
Dean Pedrick, Legal Specialization and Liberal Education

Irving E. Fasan

Follow this and additional works at: <https://via.library.depaul.edu/law-review>

Recommended Citation

Irving E. Fasan, *Dean Pedrick, Legal Specialization and Liberal Education*, 19 DePaul L. Rev. 709 (1970)
Available at: <https://via.library.depaul.edu/law-review/vol19/iss4/5>

This Article is brought to you for free and open access by the College of Law at Via Sapientiae. It has been accepted for inclusion in DePaul Law Review by an authorized editor of Via Sapientiae. For more information, please contact wsulliv6@depaul.edu, c.mcclure@depaul.edu.

DEAN PEDRICK,
LEGAL SPECIALIZATION
AND LIBERAL EDUCATION

IRVING E. FASAN*

I

*Youth has a right to education in the liberal arts, in order to be prepared for human work and for human leisure. But such education is killed by premature specialization.*¹

DEAN WILLARD PEDRICK recently published in the *Journal* of the American Bar Association an engaging article entitled *Collapsible Specialists*.² While the article ostensibly deals with legal specialization and seems intended to dash some cold water on the present movement in some segments of the organized Bar for more specialist training and perhaps for the recognition and certification of legal specialties, *Collapsible Specialists* is actually a somewhat loosely constructed article with several themes: its latter half is a well-balanced statement about the problem of specialization, while its first half is concerned with the quite different problems of political leadership, human wisdom and virtue; with boredom and "corrosion of the soul,"³ and of how specialization is seemingly related to these problems.

This small article is not a response to the latter half of Dean Pedrick's article for, despite its tone and its perhaps not wholly serious asides (for instance that not even tax lawyers consider taxation a speciality⁴) Dean Pedrick well knows that specialization in fact exists and is growing,⁵ and that the only real questions left are what form specialization will take and who will supervise its development and

* IRVING E. FASAN of the Illinois Bar, A.B., A.M., Fulbright Scholar, and J.D., University of Chicago.

1. MARITAIN, EDUCATION AT THE CROSSROADS 64 (1943). See also GARDNER, EXCELLENCE 43 (1961).

2. 55 A.B.A.J. 324 (1969).

3. *Id.* at 327.

4. *Id.* at 325, n.7.

5. "We know that the legal profession is moving rapidly along the specialization trail," *id.* at 325.

administration. Thus the last half of *Collapsible Specialists* needs no response because it is in fact a clear recognition of the existence and value of legal specialization and contains a sober assessment of its virtues as well as a discussion of what form specialization might take and who should guide its development.⁶

It is, however, the first portion of *Collapsible Specialists* that requires further comment. The reason why Dean Pedrick takes up the subject of specialization at all is because he is concerned about political leadership in the United States: he wonders first of all why it is that today's political leaders do not come from the ranks of the lawyers, as such leaders presumably formerly did, and he then quickly suggests that lawyers today are not supplying a fair share of our present leaders because law training is too specialized. Thus Dean Pedrick writes:

It does seem that lawyers have been eclipsed to some extent as the leadership cadre.⁷ When the great need is for generalists—for leaders who can understand, unravel and explain to the rest of society the complexities of the modern technological and regulatory era and propose new directions, do we want to turn the face of the legal profession in the direction of greater emphasis on the technical and limited specialties? . . . We agree that we don't wish to entrust the important work of governance to legal specialists.⁸

Of course, Dean Pedrick's notion about introducing some "generalist" type of training into a law school curriculum is certainly sensible if it means only that *highly practical* and *Bar oriented* law schools should move toward some consideration in their courses of policies and purposes, but this position is harmful if it leads other law schools into believing that they have a primary function which is not practical, technical and specialist oriented. The notion that the law and the legal profession are disciplines concerned with training people in wisdom (assuming for the moment that this is one thrust of *Collapsible Specialists*) is a dangerous one if it leads law schools and the Bar away from training craftsmen, and especially if it bolsters the existing reluctance of the profession to face squarely the matter of specialization and its related problems, such as the quality of legal education and the economic condition of the Bar.⁹ Unfortu-

6. 55 A.B.A.J. 324, 325 (1969). The best single statement about legal specialization is CHRISTENSEN, *SPECIALIZATION* (1967).

7. 55 A.B.A.J. 324 (1969).

8. *Id.* at 325.

9. See Fasan, *Thoughts on Specialization and the English Experience*, 3 THE JOHN MARSHALL JOURNAL OF PRACTICE AND PROCEDURE 66 (1970).

nately *Collapsible Specialists* appears intended in part precisely to reinforce this existing and significant resistance to legal specialization. The article's headnote, for instance, tells us:

Today, when society is searching for men of broad vision and general capabilities to furnish leadership in our technological era, and when law schools are attempting to broaden the academic bases of their curricula in order to retain those bright young students who do not wish to be restricted to the conventional legal spectrum, the American Bar Association continues to agonize over the problem of specialization. Whom will the Bar be helping by establishing specialization?¹⁰

The answer is that the Bar has agonized too long over the obvious and that it would seem rather clear at this point that the Bar would only be helping itself if it would take on the task of organizing a system of legal specialization, as indeed the practitioners are now doing anyway on an informal basis. Like it or not the purpose of a law school is to train craftsmen, and the great need today is to work out some way to provide for regular specialized legal training for all those who desire it and who can qualify for it, after our present three year law course, which is almost exclusively academic and which cannot provide a student with much more than sets of legal generalities.¹¹ The problem with the legal profession today is thus not too much specialization but too little and too unsystematic specialization. The fact that tax lawyers may be bored (or worse still, bad) men with "corrosion of the soul"¹² is not, as Dean Pedrick would suggest¹³ because these men have been badly trained as lawyers (not trained, that is, to be "generalists"), but because before they reached law school these men have been poorly trained by both school and society to be *human beings*.¹⁴

10. 55 A.B.A.J. 324 (1969). While Dean Pedrick does not appear to have written this headnote, it seems to paraphrase his thought on this point and the headnote is something which the busy practitioner will see and read.

11. There are some currents of change. "These are some of the trends taking shape in many of the nation's 169 law schools: . . . New emphasis on clinical work to impart practical skills, to bring students into contact with 'real people' and to alleviate the boredom many students experience in their third year." N.Y. Times, November 19, 1969, at 37. See also 17 THE LAW SCHOOL RECORD 30 (University of Chicago, 1969) for a description of their curriculum discussions, studies and changes in this regard.

12. 55 A.B.A.J. 324, 327 (1969).

13. *Id.* at 325.

14. Students are bored either because university work is beyond their capacity or because they consciously or unconsciously resent a curriculum which only describes, counts, compares and contrasts, refusing to affirm that anything is true or false. Forcing an individual to learn something which is wholly without relation to truth is an act of tyranny, which most free and intelligent beings abhor. See note 23 *infra*.

Of course no one can argue with Dean Pedrick if what he means to say is merely that men ought to be educated as human beings before they are trained as professionals. We have known that for a long time.¹⁵ The flaw in Dean Pedrick's approach on this issue, however, (and despite Dr. Hutchins and President Levi's comments as noted) is that Dean Pedrick puts liberal education ("generalist" training) at the wrong time and in the wrong place. It is, unfortunately, a matter of too little and too late. Stringfellow Barr pointed out the true problem many years ago when he said:

Since to live well, since even to earn a living, requires a man to think, liberal education is the basic preparation for life. But it is a full-time job and cannot be carried on adequately by institutions that attempt simultaneously to give occupational training and what they may call "practical" knowledge. That kind of knowledge can be speedily acquired, whether on the job or in a post-graduate professional school, by the man who has learned to think. It can be acquired only with difficulty and inadequately by the man who has not. The penalty which contemporary society has paid for omitting this basic sort of education is the multiplication of highly trained specialists, who are, fundamentally, uneducated men and who are inadequate to the varied responsibilities of life.¹⁶

15. "In a social order fitted to the common dignity of man, college education should be given to all, so as to complete the preparation of the youth before he enters the state of manhood. To introduce specialization in this sphere is to do violence to the world of youth." MARITAIN, *EDUCATION AT THE CROSSROADS* 64 (1943). The writer is also well aware that Robert Maynard Hutchins once said: "It is sad but true that the only place in an American university where the student is taught to read, write, and speak is the law school," HUTCHINS, *EDUCATION FOR FREEDOM* 7 (1946), and that President Levi has just said: "[W]hy should law schools . . . insist that their students have completed a four-year program before their law study is commenced? I am not sure there is even a doubt but that undergraduates could do just as well as graduates in formal law study. The argument has rather been that a broad liberal arts training or perhaps a general education was necessary to make a man or a woman a good lawyer or a public servant. But law is a liberal arts training. It is one of the best." Levi, *Education and Legal Education*, 17 *THE LAW SCHOOL RECORD* 5 (University of Chicago, 1969).

16. Barr, Report of the President at 14, St. John's College, Annapolis, Maryland, July 1942, quoted in MARITAIN, *supra* note 15, at 64. *Collapsible Specialists*, as its title indicates, is written in a somewhat jocular and imprecise fashion and perhaps it should not be taken as seriously as we have. In a more sober moment Dean Pedrick has said: "Certainly, there should be a high regard for the technical skills which the profession must possess—and especially in the field of estate planning where there are so many technical aspects. But those traditional conventional skills can be taught in two years of a fully packed legal education. Evidence of that fact is that the third year in law school is regarded as the year of boredom. Why? Because not much is taught in the third year. Thus, the effort is being made today to bring into law school training some of the skills that a lawyer ought to have had but that he never was really formally trained to have. In the field of estate planning, the student might be taught counseling, negotiating skills, some knowledge about mental illness, the ability to recognize problems, etc." *THE THIRD ANNUAL INSTITUTE ON ESTATE PLANNING* ¶ 69.1924 (P. Heckerling, ed. 1969).

There is, however, another undercurrent in *Collapsible Specialists*, which, if it is one, is of an even more serious nature than placing liberal education at the wrong point in time. And even if the undercurrent is not at all there, reading *Collapsible Specialists* raises some thoughts, and permits some comments to be made about an aspect of contemporary life which may be worth consideration.

II

*Today the young American comprehends only by accident the intellectual tradition of which he is a part and in which he must live: for its scattered and disjointed fragments are strewn from one end of the campus to the other. Our university graduates have far more information and far less understanding than in the colonial period . . . The crucial error is that of holding that nothing is any more important than anything else, that there can be no order of goods and no order in the intellectual realm. There is nothing central and nothing peripheral, nothing primary and nothing secondary, nothing basic and nothing superficial.*¹⁷

If one is looking for wise men, as Dean Pedrick apparently is, one must first of all ask what wisdom is, and in this connection the disturbing thing about Dean Pedrick's article is that one wonders whether his "generalist" training has anything to do with wisdom; one wonders, indeed, whether Dean Pedrick's "generalist" training is really very good education at all, ill-placed though it may be. What we need to ask is, what is the kind of education to which a man ought to be exposed if his capacity for wisdom is to be sparked into actuality. Although such an inquiry is beyond the scope of this paper, one can suggest that the pre-specialized education which a free and intelligent being such as man needs is an education which knows that man has a nature which he shares with all other men and for which there is a purpose or an end, namely some kind of life of truth and goodness, and ultimately, a life of charity.¹⁸ This educa-

17. HUTCHINS, *supra* note 15, at 25-26. See also Dr. Hutchins' book, *THE HIGHER LEARNING IN AMERICA* (1936).

18. "For the main point is surely to be a good man rather than to be a learned man." MARITAIN, *EDUCATION AT THE CROSSROADS*, 20 (1943). In a less gentle mood Maritain has said: "Since I have not time here to discuss nonsense (we can always find very intelligent philosophers, not to quote Mr. Bertrand Russell, to defend it

tion, moreover, is not a crude kind of setting up for all time of a specific code of truths to be memorized, but still a commitment to knowledge and ends; a firm conviction that truth exists, which conviction, however, is also rooted in an equally clear recognition that truth or wisdom will be seen at each point of time and in each place in history only imperfectly and opaquely; a commitment, therefore, if you will, to the mystery of human knowledge through human freedom.¹⁹

If on the other hand a people in their intellectual life earnestly deny the possibility of knowledge, and therefore of wisdom, such a people will perforce not cultivate wisdom in anyone, whether in a law school, in a college, in a preparatory school or in life itself, except perhaps in the very strong-willed and clear-headed, and then in them only by chance. The rest of the people will be bored. Thus the disheartening thing about Dean Pedrick's article is not only that he advocates teaching "generalist" skills (which we have translated into the single word "wisdom") in the wrong place, but that his "generalist" skills seem to be exactly only that, namely skills or techniques rather than a commitment to knowledge and truth. Thus Dean Pedrick talks of analytical approaches, vocabulary, skepticism, advocacy, process—an understanding of and a sensitivity for a sophisticated, and occasionally mystical, system of governance. These, we believe, are "generalist skills."²⁰

Now these items may indeed be "generalist" skills, but the proper question is, as we have said, are these skills the elements of an education for wisdom, since it is truth and wisdom which ought to be the virtues of a leader and which are the glory of a human being.

It should of course be noted that Dean Pedrick does not use the terms wisdom, truth or goodness, and it may be that he would be uncomfortable in doing so, for his heroes appear to be the [s]cientists, engineers, economists, sociologists, city planners, [and] even accountants, [who] sit with the mighty in seats occupied in former times by counsel.²¹

most brilliantly) I am taking it for granted that we admit that there is a human nature, and that this human nature is the same in all men." MARITAIN, *MAN AND THE STATE* 85 (1951). "One purpose of education is to draw out the elements of our common human nature. These elements are the same in any time or place. . . . Education implies teaching. Teaching implies knowledge. Knowledge is truth. The truth is everywhere the same." HUTCHINS, *THE HIGHER LEARNING IN AMERICA* 66 (1936).

19. See MARITAIN, *EDUCATION AT THE CROSSROADS* 23 (1943).

20. 55 A.B.A.J. 324, 326 (1969).

21. 55 A.B.A.J. 324 (1969).

Unfortunately, it is many of these men who seem more or less rigorously committed merely to counting, classifying and describing, while studiously suspending their judgment (so they believe) as to whether what they are doing has any reference at all to what is true or false, or whether what they are describing is right or wrong, since no one really can know what is true, false, right or wrong.²² Anyway, if indeed this is the approach of these men, shouldn't that very approach rigorously exclude them from the seats of the mighty altogether, for the reason that they do not ask the most fundamental questions of all, that is to say, what is the true and what is the good.²³

The point is that Dean Pedrick's "generalist" training will be foolish training indeed if it accepts, as it seems to accept, what appears to be the present posture of much of our intellectual life and thus rejects a commitment to truth and goodness and insists upon only "analytical approaches, vocabularily, skepticism, advocacy, process."²⁴ As Maritain has said in this connection:

There are people who think that it is wonderful to have a mind that is quick, clever, ready to see pros and cons, eager to discuss, and to discuss anything, and who believe that such a mind is that to which university education must give scope—regardless of *what* is thought about, *what* is discussed, and *how important* the matter is. These people are unaware that if they succeeded in making such a conception prevail, they would at best transform universities into schools of sophistry. In fact, they would not even produce sophists, who have some force, but rather disarmed and talkative minds, that believe they are well informed but live by words and opinions.²⁵

22. See, e.g., the following: "Existentialism is not a missionary movement. It does not promise anything. Rather, it tells us what is at stake in the task of being human. Its one claim to our attention is its shattering candor, betokened in its starting ground rule: There is a real possibility that we live in a meaningless world." MORRIS, EXISTENTIALISM IN EDUCATION: WHAT IT MEANS 3 (1966). See also Geoffrey Barraclough's comments about historians in Barraclough, *What Is to Be Done about Medieval History?* 14 THE NEW YORK REVIEW OF BOOKS 51 (1970).

23. "At the beginning of human action, insofar as it is human, there is truth, grasped or believed to be grasped for the sake of truth. Without trust in truth, there is no human effectiveness. Such is, to my mind, the chief criticism to be made of the pragmatic and instrumentalist theory of knowledge. In the field of education, this pragmatic theory of knowledge, passing from philosophy to upbringing, can hardly produce in the youth anything but a scholarly skepticism equipped with the best techniques of mental training and the best scientific methods, which will be unnaturally used against the very grain of intelligence, so as to cause minds to distrust the very idea of truth and wisdom, and to give up any hope of inner dynamic unity." MARITAIN, EDUCATION AT THE CROSSROADS 13 (1943).

24. 55 A.B.A.J. 324, 326 (1969).

25. MARITAIN, EDUCATION AT THE CROSSROADS 53 (1943). Moreover the only reasonable posture for these universal skeptics is *silence*, since everything which such

It is rather easy (and therefore sad) to demonstrate in a crude way that we are indeed at a state of affairs such as that which we have just described, namely, a condition for all practical matters of universal doubt. There is, for instance, a recent law review article²⁶ in which the author used the word "nature" in making a reference to "the nature and function of [the legal] profession."²⁷ This author felt compelled, however, to attach to his reference, by way of apology for using the word "nature," the following footnote, presumably because the word "nature" smacked of something fixed, something which might be true. Listen to what this author says to his colleagues:

One does not have to believe in the existence of an immutable essence or "nature" of law in a heaven of concepts in order to use this word, though the philosopher is more apt than the layman to write footnotes and otherwise exhibit a certain squeamishness about it. A good recent anthology of readings in the philosophy of law does, in fact bear the title, *The Nature of Law* (M.P. Golding ed. 1966). That it is now possible, as it might not have been a decade or so ago, to employ such a title without automatically arousing the suspicion among philosophers that one is a "Platonist" or worse (!) is a sign, I think, of increasing emphasis on the fact that the language used by philosophers, besides "bewitchment of our intelligence," L. Wittgenstein, *Philosophical Investigations*, No. 109 (G.E.M. Anscombe transl. 1953), is also capable of liberating it. How it can do so in the field of law is the subject of the present essay.²⁸

When a people have reached such a state of self-doubt about the self-evident, there is not much possibility for wisdom left, even in its proper academic setting. That, one submits, should be a cause of enormous concern, but that concern does not seem to appear in *Collapsible Specialists* or, worse still, the doubt about the self-evident is accepted as an unstated assumption of the author.

persons say is ultimately and literally nonsense. Perhaps this is why Samuel Beckett has been so well liked by certain groups. "His (Beckett's) style is a poetic mixture of statement, omen, resonance, and mostly, silence. He deprecates words, ennobles silence. 'Every words,' he has said, 'is like an unnecessary stain on silence and nothingness.'" Mel Gussow, N.Y. Times, October 24, 1969, 32, Col. 4.

26. McBride, *The Essential Role of Models and Analogies in the Philosophy of Law*, 43 N.Y. UNIV. L. REV. 53 (1968).

27. *Id.*

28. *Supra* note 26, at 53 n.6.