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BOOK REVIEW

ALLAN BLOOM AND THE AMERICAN LAW SCHOOL

Jonathan R. Macey†

Allan Bloom is a very frustrated and unhappy fellow, and his despair is evident on virtually every page of his recent best-seller, *The Closing of the American Mind*.¹ Many in legal education share Professor Bloom's despair, as we increasingly hear educators complain about the incursion of new ideas into the classrooms of America's elite law schools. This review explores the relationship between Bloom's world view and the "feeling of malaise" gripping American law schools.²

In law schools, the current debate about the direction of educational life revolves around three major topics: the place of Critical Legal Studies in the law school curriculum, the merits of clinical education and the role of interdisciplinary work, particularly law and economics. In essence, my argument is that Professor Bloom rightfully bemoans the decline of educational values and cultural norms within the American university, but he is dead wrong about the cause of this decline.

In addition, Professor Bloom is also correct in his observation that we live in a "culturally impoverished" present. But he is wrong to lay the blame at the door of American universities, which are only responding to a change in the sort of services demanded of them by their consumers—students, parents, state governments, and, increasingly the federal government.

I

COWARDICE, NOT RELATIVISM, IS TO BLAME

Contrary to Bloom's unsupported assertion, any decline in the American university ought not be attributed to the rise of relativism. Rather, the decline is due to the unwillingness of American academics to make the difficult choices that modernity has forced upon us.

In other words, Bloom correctly identifies the symptoms of the

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¹ A. BLOOM, *THE CLOSING OF THE AMERICAN MIND* (1987) [hereinafter A. BLOOM].

² See generally Luban, *Against Autarky*, 34 J. LEGAL EDUC. 176 (1984); Trillin, *A Reporter at Large: Harvard Law School*, THE NEW YORKER, March 26, 1984, at 53; Margolick, *The Trouble With America's Law Schools*, N.Y. Times, May 22, 1983, § 6 (Magazine), at 20.

disease (declining educational values and disappearing shared cultural norms), but his diagnosis of the cause (the departure from classical education), is way off the mark, and his cure (a return to a world of absolutes) would be far worse than the disease itself. The disease at our door is not caused by the rise of relativism, but by lack of commitment to excellence in teaching and scholarship on the part of the governing bodies of American universities. All too often our universities refuse to make the right choices in politically charged situations, and choose instead to follow the path of least resistance.

Examination of the illustrations Bloom invokes to describe the decline of American educational values proves that he has misdiagnosed the disease. Professor Bloom, for example, correctly observes that "any man of weight" would have fired a radical black faculty member who threatened the life of a black student at Cornell for refusing to participate in a demonstration in the 1960s.³ But it seems a bit ridiculous to insinuate, as Professor Bloom does, that somehow, a different curriculum would have given the provost the moral courage to carry out the responsibilities of his office. Simple cowardice is to blame. Indeed, it is easy to imagine a poorly educated man with simple values taking the appropriate course of action in this matter. Cowardice, not moral philosophy, is to blame.

Professor Bloom's book clearly has struck a chord in the American consciousness. It enjoyed a lengthy stint on the New York Times best seller list and seems destined to inform the debate about the direction of American higher education for years to come. Bloom's work enraptured the book buying public not because it was convinced by his plea for a return to Platonic dialogue and absolute values, but because it is enthralled by his marvelous depiction of the left-wing cowardice that has caused American universities to discard the values and principles that made them great.

Likewise, in the debate over the direction of American education, Professor Bloom joins a growing number of educators urging that we once again allow the classics to form the underpinnings of a liberal education. I share this view. The difference between Professor Bloom and myself is that he urges the classics because they contain the immutable truths of the ages and are necessary to fill a spiritual cavity in our nation's youth, while I urge the classics because they provide the most challenging and rewarding set of readings that we can provide for our students.

But the difference between Professor Bloom and me is more than a difference of approach. Professor Bloom is a committed be-

³ A. BLOOM, *supra* note 1, at 316.

liever in absolutes and his real worry is over the triumph in education of those he describes as relativists. Professor Bloom believes that his way is the only way and his books are the only books and anyone who disagrees is either a socialist, a nihilist, or worse, a feminist.

Bloom presumes that anyone who opposes his view is an *absolute* relativist, someone who believes that no argument is better than another and that truth is a perpetually elusive adversary. This is a sadly impoverished vision of the world. There is an alternative philosophical perspective, which Nobel Prize winning economist James Buchanan has described as the belief in the "relatively absolute" absolute.⁴ This is my own perspective, and I suspect, the perspective of most people Bloom describes as relativists.

Like Professor Bloom, those who believe in the "relatively absolute" absolute believe that in a debate it is possible to form a respectable and informed opinion about which side has the better argument. And, like Professor Bloom, those who believe in the primacy of the "relatively absolute" absolute believe that some ideas are better than others and that educators have a responsibility to present the better ideas to their students.

Like Professor Bloom, such people believe that it is possible to develop an educational curriculum and collegiate course of study that provides the maximum exposure to the works of genius that form our cultural heritage. But, unlike Professor Bloom, those of us who believe only in relative absolutes recognize that, over time, new ideas often will replace old ideas. Thus, unlike Professor Bloom, those who hold to the idea of "relatively absolute" absolutes recognize the inevitability and (dare I say it) the desirability of change.

Professor Bloom would have us believe that anyone who disagrees with his rather extreme views believes there are no right answers. This is just not so. Rather, it appears to me that those who side with Professor Bloom believe that there are nothing but right answers and that these right answers come in the form of immutable truths handed down by Professor Bloom and his mentor, Leo Strauss.

II

PROFESSOR BLOOM: HIS WORLD VIEW AND ITS IMPLICATIONS

Bloom is not just concerned that we are teaching our students the wrong things—he is concerned that we are failing to teach them

⁴ Professor Buchanan gives credit to Professor Frank Knight of the University of Chicago.

the right things in the right way. Many law professors share precisely this concern regarding the Critical Legal Studies movement, which they regard as representing a dangerous trend towards nihilism in American legal education.⁵ Take for example William W. Van Alstyne's rather remarkable letter to the Committee on Academic Freedom and Tenure of the American Association of University Professors.⁶ Here Van Alstyne advances the notion that a Critical Legal Studies scholar should feel no more comfortable in a law school than an astronomer would feel in an astrology department, since the Critical Legal Studies scholar's belief in law is no more sincere than an astronomer's belief in astrology. His idea is that if you do not believe in something (whether it be "the law" or astrology), you should not associate yourself in an academic enterprise with those who do.

But what an arid, empty conception of law! Everybody, and I mean everybody who is doing anything at all interesting in the way of legal scholarship—from crits, to law and society types to law and economics adherents—are engaged in an effort to discover what law is all about. An attack on any of these groups on the ground that their effort to demystify the law has no place in the world of legal scholarship,⁷ is an attack on all of these groups. In particular, Van Alstyne and Carrington could level attacks of the kind they direct at the Crits with even more force at practitioners of law and economics such as myself.⁸ After all, law is about power, and how it is used. The Romantic View that we should teach students the Pollyannaish notion that law inevitably plays a civilizing and constraining role in society must make room for other voices.

For many, the problem with all of the new approaches to the "law as truth" school of thought is simply that they threaten the conventional wisdom, always a dangerous thing to do in academic circles. If, God forbid, critical thinking, or economic analysis, or social science empiricism is of particular value in understanding the legal landscape, then many of us actually might have to invest the energy to rethink our own paradigms about law, and even worse, learn some new skills.

⁵ See, e.g., Carrington, *Of Law and the River*, 34 J. LEGAL EDUC. 222 (1984) [hereinafter Carrington] which is a striking attempt to discredit the role of Critical Legal Studies in American law schools.

⁶ Various Authors, "*Of Law and the River*," and *of Nihilism and Academic Freedom*, 35 J. LEGAL EDUC. 1, 20 (1985) (collection of correspondence exchanged in response to Dean Carrington's article, *Of Law and the River*, *supra* note 5) [hereinafter Various Authors].

⁷ This essentially is the charge that Van Alstyne and Carrington level at the crits.

⁸ See Haddock & Macey, *Regulation on Demand: A Private Interest Model, with an Application to Insider Trading Regulation*, 30 J. LAW & ECON. 311 (1987); Macey, *From Fairness to Contract: The New Direction of the Rules Against Insider Trading*, 13 HOFSTRA L. REV. 9 (1984).

Thus, it seems to me that those who complain the loudest about Critical Legal Studies are not really complaining about critical scholarship in particular, but about the threat of new ideas in general. But it is unfashionable in academic circles to claim that new ideas are bad. Consequently, attacks on new ideas often are portrayed as attacks on relativistic thinking. This is the trick used by Professor Bloom, and it is the trick used by Professor Van Alstyne. It seems more likely to me that Bloom is screaming because modern educational trends are pushing the focal point of American education further and further away from his orbit.

Interestingly, Van Alstyne's complaint about the Crits is identical to Bloom's attack on the relativists. Van Alstyne charges that Critical Legal Studies scholars believe that law is "a lot of crap" and is "bullshit on stilts" and is (and this, of course, is the most serious charge a relativist can make) "all the same."⁹ Although I have never been a friend of Critical Legal Studies, I consider this a grossly unfair and incorrect portrayal of an entire school of thought. If there is one thing critical thinking emphasizes, it is that law is an important tool. Crits may strongly believe (as do I, although for radically different reasons) that law may be used for nefarious purposes, but they do not consider it irrelevant "bullshit." It is a belief in the malleability of the law, and/or in its propensity to be manipulated by those in power, combined with a leftist political agenda, that distinguishes Critical Legal Scholars from the rest of us. If, as Paul Carrington charges, Critical Legal Scholars erect "impediments to belief in law" that create in law students, "doubts about the validity of their professionalism as lawyers,"¹⁰ then Critical Legal Studies is about the healthiest thing to come along since aerobics. After all, a good law school inevitably will produce skeptics, our task is not to churn out the legal equivalent of Moonies.

As Paul Brest has so succinctly pointed out, "one of the single achievements of legal education in the past century has been to earn law schools a full and equal place in the university community."¹¹ With this new position, however, comes a new responsibility: the responsibility to distinguish, on the basis of quality, to the best of one's ability, among the multitudinous voices that attempt to lay claim to the ears of our students. This exercise, by its very nature, requires that we make *relative* judgments. It also requires tolerance,

⁹ Van Alstyne, *supra* note 6, at 20. Van Alstyne uses the term Sociology but in his first footnote he makes it clear that he really means law as well ("For 'Sociology' substitute any of the following . . . : 'philosophy,' 'economics,' 'art,' 'history,' 'English,' or 'law.'").

¹⁰ Carrington, *supra* note 5, at 226.

¹¹ Various Authors, *supra* note 6, at 16.

and enough courage to recognize the difference between bad ideas and ideas that are so good as to be positively threatening.

It would be wonderful if Bloom were right. Think how much simpler decisions about hiring and curricular matters would be if we could reduce them to immutable truths. Unfortunately, we cannot. We are left with hard choices because we live in a world in which the range of resources at our disposal (particularly our time on the planet) is quite limited. Thus we must wonder about such things as how much to emphasize skills courses and how much to emphasize traditional education and how much to emphasize non-traditional subjects like finance and philosophy. Law schools generally have taken the path of least resistance regarding these questions, sacrificing the long term interests of their students to the short term demands of vocal interest groups.¹² But again, the problem is not that relativism is running rampant. Rather, the problem is that faculty members are insufficiently aware of the fragility of the institutions they serve, and are not courageous enough to champion those interests. Bloom thinks that we do not know what courses are best for our students because, as relativists, we think that one course of study is as good as another. This is absurd. Often we do know.

Our problem is that we do not seem to care enough to fight for high standards and commitment to excellence against the onslaught of mediocrity. Plato and Hegel are dead, we cannot hear them cry out when we ignore them. But law students are very much on the scene, and will cry loudly if they are unable to dilute their work-load by indulging in the luxury of adding a skills course to their schedule as they while away the spring semester of the third year. And how many will be heard to stand up to the sickening charge of racism that faculty and students inevitably hurl at anyone with the temerity to oppose affirmative action quotas?

The point is not that affirmative action is a bad idea, but that we have arrived at a state of affairs in which speaking out against affirmative action would be academic suicide at most law schools. Contrary to Professor Bloom, however, the reason free speech has fled the academy has nothing to do with the decline of classical learning, and everything to do with the decline of simple courage.

The ultimate proof of this lies in the fact that many confirmed relativists decry the increasing tyranny of skills courses¹³ and the need for the common cultural ground among citizens that a classi-

¹² My friend and former colleague David Haddock believes that this trend has been facilitated by the increasing role of the federal government in education.

¹³ Rorty, *Straussianism, Democracy, and Allan Bloom, I: That Old Time Philosophy*, THE NEW REPUBLIC, April 4, 1988, at 31.

cal, liberal arts education can provide.¹⁴ Unlike Bloom, however, these people come to their views by making hard choices in close cases among rival conceptions of the good. They do not make them by imposing some bizarre tyranny of absolute good on a richly diverse group of students.

III CAUSES AND CURES

Having correctly observed the general malaise in American education, Professor Bloom argues that the solution is a return to the classics. Bloom's proposed solution, however, ignores the market forces at play in the American education system. Bloom appears wholly ignorant of the fact that American universities face increasing competition for funding, and for students and faculty. This competition comes of course from rival universities. The classical approach to education advocated by Bloom has not proven to be a successful competitive strategy in the education marketplace: compare the modest success of St. John's University in Annapolis, which has organized itself around a Great Books program of exactly the kind Bloom advocates with the recent popular success of Brown University in Providence, which is the paradigm of the abandonment of educational standards that Bloom finds so abhorrent.

In other words, the source of the problem Bloom identifies lies less with the universities themselves, than with the environment in which they exist. We seem to have created an educational "race to the bottom" in which the indulgence of sloth is rewarded over the maintenance of standards. We can lay part of the blame at the feet of public primary and secondary schools, where parents are unable to affect the quality of the education their children receive, because no market forces exist to constrain the shirking of public school officials. For one thing, parents of public school students cannot shop among alternative teachers or rival schools. And, equally important, in the majority of cases, teachers and school districts are not rewarded on the basis of their performance. In other words, the market for education in this country has collapsed at the most basic levels. The consequence is that the many of the students entering college simply are unprepared to do the sort of work Professor Bloom would have them do.

CONCLUSION

In my view, Bloom is wrong in prescribing the Great Books as

¹⁴ See E.D. HIRSCH, *CULTURAL LITERACY: WHAT EVERY AMERICAN NEEDS TO KNOW* (1987).

the elixir for the problems of modernity. The Great Books have their place, and if American education gets back on the right track, such books will play a central role in the curriculum. But such books will be only a byproduct of the national moral healing; they will not be its cause. Bloom's book claims to be about the American mind, but the real spirit of the book is captured in the book's subtitle, in which Bloom promises to explain "how higher education has failed democracy and impoverished the souls of today's students." It is my claim that if the souls of America's college students are lost, the battle is over before they enter college.

My own view is that the only hope for success in the battle for standards is to raise the stakes of capitulation to mediocrity. Serious scholars must find the courage to call a sham a sham. If law schools embracing sloth and mediocrity were exposed by their peer institutions, then they would not so quick to take what is, at the moment, the path of least resistance.

As Owen Fiss has observed,

Law schools are professional schools . . . but they are also academic institutions. We cannot shut off an avenue of inquiry for fear that it would render the professional training pointless. . . . Every law school should confront the question whether law exists, and it is of the essence of academic freedom to allow all sides to speak, even those who would answer that question in the negative and thus recommend that our doors be closed and resources be used for other purposes.

Lawyering requires courage. . . . So does academic leadership—it requires courage to listen to those who deny the point of the exercise and then to explain, through the power of word and reason, why they are wrong.¹⁵

A multitude of wildly different voices claim to have the ultimate answer to the question of what is wrong with the American mind and soul. Alan Bloom is among the voices most clearly heard, and his message has struck a familiar chord among those of us in legal academics. But, as Owen Fiss has said, the answer to Bloom's call for absolutes is not to stifle dissenting voices, but to answer reasoned argument with reasoned argument, and to balance opposing views in a way that Bloom would abhor. The threat of mediocrity can only be met with courage. The age of absolute truths is gone forever. And Alan Bloom's desperate appeal will not bring it back.

¹⁵ Various Authors, *supra* note 6, at 24.