essential to what we call free will and moral agency. It is also what is generally meant by human dignity.” ANDERSON, *supra* note 196, at 5. Therefore, with regard to the process of liberal education, what instructors really give students is their dignity.

Socrates, with a view to stirring (6) Euthydemus, answered: There was certainly an ingenuous simplicity in the belief that superiority in arts of comparatively little worth could only be attained by aid of qualified teachers, but that the leadership of the state, the most important concern of all, was destined to drop into the lap of anybody, no matter whom, like an accidental windfall.<sup>198</sup>

While instruction is clearly necessary for individuals to fulfill their rational potential and approximate happiness (individual good), it also serves an important political end (common good), leading to its institutionalization. According to Aristotle, “the mass of mankind are evidently quite slavish in their tastes, preferring a life suitable to beasts” and without proper instruction, becoming unmanageable for society.<sup>199</sup> Though the masses are not capable of living the philosophic life, they still benefit greatly from a liberal education because it aids them in finding the right balance (the “golden mean”) of intellectual and moral virtues. “Intellectual virtue,” claims Aristotle, “owes both its birth and its growth to teaching,” and moral virtue follows from proper habituation.<sup>200</sup> To attain the balance, says Aristotle, “we ought to have been brought up in a particular way from our very youth . . . [with] the right education.”<sup>201</sup> The political benefits of having well-educated and balanced citizens is obvious, as Aristotle concludes, because virtue and political science share the same concern.<sup>202</sup>

Underlying the choice to educate liberally is a moral question about the very nature of the institutions that hold that goal.<sup>203</sup> Do we educate for the purpose of churning out productive and useful citizens (common good), do we educate to increase their autonomy and help them find freedom and happiness (individual good), or do we do one of these in the hope it will result in both being accomplished? Adler’s position is that education must be ordered to the individual good first, given the rational nature of humans, and only when it is so ordered can the common good be served.<sup>204</sup> Where these have been inverted, a false liberalism ensues, and neither goods are served—which are the conditions Adler is responding to in his call for educational reform in America.<sup>205</sup> “[U]nless education makes men free it can-

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198. XENOPHON, MEMORABILIA OF SOCRATES, Book IV, II.2. (H. G. Daykins ed., Project Gutenberg 1998), [https://www.gutenberg.org/files/1177/1177-h/1177-h.htm#link2H\\_4\\_0006](https://www.gutenberg.org/files/1177/1177-h/1177-h.htm#link2H_4_0006).

199. Aristotle, *supra* note 194, at 312.

200. Aristotle, *supra* note 194, at 331.

201. Aristotle, *supra* note 194, at 334.

202. Aristotle, *supra* note 194, at 336.

203. Adding to the moral complication of the purpose of education in our society is the problem of money. Education has become a business, and the business aspect has, in many ways, overwhelmed the educational aspect. Plato was the first to postulate the idea that money and education do not mix. In the *Protagoras*, the *Meno*, and the *Apology*, people who charged fees for teaching aroused a moral repugnance in Socrates and he refers to them as sophists. As Adler points out, “this is not a minor matter. . . it was the first time anyone had ever done so and it raised a very serious moral problem.” ADLER, *supra* note 166, at 103.

204. ADLER, *supra* note 166, at 103.

205. See ADLER, *supra* note 32, at 45.

not serve democracy at all,” concludes Adler.<sup>206</sup> Here Adler means “free” in the philosophical sense, not the political sense. Adler says,

if democratic citizens must be free men, they must have free minds, and minds cannot be made free except by being disciplined to recognize . . . the authority of reason. That discipline is accomplished only when the intelligence is trained to work critically on all matters . . . [and when] the mind is freed from all local prejudices and current exigencies.<sup>207</sup>

From Adler’s perspective, false liberalism is the result of inverting the priorities of education and placing the emphasis on serving the common good first, which is the result of education’s politicization.<sup>208</sup> It leads to a misguided emphasis on “liberty,” which ironically finds its way into the “legal modules” and institutional structures that protect capital in ways that result in fundamental inequalities in society. Practically speaking, we have come to view education as a means to an economic end for ourselves first and then others, and it is masked by a false liberalism that obscures any genuine commitment to the common good—and we cannot see it!

For Adler, linking our learning to earning a living vitiates the proper end of the educational process, which, as Aristotle held, is true human happiness. After multiple generations have pursued the wrong end, we now inherit a society on the brink of catastrophe, if not collapse. We can avert this disaster if we change the institutional structures and “legal modules” that have perpetuated social inequality. Law schools are the logical starting place because lawyers play a key role in developing policies, laws, and practices that define the structures of society. While we have traditionally required law students to learn the “legal modules” that protect capital, perpetuate inequality in income and wealth, and prosecute poverty, we must now balance that with a more complete education that includes a critical analysis of those modules and how they are taught. A simple start to such a project would be to require classes in Poverty Law and International Human Rights.<sup>209</sup>

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206. ADLER, *supra* note 32, at 45.

207. ADLER, *supra* note 32, at 46.

208. ADLER, *supra* note 32, at 46.

209. Though this paper did not expound upon the reason for including Human Rights as a required law school course, suffice to say that the very nature of the United Nations as an organization reflects the fact that incomplete education and false liberalism lead to fascism and institutional structures that perpetuate inequality. The UN was born in the wake of WW2 and the global humanitarian crisis it caused, and the UN concerns itself first and foremost with the elimination of poverty and sickness and disease. The Universal Declaration of Human Rights is dedicated to promoting equality and justice. As stated in the Preamble, the UDHR is: “a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.” G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948). The formal study of

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these human rights is a means of inculcating in law students an awareness of how inequality is institutionalized, and as such, how it obviates the realization of justice in any sense of the word. It is equally important that law students learn to develop law in light of the fact that we live in a global society and that many of our macroeconomic policy initiatives lead to oppression, exploitation and immiseration of poor people the world over.