

Cooking for a Job

THE LAW SCHOOL HIRING PROCESS

Martha Nussbaum

Well, Gorgias, it looks to me like the practice not of a knowing expert, but of a brave, manly soul, good at improvising, bold and clever in approaching people. I'd sum it up by calling it flattery. There are many other types of flattery too, and one of them is cookery.

Plato, *Gorgias* 463A¹

IN ONE OF HIS MANY ASSAULTS on rhetoric in the name of philosophy, Plato observed that the rhetorician is rather like a cook: he is very skilled at dishing up what will flatter a particular audience, but he lacks the philosopher's ultimate commitment to truth. He wants to please more than he wants to be right. For this reason, Plato held, he has only a "knack," not a genuine art – and he is a dangerous figure to have around, whether in the academy or in political life.

Plato's account of rhetoricians is also a good description of some of the less admirable characteristics of the lawyer. These characteristics are shared by many legal academics, who sometimes do argue more to please and influence than to get at truth. In one sense this comes in handy: for legal academics are supposed to be paradigms for young lawyers, and if the legal profession seeks such characteristics the law schools are under pressure to deliver them. But legal academics are also, and

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- 1 Comments on my translation: I have translated the single word *andreias* by two words, "brave" and "manly," to bring out the connection with manly valor that is powerful in the Greek. I have translated *deines* with both "bold" and "clever," for similar reasons. *Deimon* is a very protean word; although its principal sense here is clearly "clever," it also connotes impressive energy and initiative. As for "flattery": this is a bit too polite, I think, for Greek *kolakeia*, but "ass-kissing," which would convey the sense of what a *kolax* is like a bit better, is too impolite in tone – for Plato, and perhaps also for the *Green Bag*!

in the first place, scholars, who are supposed to be dedicated to the search for truth and good argument. The tension between these two aspects of the legal academy is a fascinating one to ponder for a “participant-observer” like me, who has entered the legal academy as an outsider, without a law degree, after years of life on the philosophical side of the street.

Instead of reflecting in a general way about this tension, however, I want to focus on the law school hiring process: how it looks from an outsider’s perspective, how it compares to hiring processes elsewhere in the academy, and how the Platonic tension between rhetoric and truth appears within it. Recent years have seen much discussion of law school hiring, especially with regard to issues of affirmative action. But these discussions, interesting though they are, seem to me to have passed over some central matters, such as: does our hiring process conform to basic standards of fairness, as these are understood elsewhere in the academy? And: is the process effective in identifying good scholars, as opposed to good rhetoricians? Speaking not from any extensive empirical study, but only from personal observation of the process of both hiring and placement in the legal academy, I’ll argue, with some qualifications, that the answer to both of these questions is “no.”



While I was a graduate student at Harvard in the early and mid 1970’s, the hiring process underwent a radical change. The old system of hiring in the humanities was aptly called the “old boys’ network.” Let’s say the Harvard Classics Department wanted to hire an Assistant Professor to teach ancient Latin poetry. The relevant faculty, and perhaps also the Chair of the Department, would informally telephone specialists in Latin poetry whom they admired, mostly in the U.S. but sometimes in England, asking them what students

they had ready to begin a job. These students were then recommended. Departments considered their letters of recommendation and their written work; usually they interviewed top candidates in person. Eventually, the “best man” was hired.

This process had many defects. First of all, it had a random quality: the pool was constituted by whoever the people on hand thought of, and there was no public advertisement or job notice that would pull other excellent candidates into the search. Second, it perpetuated mediocrity: for weak departments called up their own pals and sought out people who would not threaten them, rather than having to look at the best people. Third, it placed extraordinary weight on the judgments of individuals: thus a candidate who didn’t have a strong relationship with a mentor would be unlikely to be recommended. Fourth, it eliminated from consideration for top positions talented people who for one or another reason, whether financial or familial/geographical, or because of late-blooming talent, did not attend one of the top four or five schools.

And finally and egregiously, it discriminated against certain groups of people. Until the mid-sixties, Jews were rarely recommended through the “old boys’ network” in traditional fields such as Classics and English, and not to the best jobs. Even when they were recommended, there were certain anomalies in that process. The late Morton Bloomfield, a great scholar of mediæval English who eventually ended up at Harvard, liked to tell, in later life, that when he was on the job market he learned from others that his letters of recommendation assured prospective employers that “although he is a Jew, he lacks the odious characteristics of his race.” African-Americans were nowhere in evidence throughout the entire process.

And of course, because it really was an “old boys’ network,” women lost out. Women at Harvard suffered all down the line. Although

Harvard had taken a strong stand on racial integration of university facilities in 1923, it saw no problem in denying the equal use of its facilities to women. Women could dine in the Faculty Club, but only in a small side room. Until 1967 they were forbidden to use Lamont Library, and had to walk a mile to Hilles. (A female teaching assistant, assigned to teach a section of her large course in a seminar room in Lamont, asked what she should do about the fact that women were not permitted inside the building. She was told: "Go around to the side entrance, and don't use the elevator.") Until 1971 women were ineligible for the Junior Fellowships that relieved certain students from formal requirements so they could pursue interdisciplinary research. Only at around that time did they become eligible for graduate traveling fellowships. Men who were filling out income forms for fellowships did not have to declare their wives' income, but women did have to declare their husbands' income. Women suffered pervasively from sex discrimination and sexual harassment. But it was in the hiring process that women lost out totally. Outstanding female philosophers now in their sixties and seventies were often refused placement aid altogether, on the grounds that men had to support families and women did not. Even when women were placed, they were typically recommended to women's schools, on the assumption that Yale and Princeton did not want to hire women – as they almost surely did not. I recall the shock with which my Harvard Classics professors reacted when their colleague Herbert Bloch (a refugee from Nazi Germany who had also been instrumental in getting women into the Society of Fellows) recommended a female dissertation student of his, Rolly Phillips, an expert in ancient military strategy, for an Assistant Professorship at Yale. This was the kind of thing that should not happen; the Chair had already sent the names of two prime young men. But Phillips was hired, and times were beginning

to change.

The first change, then, was the opening up of the "old boys' network" to previously excluded groups. Even when women were placed through the network, however, it did not serve them well. The procedure was too capricious and ad hoc; it rested too much on personal favor and too little on the impartial scrutiny of credentials; it left too much room for malice, secret skewering of the candidate, and worries about whether the candidate would have a baby and quit. And of course it continued to leave out completely the talented woman who did not have a close connection with a powerful male mentor, or who went to a less than stellar graduate school. Then as now, women frequently took time off to have children and returned to school in whatever city they happened to live. So the restriction to top schools, though it disadvantaged many men too, imposed an unequal disadvantage on women.

At least there was one good thing about the "old boys' network": if you were lucky enough to get your name in at the transom, at some point people sat down and read quite a lot of your work. Job candidates in the humanities, then as now, sent their dissertations and gave an hour-long public lecture based on the dissertation. People who hadn't done the reading sometimes still weighed in, then as now, but at least there was a public norm that selection was based on the worth of scholarship, not on personality. The public lecture was indeed used to test the candidate's ability to put ideas across in the classroom, to think on his or her feet, and to engage in reflection about basic methodological issues. But the writing was the core, and some departments, for example the Princeton Philosophy Department, have refused over the years to meet any candidate in person, on the grounds that personal characteristics might prove a distraction from this central emphasis.

In the early 1970's all this began to change – thanks in no small part to the women's move-

ment and its demands for fairness. Many parts of academic life became more impartial as people became more critical about their own propensities for biased judgment. Most journals adopted procedures of blind refereeing. Similarly, hiring was done by public advertisement, in accordance with public norms of adequate search. By now, there is wide consensus in the humanities about what constitutes an adequate and fair procedure.²

A fair procedure begins with a job description, publicly placed in the job list of the relevant professional organization and possibly also in the *Chronicle of Higher Education*. This description must state clearly whether the position has been authorized or not (to avoid chicanery that sometimes took place when undesirables applied and people then said the position had been canceled); it must state what rank the searcher is looking for; and it must specify a field or fields of expertise. One may write "open" for both rank and field, but if one does so one is letting oneself in for a deluge, so departments usually try to be more specific. The job description will later be used as a criterion should they hold that a given candidate was excluded for "wrong field." Other desiderata about teaching competence may also be mentioned. Finally, a good job description avoids discriminatory requirements. The Philosophical Association gives some latitude in its non-discrimination policy for religious institutions to discriminate on grounds of religious membership, though this remains controversial both in the Association and in the religious institutions themselves;

what is unambiguous is that religious membership must not be defined in ways that entail discrimination of other types, such as discrimination on the basis of race, sex, or sexual orientation. Usually the hiring institution states in its description that it does not discriminate, though not all institutions endorse non-discrimination in all these areas.

The advertisement is placed. Let us say that 300 candidates apply. All candidates must send a resumé listing experience, areas of research and teaching competence. At the same time they must submit three confidential letters of recommendation, in some cases a transcript, and usually a writing sample: a published article or a dissertation chapter. Most graduate departments have placement operations that package all this, frequently supplying a covering letter explaining why they have judged that candidate A is especially suitable for the job at University Y. This helps the candidate by personalizing the application and suggesting that the department as a whole has thought a lot about the job at University Y. Usually this is correct, even if Y is an obscure school, since departments are extremely anxious to place their candidates, and top departments frequently do less well than lesser departments with strong regional connections.

A typical hiring procedure involves a search committee, usually consisting of three or four members of the department. In rare cases graduate students are on these committees, though I know of only one top philosophy department that permits them to read confidential letters of recommendation.³ Usually at

² In this section I focus on Philosophy rather than Classics, since of the two fields in which I have extensive hiring experience it is the one far more closely comparable to law in terms of the numbers of applicants typically involved. The Philosophy process is very standardized, and my description applies both to elite and to non-elite schools. Most of the norms I describe are, I believe, prevalent throughout the humanities, though there may be variations in some areas.

³ This statement is based on solid information, since our Philosophy Department has recently conducted a study of top philosophy departments on this issue, in order to determine what our policy should be. The outlier department is once again Princeton, which has no job talks and no interviews, so it would be impossible for graduate students to participate in any way if they did not read the files.

least two people from this committee look at every file, keeping a careful log, and writing down reasons for rejecting any candidate who is rejected. Many can be quickly rejected, for inappropriate field, or low quality of training, or lukewarm letters of recommendation. There is no doubt that, given the numbers involved, prejudice toward some graduate programs and against others still plays a bigger role than it should, but the professions are well aware that good graduate students are trained at many different places, given the dispersal of talents occasioned by two-career couples and the wealth of certain second-tier universities; so people spend hours trying to be fair. During the entire process, the search committee typically keeps a special log of female and minority candidates. Many universities ask departments to describe the credentials of the top candidates in each of these groups, if they are not hired, and to give the reasons why they were not hired.⁴ This usually ensures that those files get a thorough reading.

When the pool is narrowed to about fifty in this way, a more intensive scrutiny sets in. Members of the search committee begin to read the writing samples that candidates have enclosed, usually an article or a dissertation chapter. They meet for hours discussing these pieces of writing. Around twelve candidates are then selected for interviewing at the American Philosophical Association convention, and even more of those people's work may be read. The interview thus consists of a focused discussion of the work that has been read. It is designed to test the person's ability in argument, command of fact, range, and whatever else the committee wants to know. (I have

been known to assess command of languages by getting into close discussion of a text.) Another important part of the interview involves talk about teaching: how would you teach the following course, and so forth.

At the convention, departments also work hard to place their own graduate students. At a reception where each school has a numbered table, we go around to schools where our students are interviewing, talk to them about the student's work, and try to introduce the student to members of the department he or she may not have met. Other schools will do the same, increasing the depths of our knowledge of the candidates we have interviewed. If, as a hiring institution, I have doubts about a candidate I have interviewed, I can also go around to find a member of the placing institution to consult; such informal discussions frequently resolve unanswered issues about the interview, one way or another.

Three or four candidates are then selected for a trip to campus. Each spends a full day, meeting the whole department. Usually by this time the candidate has submitted an entire dissertation and whatever other written work she wishes to have read. Graduate students are sometimes involved in convention interviewing, but almost always in reading papers and assessing job talks at this final stage. The talk is a sixty minute lecture, followed by at least another hour of discussion. Following the norms in philosophy, people generally read their talks rather than improvising, since details of logical and verbal formulation are generally considered crucial. What we look for in the talk, beyond the arguments themselves and the clarity with which they are

⁴ At Brown, where I taught for eleven years, this requirement was put in place by a consent decree after Brown lost a sex discrimination class action suit; the consent decree was administered by Judge Pettine for twelve years, and then replaced by university procedures that had similar features. It is worth noting that the consent decree mandated no quotas, but instead public advertising and norms of fair procedure and public reason-giving. All by themselves, these measures resulted in a tremendous rise in the number of female and minority faculty. Many universities and colleges, though certainly not all, have voluntarily adopted similar procedures.

developed, is the potential to rethink something under pressure of argument. One candidate got hired at Brown largely because, after a grilling at the convention, he went away and thought about our questions and rewrote his paper to reply to the objections that had been raised. We thought that the deficiencies in his written work might well be the fault of his teachers, and we were reassured to see his diligent effort to respond to intellectual challenges that they had not given him. His dogged pursuit of the truth impressed us more than the initial gappiness of the argument distressed us, and we were right. He recently received tenure and has produced first-rate work, largely because of this quality of obsessiveness and close attention to detail.

Before hiring any candidate, most departments have to submit a report detailing why they decided to reject the top female and minority candidates, if they did. This does not exactly solve all problems of racism and sexism, but at least it gets people to look at such candidates and to take their credentials seriously. Typically, top departments make special efforts to interview such candidates at the convention, even if they appear to be not in quite the right field, or not quite as outstanding as the others. We hope to find that our initial sense of the file was mistaken, and sometimes we do. Occasionally we bring to campus a female or minority candidate who seemed less good than others, though this practice is controversial, since to many it seems exploitative of the candidate. My own stand has been that if we are sure we're not going to hire someone, we shouldn't bring that person in for a talk: that is a way of using a person to make a statement about our political goodness. If we are not sure, we should certainly find out more

about such candidates.

These procedures are hardly perfect. They allow a lot of room for bad faith (as what procedure does not). They still give undue weight to the fame of the person's recommenders and graduate program. And (except in the Princeton Philosophy Department) the personality of the candidate may still play a distorting role. (I do not support Princeton's strategy, however, because I think it important to ascertain how much of the thesis is the work of the thesis advisor and how much the person can really defend herself; I also think that the ability to reflect about questions is one of the abilities on which hiring is rightly based.) But through these changes the humanities have made great strides in the direction of fairness; norms of public justification, important in any political process, are now closer to being at the center of what determines the course of young people's lives.



The Law School hiring process, at least as I have observed it at various top schools,⁵ is the unreformed "old boys' network"—though in its second phase, with women and minorities folded into its genteel and clubby operations, as one might fold some nuts into a cake batter. In other words, the deep problems that caused women and minorities to lose out in the Philosophy hiring process have not yet been addressed in law: folding and stirring, not real change, is the order of the hour. First of all, there is no such thing as a job description. Major law schools have some general sense of curricular need, but all searches at the junior level are, in effect, open. This means that there is no principled way of stacking candidates up

⁵ Nothing said in this article should be taken to apply specifically to the University of Chicago. I have attempted to characterize norms at a group of top schools. My impression is that Chicago, because of its highly interdisciplinary character, may give candidates' written work somewhat more importance than other schools.

against each other and arguing that so-and-so does a certain specified thing better than others. All judgments have a nebulous quality: items such as “brilliance” and “star quality” are frequently mentioned; of course these are exactly the sorts of criteria that can most easily embody socially distorted perceptions of worth. It is generally observable that the clearer the standards for something are in the humanities, the better women do at it: thus women do outstandingly well in ancient Greek philosophy, where there are clear-cut standards of knowledge and expertise, in comparison to other areas of philosophy. If this is so, any process that leaves so much to subjective judgments of “brilliance” is likely to have special difficulty reaching fair results.

Compounding this problem is a second: there is no advertisement, and no applicant pool. How is the “pool,” such as it is, constituted? By the same device used in the “old boys’ network”: phone calls to powerful people at first-rate schools. Who loses out? Many types of people, but at least the following: those who are personally shy or unpleasant; those who are averse to flattering powerful people; those who attend a non-top-five school; those who seek jobs after working for several years; those who shrink from a mentor-mentee relationship out of fear of sexual harassment; those who have unpopular religious or political beliefs.

Thus a certain type of individual, who combines obsequiousness with glibness and aggressiveness, is disproportionately (and disgustingly) in evidence in the academic hiring process of the legal academy. Such people seem to have the knack of cooking up a good relationship with a mentor. Many mentors aren’t susceptible to flattery, but some certainly are. On the other hand, shy or contemplative people are underrepresented – not necessarily, I think, because such people don’t make outstanding legal scholars.

These problems are compounded by the

fact that the other credentials that are taken seriously are even less reliable than the relationship with a faculty mentor. One of these is the prestigious judicial clerkship. Anyone who has been involved in the clerkship placement process knows that merit (as reflected in law school grades and writing) is only one part of what makes a candidate succeed. The all-important personal interview is far more subjective, in this case, than the faculty interviews I shall shortly describe. Judges are not academics, and they are often not even looking for academic potential. Some explicitly say that they prefer not to have a clerk with academic aspirations. They look for “fit.” In the chaotic rush to get good clerks, as young candidates fly around the country, going to one interview and then the next, “fit” must be demonstrated by a candidate’s ability to impress a stranger whom he or she has just met and may not even admire, in an interview setting that is definitely not calculated to bring out her most serious reflections about legal issues. In short: candidates have to get by on their cooking skills alone. In addition, schools with connections to individual judges give their own candidates a boost, and candidates from less than top schools are at a terrific disadvantage. Everyone recognizes that success in this process is not well correlated with academic potential or achievement; everyone knows how rushed the process is and how impressionistic; everyone has seen brilliant students lose out and lesser ones succeed, even when both are from the same good school. No legal academic thinks that the federal judiciary is an awe-inspiring intellectual elite, or a top source of judgment on intellectual issues. And yet, year after year, institutions look on prestigious clerkships as important evidence when they assess the potential of an academic job candidate.

Similarly problematic are law review editorships. People are often selected for law reviews because of their grades and their writing

ability. But this is typically not the way in which they get the top jobs. Here again, networking – this time, among one’s peers – plays a very large role. Even if one were to grant that the editors of a law review are good judges of scholarly potential, and even if one were to grant that scholarly potential is at least one part of what they are looking for when they select an Editor-in-Chief, it is perfectly clear that they also look for personal qualities that are not well correlated with scholarship. *Perhaps* the selection process works to create the best law review; but it is seriously problematic that top editorships are regarded as important credentials in the hiring process.

The legal hiring process is probably unfair to several different groups: I am sure that Christian conservatives are disadvantaged at some schools, lesbians and gay men at others. A constant throughout, however, is that talented individuals who attend non-top-five schools never make it into the pool at all. People who go to law school after raising a family, people who care for aged parents, members of two-career couples – all these people and others often choose their school for geographical reasons. The only thing such a person can do is to get a lesser job and then try to write her way into a top school. Given, however, that law journals don’t use blind refereeing, and given that the quality of one’s colleagues is even more important to the development of a young legal academic than to other young academics, who have years of

solid formal graduate training to shape their development, this rarely happens.⁶

Top law schools do also attend the Association of American Law Schools (AALS) convention, interviewing people whose resumé’s have been noticed in a book prepared by AALS. But in my experience this is rarely a serious part of the hiring process. Once in a while it turns up good people whom we later bring back to interview; but more often it just reassures us that we have already located the best people. The AALS dossiers are so thin – they contain neither writing sample nor covering letter from a placement officer nor letters of recommendation – that it is impossible to tell anything from them, except what school the person went to and what honors he or she obtained. This part of the process is therefore just as unfair to people from non-standard schools, and is extremely unlikely to identify the talented scholar who is committed for family reasons to remaining in Des Moines, or Tucson, or Eugene.

Once this non-pool is constituted, what happens next? Typically, the candidates put in an appearance at lunch. In this artificial setting, before people who have read none of their work, they have to cook up a rhetorical feast that will satisfy the appointments committee (which is usually happily eating a physical meal, while the candidate holds forth, in the general vicinity of an untouched fruit plate). People whom we later recognize as excellent scholars have “flunked” lunch. And we

6 One might argue that those who attend a non-elite law school are so poorly trained to begin with that poor training cancels out whatever talent they may have had. I reject this argument for three reasons: (1) No young legal academic has had much significant *academic* training, unless she has done graduate work in a related field. Hiring is based largely on promise, not achievement. (2) The current tight legal job market has brought about a situation in which excellent teachers and scholars are teaching at the non-elite schools, so there is no reason to suppose that training there is poor. This effect is enhanced by the impact on hiring of two-career couples. (3) Young scholars who get law degrees at non-elite schools may well have some further graduate training at a very solid or even excellent school. (Frequently it may even be the *same* school; thus the University of Arizona, which has a non-elite law school, has a philosophy department ranked in the top five nationwide.) In short: those who favor this hypothesis should test it by giving candidates from non-elite schools a fair shake.

have no idea how many people who *would have been* excellent scholars but for their flunking have flunked lunch. Aggressiveness, a certain supple glibness, these are the things that get you through, though of course you have to know something too. In other words, to use philosophers' lingo, having something to say is usually (not always) a necessary condition of passing lunch, but by no means sufficient. The other necessary conditions are well stated by Plato: one must be a "brave manly soul, bold and clever in approaching people." I tend to think that these rhetorical qualities are not necessary for the equipment of a legal scholar, and that a process that gives them so much weight is flawed, even vis a vis the needs of the legal academy. But even schools that see these problems have a hard time bucking the trend, since everyone operates in more or less the same way.

The greatest difference between this stage of the process and the corresponding humanities stage is the absence of reading. This is a hard issue, since many young law candidates have written nothing that one can read. Increasingly, many candidates do have either a Ph.D. in a related field, or some publications, or a substantial research paper. I believe that all top law schools should do more to develop the scholarly research of students with an academic bent, supervising extensive writing projects that would produce scholarship of readable quality. Ultimately, this is the only way the diseased hiring process can be made to embody any kind of fairness.

Finally, the lucky finalists come to town. They are given a day-long series of office interviews and then they present a job talk before the entire faculty. The office interviews are hit and miss, since most people know nothing about the candidate until they see him or her, and thus they may ask good or bad questions. I have seen some extremely valuable and searching interviews; but they are not as good as they would be if candidates had written

something and that writing had been read. The job talk is a far less scholarly affair than the corresponding humanities job talk. Once again, although skills of argument are displayed and assessed, rhetorical cookery is all too frequently in evidence. Candidates seem to think that quickness, glibness, and aggressiveness are virtues, and that reflectiveness, quietness, and uncertainty are vices. And so it frequently turns out. Although I love nothing more than to see a person who stops and ponders a hard question, says it is hard, and gives some sense of understanding how many years of work it would take to answer it, that is by no means a universal desideratum.



This process is defective because it does not conform to basic standards of procedural impartiality. It is also defective because it probably does not identify the people who will be the best scholars. But it has one more pernicious effect: it produces young scholars who have a confused sense of what their purpose is. Are they supposed to be good rhetoricians or good scholars? Are they supposed to spend years working toward a difficult truth, or to come up with catchy phrases and slogans that will market their ideas to an audience? It is no secret that much legal scholarship is very bad. In interdisciplinary areas that I am competent to assess, it rarely comes up to the professional norms of the relevant other discipline, whether philosophy or political theory. There is a disturbing proportion of hype, self-salesmanship, and sloganeering. I believe that this is a direct result of the confused messages sent young scholars through the hiring process. If they are hired for being "brave and manly souls, bold and clever in approaching people," then it seems reasonable for them to put those same qualities into their work. Thus the term "entrepreneurial scholarship" has been heard in the halls of major law schools;

and this conception of scholarship, fatal to the committed pursuit of the scholarly life, is a direct result both of the choice of individuals and the message sent those individuals through the process of choosing.

Again, I have heard with tiresome regularity that junior person Z at school S is “writing up a storm” and is “extremely prolific.” Often, this is work that, though published, is not really ready to appear in print. Z should have been told to get some training and practice in writing, and not to publish anything at all until it is really finished. One really good article is worth vastly more than five overblown windy self-promoting articles, because the former is evidence of a mind committed to truth. In philosophy, people are well aware that major figures such as John Rawls and Hilary Putnam published little in their early careers, though what they did publish was excellent. They waited to hone their larger ideas until they were really ready. But to live that way takes a dedication to truth; our message, all too often, is that you get ahead by clever cookery.

How might this diseased process be reformed? In the end, any lasting reform will require law schools to sort out the deeper issues I mentioned at the beginning of this article. Are they looking for good scholars or for good lawyers? What relationship, if any, is

there between being a good scholar and training good lawyers? Do we want, ultimately, two quite different kinds of people, some to exemplify and lead the life of the mind, some to exemplify and train people for the life of the law firm? I do not know the answers to these questions, and I believe they must be answered by a lengthy process of public debate. But I do know that the process will remain confused until a lot more deliberation about them takes place.

As we deliberate further, we should go back to look at the historical process through which law schools came to have the shape they currently do. And we should ponder the distinctions between the conception of legal education pioneered by Langdell at Harvard and a more humanistic, research-oriented conception of legal education advocated by Ernst Freund, a political theorist who was among the original members of the University of Chicago Law School.⁷ Freund, a Jew educated in Germany,⁸ believed that the legal academy should be truly interdisciplinary and should retain close connections to scholarship in the humanities and the social sciences. Defenders of the Harvard model opposed this, defending the case method as the best way to establish first principles from which legal conclusions could be deduced, and defending “pure law” over interdisciplinary

7 For this fascinating history, see William C. Chase, *THE AMERICAN LAW SCHOOL AND THE RISE OF ADMINISTRATIVE GOVERNMENT*, 52-59 (University of Wisconsin 1982). Chase shows that Chicago was regarded as a key school in the effort to establish the Langdell method nationally; proponents of the method therefore focused intensely on converting Chicago to their model. Freund thus became the primary target of pro-Langdell Harvardians. Freund’s particular interest was administrative law, which Chicago taught from the beginning; he urged that it be studied in an interdisciplinary way, along with relevant courses in social science. Freund also proposed requirements in public law and jurisprudence. By contrast, Harvard did not even offer administrative law until many years later, and considered jurisprudence “not really pertinent to training for a practical profession.” *Id.* at 52.

8 Freund was born in the U.S. and was nine years old when his family moved to Germany. He remained a U.S. citizen and never acquired German citizenship. Apparently Freund was the first Jewish law professor in the U.S., although I have not been able to verify this with any certainty. (He was totally non-religious, according to his daughter, Nancy Freund White.) Attacks on him allude to his foreign ideas. Given that he was an American citizen, there is at least some reason to believe that this was a coded way of alluding to his Jewishness, as well as his foreign education.

scholarship. In terms of the short-term political struggle, Freund lost. He was sidelined at Chicago for his “heretical ideas about law,”⁹ and played little role in shaping the curriculum of the new school. But in terms of the long-term trajectory of legal scholarship, Freund’s ideas were, I believe, sound; and he may yet prove to have won the war.¹⁰

On the assumption that at least one thing law schools want is good scholars, the process cannot be reformed without giving young candidates more scholarly training. The hiring process in the humanities could be reformed only because there was writing to be read, and that was what it was ultimately all about. Law schools encourage the delusion that scholarship can be spotted before it is done, and that the brave and manly souls can be licked into shape like young bear cubs, while they are teaching a full load. This is not a good way to become a scholar. Thus law schools need to offer courses in the third year that introduce students to academic research and writing. Judge Posner has taught such a course at the University of Chicago; others are teaching a similar course this year. But that is hardly enough. We should encourage academically inclined students to get some graduate training in a related field of their choice, and we should create M.A. programs that are designed explicitly for the purpose of giving further academic training to law graduates who want to enter the academic market. I am encouraged to see that more and more such candidates are appearing, and that top law students are increasingly conscious of written work as a desideratum when they enter the job market.

As more candidates have M.A. or Ph.D. theses in hand, or at least extensive academic

research papers, the process can begin to be reformed along the lines I described above. Job descriptions, public advertisements, and the careful reading of dossiers and writing samples can begin to replace the current hit or miss process. A serious interview based on written work that all interviewers have read can replace “lunch.” And an hour-long academic talk, with another hour of questions and answers, based on the candidate’s already completed research, can become the final step. At any rate, that would be the way to search for real scholars, if real scholars are what is wanted.

On the placement end, institutions whose students are on the job market should be doing much more to place those students. Just as other academic departments help their students find jobs even years after they have left the fold, paying the expenses of sending out the student’s dossier, gathering confidential letters, and approaching hiring departments on their behalf at conventions or by telephone, so we should be doing the same thing for our own students, when they embark on the academic life.

Powerful mentors will continue to play a role in this process, but in a restricted way: not as the only source of the “pool”, but as writers of letters of recommendation, and as operators of placement efforts. People at less prestigious schools will still suffer disadvantages, but less so, since once they pass an initial hurdle their writing will be the focus of attention. Furthermore, there is much more that the top schools could be doing on behalf of young scholars at less prestigious schools. The NEH has long operated “Summer Seminars” where disadvantaged scholars in the humanities (those at institutions with poor libraries, or without

9 The words are those of Joseph H. Beale, who was imported from Harvard to Chicago to serve as dean of the new Law School. He made the sidelining of Freund (a long-term member of the Chicago faculty) a condition of his acceptance.

10 Nancy Freund White informs me that Freund used to carry his books and papers to and from his office in his “Green Bag.” I therefore hope that this article will prove a suitable tribute to his memory.

much encouragement for research) receive stipends to study with outstanding scholars in their own profession, getting help with their writing efforts and a boost in the letter-of-recommendation process. Teaching such a seminar is generally agreed to be one of the most rewarding experiences one can have as a scholar, since the young participants are so excellent, and so hungry for the life of the mind. I have kept in touch with most of my former seminarians in the twelve years since I taught a Summer Seminar; most have gone on to produce work of distinction, and some have moved to better jobs. In this same way, the legal academy should operate summer seminars in legal research and writing, open only to people at non-top-twenty schools, where talented applicants would receive stipends to work with an outstanding legal scholar in their field and get a second chance to climb to a new level of performance and reward. Just as the NEH pays people very well to give up a part of their summer and run such a seminar, so the legal academy will have to spend money. But it will be money extremely well spent, both for its effects on the students and in how it will

educate the faculty at top schools, by showing how much talent is going unheralded at less prestigious institutions. It is surprising that, for all the talk about equality on the radical side of the legal academy, such a simple practical step has not been taken.

These are burdensome recommendations; they involve rethinking much that we currently do and questioning norms that are deeply entrenched. To change the modus operandi in the academy was not so hard, since there was already substantial agreement about what scholarship was, and that reading was the right way to assess it. Our situation, by contrast, is more like Plato's: we will have to first decide, and persuade one another, that it is scholarship and not rhetoric that we should be pursuing. To Plato's young rhetoricians and their delighted audiences, his advice to turn to the serious work of philosophy was like an invitation to leave a delightful feast and go to the doctor. Will we change the process of cooking for a job? I don't know. But I believe that the future of law schools as places of excellent scholarship depends on it. *✎*