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A primer on higher education in the 21st century: the university as a whole and contributions made by law schools

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Abstract: Citizens live within their unit's belief systems and superstitions. Truth is derived from family narratives, stories spun by old friends, outbursts from neighbours, barbers, religious figures, and priests. Certainty and comfort come from living in these spaces. But there is a wider world out there with characters doing things that conflict with routine. Higher education illuminates this realm. Legal education predicts what authorities will do about their antics and, while this is a laudable undertaking in the abstract, legal education should do more. It should arm the next generation with tools to cope with cultural ruptures, social confusion, dislocations, avatars, and violence in cyberspace. This article strings together some ideas, insights, and proposals to deal with these challenges.

Keywords: higher education; synthesised knowledge; use.

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Biographical notes: Ronald Charles Griffin graduated from Hampton Institute. He received his Bachelor of Science degree with Honours in 1965. Howard University bestowed its Juris Doctorate degree in 1968. He received his LLM degree from the University of Virginia in 1974. He is a Professor of Law, Emeritus, College of Law, Washburn University, Topeka, Kansas, and Professor of Law, College of Law, Florida A&M University, Orlando, Florida.

I miss you mom
 knowing—
 before you were unsteady—
 That you were
 always there for me

1 Introduction

Many dwellers live within their unit's belief systems and superstitions. Truth is derived from family narratives, old friends, and outbursts from neighbours, barbers, religious figures, and priests. Certainty and emotional comfort come from living in these spaces. But there is a wider world out there with a cast of characters doing things that conflicts with what's routine.¹ Higher education illuminates this realm.² Legal education predicts what authorities will do when folks act up and, while this undertaking is all well and good, legal education should do more. It should arm the next generation with tools to cope with avatars³ and violence in cyberspace.⁴ This article strings together ideas, insights about the human condition⁵, and proposals to deal with the educational challenges of the 21st century.⁶ It begins with mother's death and ends with a debt.

Of course, nobody's essays about anything mean everything to everybody. But, when you drill down to the core for this narrative you will see that the author's bleating, and efforts to rescue students and universities comes from a belief that nobody is doing enough to fit the next generation for the challenges facing them – problem solving.

As a society, we need to know about the knowledge and the applied knowledge associated with particular university degrees; how much general knowledge and applied knowledge the university poured into a student's head; whether she took enough ethics courses to make good judgements as an adult; whether she's fortified against dogma, dupes, and herd instincts; whether she can make routine arguments; use data to solve clearly defined problems; whether she sees the big pictures in life (that is, how things are knitted together); and last, but certainly not least, whether she can integrate all this stuff and foretell, based upon new knowledge, what comes next.⁷

The point is to 'teach people how to live well'. To that end, this article comes to terms with privacy (its loss), the plight of the middle class (what can be done for them, particularly, their children), the aspirations of immigrants and poor people (education wise the base from which we will lift them up), and pedagogy (our obsession with using text and other old fashioned schemes to deliver knowledge to 21st century students). *But I digress.*

2 Mother's death

2.1 Rambling

Mother died on June 15, 2013. In death, she taught me lessons. First, family is important. Second, spending time with family members gives one nutrients he needs to sustain life. Third, nature is indifferent to us. Fourth, death is anonymous (everybody succumbs to its wiles). Fifth, god resides in our travail – exasperation, aspiration, and expectation that we will do better by ourselves. Sixth, a loved-one's will snuffs out family bickering. Finally, nobody knows anything about anybody. It is the trinkets that loved ones leave behind that tell the tale.

It is folly – mother would say – to play-act as if release of a loved one from a hospital means restoration of the old life. We collectively live with mysteries (some things unknowable), secrets (some things known by a few), and privacy (some things known by all but concealed from everybody).

2.2 Conjugated thoughts

People are mad hatters⁸ – doing things over the top of what ordinary men and women do. Life begins with a yelp and a surname and ends with a whimper and a plaque. Spectacle, drama, inventions, achievements, innovations, suffering, competition, vitriol, love, and sacrifice surface in between.

Adults, she'd say, will do anything to get ahead. Too many live aimless, shabby, and raggedy lives. They make caricatures of 'what they use to do' to preserve the value of what distinguishes them from others. People are transient and digitally overloaded – allowing an addiction to cyberspace, that is, an over-responsive, over-committed, manipulation of the social media⁹, to trump physical presence, intimacy, and the power of silence.¹⁰

We are wanderers in America going where one can find work.¹¹ Too many are suckers for diversions (giving in to them over politics). Where there are vibrant societies or we stumble into one with literature, science and culture, you will find tricksters, scammers, transient figures, would-be writers, scientists, artists, pretenders, and hangers-on, consuming everybody and everything. We are a strung out people, empty headed, and alone. We need something or somebody to kick start our lives again.

3 Epiphany

We need sophisticated thinking (use of the senses and the scientific method to determine reality), educated thinkers (folks rummaging through ethics to find tags for their cache), good reasoning (logic), and arguments. We need folk who will utilise 'the facts of life' – a catalogue of human endeavour stored in the brain and called to mind, by individuals, to predict how duly constituted authorities will react to something; the forces that will get released by them; the damage being done to everybody; and who will win the fights.¹²

We need social pathfinders¹³, philosophers¹⁴, journalists¹⁵, screen writers¹⁶, film makers¹⁷, and scribes¹⁸ who will find the rules utilised by authorities; collect the operative facts; and write narratives about the results.

When clerics, politicians, and would-be celebrities make arguments about how authorities should apply rules to the facts thinkers should determine whether those cropped arguments are supported by relevant (nice to know) and consistent (supportive) evidence. When there are competing versions of the same rules, thinkers ought to point out the fallout from choosing one over the other. When rules have elements (so-called conditions) and factors (considerations whose weight establish something momentous) thinkers should rummage through the evidence to find the pertinent bits for themselves.

4 Short stories

Philosophers should write stories about important things in their lives or recent developments affecting other people's lives or topics striking their fancy. A sentence or two about shared values, under threat, or how antagonists misused a rule of law to get something should do.

The narratives should get at the gist of things. There should be a presentation of the issues in question form so thinkers can answer them with a 'yes' or a 'no'. There should be a statement of the operative norms, the pertinent rules, and rationale (joining the rules with the facts) to draw conclusions.

Personalities are irrelevant. It is not 'who said what?' It is 'what got said' and 'what got done'. Content is all that matters. Scriveners should parade important information first and background information thereafter to give the stories a context.

Spotting the issues is the thing. Writers should highlight the controlling principles and research the story's background facts (rummaging through archives for related stories) ever mindful of what their readers want to know. It is what happened in a case; who did what, when, and where; and why the development is significant? Narrators must lose themselves when they write. Clarity is the thing.

5 Reset button

Having mused about life and death and the bleaker qualities in us: who are we? We are accidents. Here is all we have got. *We are soft tissue machines* reeking with morals and ethics. Life's meaning comes from what parents tell us and what worries us the most. We say 'hello' to strangers and 'good bye' to old friends. We have quiet times, noise, and chaos in our lives. We ruminate about our sex escapades, cancer treatments, jollies compiled for our aggrandisement; family members we need to squeeze; folk we've got to discard; and our surroundings (whatever they might be at the moment) without media and pundits telling us what to think.

6 Fodder

We live among giants. (We call them hegemons).¹⁹ Each possesses the power to stifle another's projects. Global media²⁰ and non-governmental organisations have the power to stymie what hegemons want to do.²¹ Multi-national corporations roam the landscape. Some have withdrawn their forces from the frontier, producing vacuums filled by niche firms.²²

We live in civilisations – our captors in a way – that destroy their surroundings to live.²³ We live on commons. Dwellers draw circles around their neighbours' aspirations and do their best to stay on their side of their neighbours' lines.²⁴

Everybody's preoccupied with their projects – assembling, launching, and seeing them through to fruition. Shared values minimise conflicts. There's freedom (the option to go hither and yon unmolested by neighbours); liberty (the option to go hither and yon unmolested by government); and privacy (communing with everybody to establish bonds with the option to withdraw from communion to:

- a invent and innovate
- b control the flow of information
- c veil some things as secrets.)

The commons are calm, weird, violent, and unpredictable places. Settlers have shadowy images of themselves and their surroundings – drifting from a *people as property notions to outrageous fictions*.²⁵ Rich pioneers and poor ones live side by side. The amount of poverty and desperation endured by some is determined by the number of jobs the rich create for the poor.

7 Structure

Mega corporations control the world.²⁶ They tell us what to think. They junk their clunky machines with all their handlers for sleeker ones.²⁷ Profit from these implements flow to the top where a few handlers, as oppose to many, reap the benefits.²⁸

7.1 Level 1

There is a superstructure for the business commons we call home: elites, property, markets, and plebs. The market is dynamic. When it burps it produces property that insulates elites against the antics of plebs. The market exerts downward pressure on everybody – telling settlers what to buy in the commercial world²⁹ and, when news makes a buck, what they should know.³⁰

Mega corporations and state bureaucracies glue everything together.³¹ They flat line what we see and, sadly, tell us what we should know. The arrangement accommodates capitalism, lies, lying, dreams, philosophy, illusions, certainties, novelty (the insertion of one species' DNA into another to create new value), innovation, inventions (virtual banking and 3D printers)³², and last, but not least, near-do-well regimes where a handful of people take most of the wealth and everybody else takes the rest.

7.2 Level 2

There are internet geeks everywhere, network engineers, entrepreneurs, information technologists, computers, and computer encampments. Computer owners – the ones with mega machines – compile raw data about us. With algorithms, statistics, probabilities, and machines, they make sense of their cache.

With smart programs they predict social events, reconfigure national economies, shape politics, capture money, store opportunities, shunt risk, cull work forces, archive knowledge, anatomise sources of archived knowledge that in the end flattens, shrinks, and impoverishes the economy for everybody.

It is a sad situation. We are wielding technology against the middle class³³; fleecing it 'so to speak' to create regimes where a handful of people take most of the money and power and everybody else takes the rest.³⁴

Quite naturally, there are costs for doing this. There is hyper-unemployment, resentments bubbling up from the dispossessed, scape-goating, social dislocation, and chaos. The question is: what do we do with automation and modern technology to mediate the bad consequences? A robust middle class, that is, the restoration of one is an answer. If technology creates as many jobs as it destroys, everything will be alright. Middle classes make efficiency relevant and bring about economic growth and stability.

8 Elites

Elites are animals.³⁵ Many sense that something's wrong. Change disquiets them. Some want Microsoft, Harvard, Stanford, Michigan, and their ilk to do 'original research' and 'think great thoughts'. *For their convenience* they want everybody else to do as they are told.³⁶

Elites are scant in number.³⁷ They derive meaning from encounters with different people, albeit limited numbers, mediated by worldly experiences and texts.³⁸ They are prone to look for the grossest behaviour around them, in carefully selected environments, overlooking the subtle stuff where (in the shadows) deeper meanings hide themselves.³⁹

Having said all that: what about our nation's smart and ambitious poor people, immigrants, and non-whites who long to show their brilliance? Is their place for them in the academy and the elite's new world? What should institutions of higher learning do for them to make their lives better than the lot of their parents? Let us craft some answers.

9 Answers

There are scientific, artistic, virtual, and physical worlds. In the latter elites cannot use mob violence (a tried-and-true but shunned political practice in the south)⁴⁰ and phony referenda campaigns to make it harder for non-whites to gain legislative victories in higher education.⁴¹ Elites must provide schools like Hampton⁴², Morehouse⁴³, Fisk⁴⁴, Haskell⁴⁵, Northeastern⁴⁶, CUNY⁴⁷, FAMU⁴⁸, Howard⁴⁹, Miami⁵⁰, and FIU⁵¹ with resources to address the needs of poor people, non-whites, and immigrants.

School administrators should banish practices that stigmatise, stereotype, intimidate, and discourage non-white students. Admissions directors should use race and ethnicity in the admissions process⁵² to plumb characteristics they want to add to freshman classes.⁵³ Elites and non-elites alike want and need brilliant physicists, engineers, and mathematicians, without regard for national origin or skin colour and diverse lawyers to organise them so our hegemon (USA) can win world contests.

Universities must establish satellite schools abroad to recruit new blood.⁵⁴ They should offer a one year program for mid-career people who want to know what biologists, scientists, engineers, and lawyers do on a daily basis; a three year course of

study for all professional schools; a four year offering for undergraduates, trial lawyer candidates, and folk trolling for government jobs; and a five year program for engineers to replenish decimated ranks in traditional engineering, civil engineering, and information technology.

Universities should provide analytical skills labs to practice issue spotting (using theoretical templates), deductive logic, reasoning by analogy, and social value analysis. It comes down to the social harm the status quo does to equal dignity and equal respect. If it is awful we elites, particularly those in the academy, have to change

10 Educational menu

Once we've got a flock in school what should we feed them? We should offer courses that promote verbal fluency (classes that work on oral discussion, debate, and writing)⁵⁵; courses that do something about resourcefulness, inventiveness, and creative abilities.⁵⁶ The schools should provide problem-based-learning that gives gifted students an opportunity to experiment with hypotheses, idea, and solutions to real problems.⁵⁷ Schools should offer something that brings together the interconnectedness of human kind⁵⁸ with nature⁵⁹ focusing upon science, physics, geology, and ecology.⁶⁰

We want university professors to study the systems around them and teach students what they know. Aside from literature, mathematics, history, and fitness training, here is a taste of what they should know: philosophy, sociology, economics, geology, cyberspace⁶¹, internet realities⁶², monopolies⁶³ and monopolists⁶⁴, cybercrime⁶⁵, constitutional law, alternative dispute resolution (ADR), and simulations.

11 Course offerings

11.1 Philosophy

We should provide everybody with food, clothing, and shelter and, as regards the sick, elderly and weak, insurance to cover the average risk that something awful will happen to everybody. Community participants should get equal dignity and equal respect⁶⁶; that is, equality under the law (protecting individual claims to personhood and property), equality of resources (using that trope to give everybody the same ration of whatever everybody regards as valuable and auctions to sate peoples' appetites for things) and liberty (doing whatever one wishes to promote economic wellbeing.)⁶⁷

Everybody is endowed with the good.⁶⁸ But what is good for one person (order, certainty, and predictability) ends where another person's good begins. Everybody's got an ego.⁶⁹ But one person's ego ends where another person's ego begins. The line dividing people's goods and egos is justice. Moving the line with bargains is justice too.

Participants should be free to implement their life plans. When members cannot do this for themselves, politics corrects the situation. It comes down to a particular population, population growth, and advantages some possess and others covet. Where social advantages are generously dispersed so most people can use what's available to them, everybody's expectations, indeed, their social satisfaction enjoyed and foreseen goes up.⁷⁰

We need a vibrant electorate, popular sovereignty, majority rules, and minority rights. Polyarchy is a way to bring them into existence. If one establishes a broad⁷¹ and a diverse electorate⁷² – assuming nobody votes for edicts that poach things that belong to everybody⁷³ – we can produce suitable majority rules and minority rights.

11.2 *Sociology*

We live in two tiered societies.⁷⁴ The top is information and technology.⁷⁵ The bottom is services. Information and technology determine the fate of people in services. The top is rich and the bottom is poor. The stability of the arrangement depends upon the wealth the rich give to the poor. Sticks of butter, ounces of lead, human lives are the units of value.⁷⁶ Consumption is the hub around which human existence orbits.⁷⁷ People, religion, and objects are commodities. The market is transformative. Everybody and everything is usable but nobody is indispensable.

Human's life is concentrated in cities where most strive to survive. But society with somebody, that is, *real* intimacy on a personal level with folk is fragmented, heterogeneous, dispersed, surly, and subject to consumerism. Nihilism grips people's lives these days. Meaning, truth, and justice are relative.⁷⁸ Life comes down to exchange value.

11.3 *Economics*

It is an old song sung by elites. Life orbited around kings and clerics. The economic order was in the background. It funded foreign wars and international trade. Time and events eroded the powers of kings and clerics. When they left history's stage the economic order took their place.⁷⁹

Hunger stalked bounty; population treaded upon production; Adam Smith was the sage for the age.⁸⁰ He said: purge the streams of religious dogma⁸¹, let goods flow like water⁸², price with the aid of demand will find its level⁸³, bounty comes from production.⁸⁴ Nations should use the market mechanism. They can build civilisations; carve them out of the wilderness; pull them above subsistence; create wealth; fuel competition, and make citizens better than they would be without competition. *There should be no contracts, combinations, or conspiracies in restraint of trade.* They will gum-up the market mechanism and compromise consumer welfare.

American society is modelled along these lines. It is an industrial scheme that accommodates lower classes, middle classes, and elites. Nowadays, it is two tiered arrangement with elites and plebs. Because the arrangement is fragile, unproductive, and subject to obsolescence, somebody's got to guard against the temptations of a 3D printer world⁸⁵; places where people download designs like we download movie files so robots can make things in real time.

Giving into that world's temptations (i.e., having somebody produce things instantaneously) shrinks manufacturing jobs, ship container business opportunities, truck and rail services, and other industries – all builders of and contributors to the middle class.

Our nation's stability depends upon the amount of wealth elites give to the base. When we abide by or condone a society where a few capture the wealth and everybody else gets the rest, trouble lurks. We need a vibrant middle class or a restoration of one to make economic growth and stability a reality.

11.4 *Contracts*

When you think about things: the human condition is what machines cannot do for us. We are born with feelings, reasons, impulses and appetites. We are more alike than different. We have public faces, private faces, and zones of privacy. The public one is used in social and business discourse. The private face harbours our aspirations, temperament, fears, talents, and appetites. The space between these spheres is the zone of privacy. It is a wardrobe where youngsters rummage through a parent's things to find personas to present to the world; a wall against publicity; and a refuge for those who seek solitude.

Everybody's got implements to get through the day: autonomy (making and implementing decisions that please the self), independence (caches of wealth spent on autonomous decision-making), freedom (going hither-and-yon unmolested by neighbours), liberty (living-out life plans without government interference), privacy (a wall between the family and the public), property (relationships with things), equality of resources (giving everybody a ration of what everybody regards as valuable and auctions to sate peoples' appetites), equality under the law (individual claims to personhood and property), and contracts (options to make deals for goods and services we covet).

Everybody's looking for things and calculating what's good for them. They march down negotiation lines to points where nobody can realise gains without sustaining losses. At points on the line – where rational ignorance takes hold of us – bargaining flourishes and deals come to fruition.

They assume different forms. Some come from Holmes's and Williston's bargain theory ($o + a / c = k$)⁸⁶, Corbin's reliance theory ($p / r = k$)⁸⁷, take-or-pay contracts ($t - o - p / k$)⁸⁸, the Uniform Commercial Code, and deeds ascribed to people captured by computers hooked to the internet.⁸⁹

The hold-up game (using a pre-existing duty to modify existing contracts)⁹⁰, estoppel in pais⁹¹ (representations of fact that cause detrimental reliance), unconscionability⁹², and the reasonable expectation test⁹³ (doing whatever to deny somebody the option to use standard terms to blow up expectations seeded during contract negotiations) invalidate them.

When it comes to performance issues, however, contract law is murky. The common law 'on what to do' is vague and indeterminate. It is for us (the lawyers) to decide what we will do with wilful breach, economic duress, holdup games (deployed to secure new contracts and modify old ones)⁹⁴ and bad faith.⁹⁵

What's been written about these notions is tricky⁹⁶ and tests the boundaries of civility.⁹⁷ Because lawyers are not a part of the operational chain of command at the point of sale⁹⁸, and lay people (ostensibly following contract law) make the sales⁹⁹ and, to a person, seem risk averse but willing to do whatever to help their sellers' business (knowing full well that the bosses' opinions matter more than anything¹⁰⁰ the law will do to them)¹⁰¹ try things that get them in trouble.

Statutes govern some contracts. Where the objects are goods it is Article II of the Uniform Commercial Code. Where contracts capture personal property to address the risk of non-payment of debts, it is Article IX of the Uniform Commercial Code. Some statutes police other statutes to mediate bad consequences. The Uniform Consumer Credit Code is an example.

11.5 *Geology*

Imagine an information trove, capturing the lives, antics, and secrets of ordinary people, that is bundled by somebody and fed to mega computers like grist. Assume the data is about oil and gas deposits and who has what and where. If demand for this type of information exceeds supply, people will buy it.

You see the world is a rock with biological scum smeared over the surface. It is molten material, granite, marble, slate, sandstone, limestone and shale.¹⁰² Precious materials are buried in its crevices. They fuel what men and animals do on the surface. This is valuable stuff. From the mantle comes energy.

Geologists pound sounds into the earth. The reports are plotted by engineers to locate oil and gas.¹⁰³ When caverns are found under a homeowner's plot she's given an estate in the oil and gas. When the cavern straddles two plots the homeowners have correlative rights¹⁰⁴ to explore, develop, and capture oil and gas.

Capture ends when homeowners cheat.¹⁰⁵ Capture ends when homeowners are negligent. Capture ends when homeowners or their oil-and-gas agents abandon projects. Agents secure adverse possession when on-going projects with landholders (ostensibly at an end) are open, notorious, exclusive uses of someone's estate and, without doubt, inconsistent with the true owner's property interests.

Migrating oil and gas is a problem for developers.¹⁰⁶ When they leak into caverns, under an adjacent plot of land, oilmen can recover the caches in condemnation proceedings. Capture under the guise of a lease is suspect. Capture under phony oil and gas license is a trespass.

Landowners own the surface realty. They are granted estates in the caverns holding oil and gas. They are cotenants with working group owners – investors in the oil and gas projects.¹⁰⁷ They can deputise project operators (oil and gas lessees) to sell the loot and do so without permission from cotenants.¹⁰⁸ When an operator sells a store after his authority has been revoked by a cotenant, or worse, without directives ascribed to one, the sale amounts to conversion.¹⁰⁹

Real property accommodates life estates and remainder interests. But remainder men cannot enter into oil and gas leases without the life estate holders' consent.¹¹⁰ Life estate holders cannot enter into oil and gas leases after their life estates come into existence.¹¹¹ Both deals are invalid. The latter creates waste.

Today, prospecting for shale is the new normal. Folks are cracking rock to capture gas. Conventional wisdom governs exploration, capture and sale. The profits are enormous. The costs to us are unknown.¹¹²

11.6 *Cyberspace*

If physical reality is a dead and virtual reality is touted as a suitable substitute, we've got lots of folk waiting in lines to go somewhere. Cyberspace is like an old growth forest. People have erected virtual settlements.¹¹³ Others have established outposts to spy on settlers.¹¹⁴ It is the wild-west – a wilderness so to speak – populated by pioneers and policemen, and, god knows, we need more to arrest bad men lurking everywhere.

This old growth forest is a boon for geeks. With algorithms, statistics, probabilities, and machines, they can do anything. They are *free radical* people willing to do anything to get close to top servers and their powers; and everything to avoid obscurity, irrelevance, and poverty.

But, underneath all this, there is a life-and-death struggle for our virtual souls. It is 'calculations versus thinking' and 'algorithms versus judgement'. We ordinary folk are krill waiting to be eaten by the big fish. It is 'do as you are told' and 'not as I do'. The trophy to be won is us.

11.7 Monopolists

There are mega servers, entrepreneurs, and monopolists¹¹⁵ in cyberspace. Big servers are monopolies.¹¹⁶ When they join clouds they form shared monopolies. These entities are forces to be reckon with in our economy. They raise barriers to entry for new firms; lower retail prices to levels that are unsustainable by established firms; push them out of the market; level competition; fix prices; and do untold damage to consumer welfare.

Google is a monopolist. It auctions patrons to needy entrepreneurs. It is 1950s golden age of television and advertising all over again. Google puts out lures – free information about everything – to collect customers. Entrepreneurs get advertising space to pitch their wares to them.¹¹⁷

Walmart is a monopolist and a global entrepreneur.¹¹⁸ It uses its computers and algorithms to optimise the cost of buying products for customers.¹¹⁹ Digital scouts plot the globe, marking locales where Walmart can buy goods cheap.¹²⁰ When suppliers get uppity Walmart goes elsewhere. It removes obstreperous firms from its supply chain – it is the firm's form of punishment – to make room for suitable substitutes.

Walmart corals sources of supply and buys in bulk to tie-up markets. It drops bid prices to levels distasteful and unsustainable by belligerent supply firms making it difficult for them to do business with anybody. At home, Walmart does what all monopolists do.¹²¹ They lower domestic prices¹²² to levels unsustainable by established firms; driving them out of business in small towns and small markets, shrinking, in the end, the retail choices available to consumers.

Apple is a monopolist.¹²³ When patrons buy smart phones Apple leases its information pathways and apps. When customers abandon their smart-phones for trade name substitutes, they forfeit the information pathways, information about themselves, and the apps.¹²⁴ At day's end the patron's needs, habits, and appetites encoded in leased stuff belongs to Apple.¹²⁵ It is the firm's property. Apple can put it in a cloud; share it with other servers; and sell *their patrons* to others.

Bringing up the rear is the Department of Defense (DOD). It is a monopolist. It is assembled information soldiers¹²⁶ (worms¹²⁷, trojans¹²⁸, viruses¹²⁹, algorithms, statistics and probabilities) to drop on foes, their encampments, and machines to degrade and destroy them.¹³⁰ DOD's has purchased brain power and machines and bundled them to perform these feats under the Law of War¹³¹, Hague Convention (policing espionage during armed conflict)¹³² and Vienna Convention on Diplomatic Relations (normalising espionage during peacetime).¹³³ Of course, on a normal day, sane people want to avoid war and minimise human suffering. *But what the law does not forbid people to do here-and-there*, it permits.

11.8 Cybercrime

Cybercrime is a new frontier. Avatars can do anything. We need laws, a coordination of the law, sheriffs, marshals, digital deputies, systems engineers, prosecutors, judges, and

courts to hold people accountable for defacing websites¹³⁴; rummaging through people's computers; and stealing information that belongs to somebody else.¹³⁵

Emailing proprietary information from a company computer to one's self is suspect.¹³⁶ Putting it to use against an owner's wishes is a crime.¹³⁷ Altering privilege information is a violation of the Computer Fraud and Abuse Act.¹³⁸ Sharing proprietary information with rivals is a crime.¹³⁹ Phishing¹⁴⁰, fishing¹⁴¹ and auction fraud¹⁴² are bad deeds. Using computers and GPS systems to locate password free servers is suspect. Selling the loot is a crime. Here are a few cases.

- a Jeffrey Gast was an employee of Shamrock Food Company. He signed a confidentiality agreement promising not to disclose the company's proprietary information and trade secrets. He used a company computer to send confidential and proprietary information, belonging to his employer, to his computer. Thereafter, he resigned from his job and went to work for a rival. A short time after Gast's job ended Shamrock conducted a forensic audit and discovered the email Gast sent to himself. Untethered proprietary information susceptible to capture by rivals was a threat to Shamrock's business. The company brought an action against Gast to recover damages for the cost of the forensic audit under the Consumer Fraud and Abuse Act. Was Gast's deed a crime? The answer was no. Assuming defendant was a full time employee at the time, and authorised to use the company's computer, sending data to his computer was allowable under the law.¹⁴³
- b Koch Industries assembled a web site to spread its message about global warming and climate change. A foe (John Doe) spent time and his acumen plumbing records to assemble a fake website that put Koch in a false light. Koch spent time and money fixing its image and, thereafter, brought an action to recover damages under the Consumer Fraud and Abuse Act. The court dismissed the complaint. Website owners, the court said, should post password protection sentinels around their websites; use bold and fearsome language to ward off miscreants; and remind web users in no uncertain terms about the terms and conditions of use for their websites. Since Koch did none of these things it could not recover damages.¹⁴⁴
- c Cisco Systems Inc. manufactured network switches and routers and performed related computer services. Cisco Technology was owned by Cisco Systems Inc. Peter Adekeye (defendant) worked for Cisco Technology. On or about 2 March 2005 defendant founded a corporation that did business in competition with Cisco Systems. Adekeye terminated his employment with Cisco Technology and, thereafter, persuaded a Cisco employee to lend her user name and password to Adekeye so he could plumb Cisco's data for his business. After discovery of the trespass Cisco brought an action against Adekeye under the Consumer Fraud and Abuse Acts. The court awarded the plaintiff damages for the cost of staunching the flow of privileged information. Poking into somebody's computer is vile. Tricking a server is suspect. Poaching information crosses the line. When the victims spend money to staunch the flow of information, culprits must reimburse them.¹⁴⁵
- d Sergey Aleynikov was a software innovator, systems engineer and an employee of Goldman Financial Services. Goldman purchased a software system, tweaking it a bit, to execute internet trades in the stock market. Goldman hid his scheme and posted sentinels to preclude public scrutiny. Aleynikov was acquainted with the system and knew how it worked. He down loaded the system's codes, beamed it to

himself in Germany, and hid what he'd done from Goldman. There was a meeting in Chicago Illinois. At that meeting he gave Goldman's rival the codes. Authorities arrested Aleynikov for wrong doing. He was charged with crimes under the National Stolen Properties Act, Economic Espionage Act, and The Consumer Fraud and Abuse Act. The court said the codes were goods, under a pertinent statute, and transporting them across state lines was a crime under the National Stolen Properties Act. Goldman's source code was a product, under another statute, and giving it to a rival was a crime under the Economic Espionage Act. Since the Consumer Fraud and Abuse Act criminalises electronic trespass Aleynikov's misuse of the looted information (the deed) was beyond the scope of that statute.¹⁴⁶

Academics, lawyers, and judges should read relevant cases analysing cybercrime statutes; plumb words in the statutes and give them their ordinary meaning before they're applied to the facts. They ought to utilise a statute's legislative history; read, synthesise, and use house and senate reports; adopt the reasoning ascribe to certain expressions highlighted in legislative history; implement legislative aspirations; use *pari materia* to determine when statutes are compatible with each other; and adopt presidential missive about cybercrime legislation to cipher for would-be lawyers and courts the meaning of various statutes.¹⁴⁷

11.9 Constitutional law

American history is a tragedy. The North won the Civil War. But the South foisted a bad deal upon them. The reconciliation costs were industrial slavery and the permanent subordination of blacks.¹⁴⁸ Legislation was put in place to seal the deal. Ignorant whites who hated blacks¹⁴⁹, working class whites who feared competition¹⁵⁰, and educated whites who saw a menace in the rise of blacks¹⁵¹, insured that nothing would change.¹⁵² Their children, by contrast, unsullied by this non-sense, have done everything they could to uplift blacks.¹⁵³ To date, thanks to their help, a bitter struggle goes on between members of the white elite. Powerful figures pro and con cannot make up their minds about what's to do next. The nub of the problem is society's tip towards white men in all things.¹⁵⁴

Regrettably, what's been done to blacks forecasts what will get done to everybody. We've spent 148 years and, undoubtedly more time will get spent, tweaking and amending parts of the nation's deal to get our social arrangements right.¹⁵⁵ Maybe literacy, excelling in school and performance on the battlefield will make a difference.¹⁵⁶ But, at all times and without pre-conditions, advocates must assert their manhood, as defined by the times, to get integration for black men and women, full citizenship, and amalgamation with everybody else. We need lots of 'civil rights courtrooms',¹⁵⁷ open minded judges¹⁵⁸, and spokesmen who will speak authentically about the aspirations of blacks in words white men understand.¹⁵⁹

11.10 Alternative dispute resolution

All clients are bottom feeders. If you take social class and economic station out of the equation, whatever the contest, the combatants have lost something. Lawyers have to ask their clients open questions – to get their input – and closed questions – to compile evidence. They have to swim in their milieu and cope with their values to find solutions

for them.¹⁶⁰ They have to point out certain rights, obligations, and ethics along the way and the consequences ascribed to the choices the clients make.¹⁶¹

The lawyers need emotional intelligence¹⁶² – to grasp problems holistically¹⁶³ – and mediation skills to get something done.¹⁶⁴ When it is a commercial transaction that a client wants the lawyer to fix he's got to capture the organic agreement (the client's personal contacts, the parties' unwritten norms and expectation and, with this bundle, do whatever to keep the arrangement going).¹⁶⁵ The lawyer-teacher can do this with simulations.

12 The simulation

There is a saying ascribed to elders that got reinforced in me. *Everybody's an accident*. Chance and circumstances determine a person's fate. Consider the following: A and B are lesbians. B is a natural parent. The parties formed a union and added children by artificial insemination. The relationship fell apart. B terminated the arrangement. While B worked A cared for B's children. B brought that undertaking to an end. Thereafter, A brought a legal action to procure custody and visitation rights.

On June 6, 2013, T.M. Hopkins called me about this case. She needed an expert witness. She forwarded transcripts and briefs to *In re T.P.S.*¹⁶⁶ The facts are as follows:

Deanna Sanders is the biological parent of Thomas Patrick Sanders. He was born on January 16, 2006. Kaylee Mae Sanders was born on October 21, 2008. At the time of birth Deanna lived with Catherine White. Catherine was named co-guardian of Thomas Sanders and Katherine Sanders. The parties separated in 2009. Deanna commenced litigation to terminate guardianship in 2010. The facts appear in *In re the Matter of T.P.S.*, 2011 IL App (5th) 100617, 954 N.E.2d 673, 352 Ill. Dec. 590. Catherine filed a petition to establish parentage, custody, visitation and child support on January 5, 2012. On February 19, 2012, Deanna filed a motion to dismiss. Catherine filed a memorandum in opposition to Deanna's motion to dismiss. There was a hearing on April 5, 2012. Judge Brian Lewis issued his ruling on April 5, 2012. It was filed and stamped on April 6, 2012. Catherine filed a timely appeal. Separating children from someone they knew, she said, caused them heartache, anguish, and distress. She brought a common law action to secure access to them.

I want you (students) to gather the pertinent laws and Illinois statutes; synthesise the cases; distinguish them; do statutory construction and analysis; write an opinion letter and an interoffice memorandum. Can the petitioner use promissory estoppel, equitable parent, contract implied in fact, and equitable parent to secure custody and visitation rights in Illinois? The trial is this year. You have a semester to get the project done.

13 Opinion letter

People can make contracts. But contracts clashing with statutes are invalid.¹⁶⁷ Evolving, detailed, comprehensive legislative schemes for custody and visitation rights evince a legislative intent to displace the common law about parenthood with statutes.¹⁶⁸ Since Catherine wants to use a contract to capture parenthood rights, provided for by statute, her contract theories and claims are invalid.

Sadly, a recent judicial pronouncement¹⁶⁹ – utilised by an Illinois court – took a different tact.¹⁷⁰ Judges need express statutory declarations that ‘common laws have been overruled’ to preclude their use in cases.¹⁷¹ For Deanna, this interpretation of a statute blurs the line between adjudicative and legislative functions. It pinches the power of the legislature to provide for the common welfare giving, in the end, adjudicative bodies the wherewithal to go off on their own to make new laws.

Though a noble thing to do and morally upright, this undertaking is wrong.¹⁷² Judges find and apply established moral principles in our legal order to facts. When deciding cases they apply the public’s opinions (about man) that have stuck over time; that is, human achievements ‘racked up in the law’ by states in their long slog through history.¹⁷³ Legislatures, by contrast, do something different. They make decisions about policy and collective welfare.¹⁷⁴

White versus Sanders is about Whites legal standing. Biological mothers have standing and the option to use promissory estoppel under the Illinois Parentage Act to get child support.¹⁷⁵ Non-biological fathers have standing and the option to use equitable estoppels under the Parentage Act to get custody, provided, the presumption of paternity has not been rebutted at the time the petitioner seeks relief.¹⁷⁶

Since Catherine White cannot cloak herself with the pertinent language, in either statutory category, she will lose this case. Illinois does not recognise equitable parent. De facto parent (derived from equitable estoppels) will not work because there is no evidence for words, lies, or concealments, ascribed to the biological parent (Deanna Sanders) upon which the non-biological parent relied to her detriment.

14 Memorandum

This spat is between positivists and anti positivists.¹⁷⁷ Anti positivists want to overthrow the law on morality grounds. Positivists (who loath morality tests) propound that statutes are valid and should be followed when advocates go through the appropriate legislative steps to bring them into existence.¹⁷⁸ Anti positivists (by contrast) claim that all laws are subject to background morality.¹⁷⁹ When statutes clash with national identity or a bit of the nation’s personality, i.e., human achievements racked up by a nation amidst its long slog through history, the offending legislation must fail.¹⁸⁰

People can make all sorts of contracts. Heterosexuals can erect marriages with them. Same sex couples can establish civil unions. When they add children to the mix the natural parents get the trappings of parenthood. When marriages break-up biological parents get custody and visitation rights. When civil unions break-up the non-biological parent gets nothing.

Illinois recognises marriage, parenthood, and civil unions.¹⁸¹ Under the Illinois Parentage Act authorities recognises parenthood by artificial insemination.¹⁸² After break-ups the Dissolution of Marriage Act gives natural parents custody and visitation rights.¹⁸³ Anti-positivists want to gloss the Illinois Parentage Act and scruff-up some language in the Marriage and Dissolution of Marriage Act to accommodate promissory estoppels and other common law notions that, if accepted, secure custody and visitation rights for disgruntled non-biological parties in same sex relationships.

Though suitable justifications for doing something in other jurisdictions, they are unsuitable in Illinois. In three cases courts turned down non-biological parents’ requests

based upon these notions.¹⁸⁴ In one case, however, the court granted a non-biological parent's request.¹⁸⁵ In that case, the court deflated the superior rights doctrine accorded to natural parents¹⁸⁶; discarded recent cases on same sex marriages (because it did not like the legal analysis); utilised a heterosexual case addressing a biological parent's child support rights to bolster its position¹⁸⁷; and made last, but not least, that particular case more important than relevant same sex cases to get at words giving lesbians common law custody and visitation rights.¹⁸⁸

It goes without saying that the court's work was noble, moral, and upright. But 'what was done by this body' was indecorous and wrong. Legislatures make policies about peoples' rights. Judges use common law principles to enforce existing rights established by legislatures.¹⁸⁹ In this case, the court overstepped its bounds. It made rights where there were none. Acting like a legislature, under the guise of doing what is best for a child, it reconfigured an arrangement under same sex relationships.

Now there is a notion. It is called *de facto* parent in some states. It is a legal status bestowed by courts on non-biological parents in heterosexual and same sex marriage cases. It presupposes a break-up and a bond with the biological parent's child. The non-biological parent must use the biological parent's words, writings, conduct, silence, and inactions, as regards what the non-biological petitioner's real relationship is with a child, to get this status. It comes down to whose version of reality authorities believe in light of the facts. The non-biological parent is given the trappings of parenthood in other jurisdictions, but Illinois does not recognise the status.¹⁹⁰

Equitable estoppel produces *de facto* parents in Illinois. The non-biological parent can use this notion to negate a biological parent's refutation of a parental bond with a biological parent's child. The non-biological parent must produce incriminating documents, evidence for concealment, lies (ascribed to the biological parent), words, conducts moments of silence and reliance to win.¹⁹¹

When children come into being, in a marriage, the adults are deemed the parents.¹⁹² When a natural parent discloses the biological parent's true identity to a non-biological parent, he loses his paternity rights.¹⁹³ But, by some sleight of hand in Illinois, he retains them when the presumption of paternity is not rebutted at the time he seeks relief.¹⁹⁴ There is something called equitable parentage at common law.¹⁹⁵ But Illinois neither recognises nor utilises the concept.¹⁹⁶ It presupposes words, conduct, oral, and written agreements establishing a parent type relationship.

Now, having said a lot about family break-ups, children, and common law contracts, Illinois courts utilise promissory estoppels under the Illinois Parentage Act.¹⁹⁷ If a man promises a woman that he will support her and a youngster *in vitro* and, thereafter, his vow changes the woman's life, he is hooked. If she brings a young life into being, because of this vow, and he reneges on his pledge, the court imposes child support obligations with promissory estoppel.¹⁹⁸

15 Pause and reset

It is a sad situation on university campuses these days. With regard to tweaking university life, e.g., adding students, furnishing new values, providing sample courses, simulations, and getting all this stuff implemented, intellectuals are not in the university chain of command.¹⁹⁹ They are not calling the shots²⁰⁰. Thicker heads and men of practical affairs determine everybody's fate.²⁰¹ Intellectuals make noise. They are

mouthpieces for educational policy makers.²⁰² They rationalise what they do. They sound alarms for everybody – giving decision-makers the option to avoid bad things. The question is: do they listen? The answer to that question is unknown.

Intellectuals congregate in groups: ronins and samurais. The ronins sides with the masses on campus when the governing school elites (samurais) are weak. The eternal struggle between these folk for and against social policies feed universities; keep people vital and society growing. But there is a cautionary tale about all this commotion on campus. Throughout history and, almost every time, elites side with the strong over the weak.²⁰³ They use glibness, jocularly, jargon, statistics, gadgets, ignorance, terror, anxiety, and bullies to build civilisations for themselves.

16 The British plague

British universities (their elites) are throwing smaller piles of cash at herds of students²⁰⁴ – some of whom are ill suited to graze in the fields of knowledge.²⁰⁵ Market forces have forced schools to spend money they do not have to keep pace with school ratings. Managerialism (the experts' obsession with organising and regulating what academics deliver to students) has made things worse.²⁰⁶

Diversity (a fancy way to describe what a hodgepodge of students expects to get from higher education) and what a university expects from students clash. There are disconnects between what universities deliver and what students take from lectures.²⁰⁷ Endless forms to be filled out, for university management experts, and entreaties for more information steal time academics set aside for teaching and research; degrading in the end the quality of what students get from their university experience.²⁰⁸

Students get bits of learning.²⁰⁹ They buy blocks (modules) to build an image that they know something.²¹⁰ This is cheap education writ large for a diverse group.²¹¹ It is a way for bean counters to audit quality (the knowledge amassed by the students)²¹² and the performance of the delivery agents (academics).²¹³ Attendees assemble blocks to buy one to three years of university credentials that get used (depending on the user's personal situation) in job searches and interviews.²¹⁴

From and employers' perspective, the question is: what am I getting from these interviewees?²¹⁵ Are they folk stocked with knowledge 'that some things have happened in the world' or knowledge about 'how to get some things done'? In Britain, there is a push to fit students for employment²¹⁶; to make universities commercial centers²¹⁷ forcing some, if not all, to forge links with industry.²¹⁸

In haste, British educators have hidden bad stuff in plain sight. The modularisation of education (the market model) has commodified knowledge and managerial expertise.²¹⁹ Giving ill suited university students smaller dosages of high end knowledge may guarantee that *the least* among them get something.²²⁰ But there are costs:

- a retail education
- b retail educational attitudes²²¹
- c higher dropout rates
- d surface knowledge
- e a dearth of deep learning.

University intake expectations – good study habits among students, reading proficiency, basic understanding of ordinary things, analytical gifts, and writing skills – dwarf what freshmen bring to the UK classes.²²² Mismatches produce high anxiety, test aversion, class avoidance, class withdrawals, and dropouts.

Ill suited university students skim stuff. They collect unrelated facts, opinions, beliefs, abilities, and skills that do not involve significant understanding, interpretation, or integration with related knowledge.²²³ They are missing, indeed, never get critical self-conscious evaluation of what they've compiled and its usages in the wider world.²²⁴

They are without deep learning (knowledge, beliefs, abilities, and skills connected together to bring about a coherent view of the world).²²⁵ This is the university material – the so-called basic stuff – students should have and use to explain what they've learned and know.²²⁶ It is the bits and pieces of higher knowledge from which they can generalise and, in appropriate cases, transfer to other areas, topics, and activities.²²⁷ It is this font of knowledge that makes humans educated.

17 The American dilemma

Knowledge is at the centre of American life.²²⁸ Folks are united by a quest to get some by decorum (hurling ideas at others to find truths) and indecorum (hurling the humanities and the sciences at others to find the good.) Religion perches on the rim of knowledge.²²⁹ People have the option to immerse themselves in theology and the poetry of the bible or not. University students – modern day acolytes – are united by their relativism²³⁰ (truth is what I perceive) and an allegiance to equality²³¹ (equal dignity and equal respect). Society is a metaphor for a net binding everybody and everything.

Some want to forge a majority around fundamental rights (e.g., foraging, gleaning, and working) and political schemes to prevent majorities from taking rights from minorities.²³² Others want a fractious-factional society²³³ with feelings (the intensity of one rival's feelings over another's) to determine the day.²³⁴

Into this brew American universities have pitched their wares and, therein, one finds their failures.²³⁵ Students were not (indeed are not) interested in what is out there (history and philosophy)²³⁶ or the truths (what virtuous men say about life).²³⁷ Everybody who's worth anything, (they think), and everything of value is in the United States. All you have to do is to take a sample. If you do not like one, you can try another.

It is a bad time.²³⁸ Schools have abandoned the excavations of all cultures for the good and the bad, and what we could learn from the good and the bad, for a blind embrace of all cultures as the embodiment of truth.²³⁹ Feelings, opinions, and a penchant for what is simple trump principles, insights, and judgement (what we eked out of studies about what is the best and the most constructive facets to mankind).²⁴⁰

Universities have lost their way.²⁴¹ They have not recovered, indeed, cannot reconfigure their offerings so students can examine their lives and survey their potential through deeper and penetrating examinations of the rich materials afforded them. Passions trumped reason.²⁴² Theoretical type teachers have succumbed to the antics of practical men.²⁴³

Today's teachers and administrators should place clarity above compassion and emotional well-being; tamp down our base urges and temptations as human beings; and subordinate university snobbishness for standards.²⁴⁴ Officials should put Aristotle and

Homer on display; share their insights with students; and show them how to apply their ethics to everyday life.

Universities should be or become breeding grounds for intellectual aristocracies.²⁴⁵ They should sequester dogma, dogmatism, and public opinions; minimise what this does to students; and make doubt the hallmark for learning.²⁴⁶ They should promote theories confirmed by life experiences.²⁴⁷ *In the end*, it is not about confirming that men and women are weak and, thereafter, giving into jingoism to make them feel better. It is about rescuing mankind from its anguish with reason and setting it on a path of doubt to make everybody's personal life better. *In the end*, higher education based upon feelings, opinions, and images must give way to education based upon science, literature, philosophy, and reason.

18 Conclusions

I am indebted to my mother. I want to pay it forward. She furnished me with an education that made *my life* better. I *now* want my grandchildren to have that and more. I want them to learn how to read, weigh what they read, reason, and apply ethics to everyday life. I want them to shun gossip, dogma, and other people's opinions. I want them to be curious about their surroundings, respect authorities, but never bend to their arbitrary will.

I want them to have doubts (healthy ones) about other people's certainties. I want them to get a liberal education; that is, schooling that sharpens their capacity to examine questions from diverse disciplinary, philosophical, and political points of view.

I want them exposed to teachers who will sow the seeds of doubt and curiosity about everything. I want them to learn civics – the virtues and social skills we need to keep the American experiment going; the stuff that highlights social actions we should, indeed, must avoid to preserve the expectations we have for each other; and last, but not least, the commitments we've made to each another (from one generation to the next) to stick together through thick and thin.

To that end, the latest rage (quarter systems, modularised instruction, teaching for the tests, meaningless mid-term examinations, fitting students with skills for jobs in sunset industries) needs to be condemned by academics, abandoned, and drummed out the academy. I want my grandchildren, indeed, all grandchildren to strive for things as human beings; to prosper as intellectuals and grow as adults.

Notes

- 1 We live on a commons that rewards people for their novelties. Reality is a closed circle. It is what folk see in their surroundings and hear somebody say to them. Reich, C.A. (1970) *Greening of America*, p.24, Bantam Books, USA. This reality is fading to black. Id. at pp.28–29, giving way to new ones. See Kelly, J. (2013) 'As oil floods the plains towns, crime pours', in *N.Y. Times*, Sunday, 3 December, at p.1; Swartz, N. (2013) 'Where factory apprenticeship is the latest model from Germany', *N.Y. Times*, Sunday, 1 December, p.1. Hereinafter cited as N. Swartz.
- 2 Universities provide venues for mixing different people; forums for the presentation of diverse views and perspectives; and skills training to address community needs. *Fisher v. Univ. of Texas at Austin*, 631 F.3d 213, 219–220, 236–237 (5th cir. 2011) vacated and remanded 133 S. Ct. 2411 (2013). Its core function is to educate youngsters in the physical sciences,

- engineering, social sciences, business, and humanities. Id. at p.257. Some administrators use relationships to govern university spaces while others use relationships and merit.
- 3 Gibbons, L.J. (2009) 'Law and the emotive avatar', *Vand. J. Ent. & Tech. L.*, Vol. 11, p.899.
 - 4 Chaffin, S.M. (2008) 'The new playground bullies of cyberspace: online peer sexual harassment', *How. L.J.*, Vol. 51, p.773.
 - 5 E.g., N. Swartz, *supra*. note 1 at 1.
 - 6 The humanities are in decline in universities. Teaching jobs are disappearing. We can rebuild the humanities from the ground up in kindergarten through grade-12 schools. We have to spend money on these institutions; find top flight teachers; recruit them from the pool of would-be university professors (who cannot find work); pay qualified candidates good salaries; and last, but not least, furnish everybody with suitable working conditions. 'The real humanities crises', *Sunday Review, N.Y. Times*, Sunday, 1 December 2013, p.8.
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 - 8 It is the enigmatic soul – a space warehousing facts, shadowy images of events, and whatever that gives a person his personality and sense of direction.
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 - 10 Carr, N. (2010) *The Shallows*, pp.112–114, W.W. Norton&Company, USA.
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 - 12 Salisbury, A. (2009) 'Skills without stigma: using the jurist method to teach legal research and writing', *J. of Legal Educ.*, Vol. 59, No. 173, pp.210–211.
 - 13 *Margaret Mead Facts, Information, Pictures* [online]
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 - 15 *Walter Lippmann, Facts, Information, Pictures* [online]
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 - 16 *Dalton Trumbo – Biography-IMDb* [online] <http://www.imdb.com/name/nm0874308/bio> (accessed 18 May 2015).
 - 17 *Steven Spielberg Biography, Facts, Birthday, Life Story* [online]
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<http://pbs.org/wnet/americannasters/episodes/lillian-hellman/ab...> (accessed 18 May 2015).
 - 19 Naim, M. (2013) *The End of Power*, Loc. 2816/345%, Basic Books, USA.
 - 20 Id at Loc. 1490/18%, Loc.1516/19%.
 - 21 Id. at Loc.2315/28%, Loc. 2321/28%.
 - 22 Id. at Loc. 4629/57%.
 - 23 Ramlogan, R. (2009) 'Creating international crimes to insure effective protection of the environment', *Temp Int'l & Comp. L. J.*, Vol. 22, p.345. See Deflem, M. (1996) *Habermas, Modernity and Law*, p.4, Sage Publications, USA.
 - 24 People have the option (undisturbed by others) to buy, sell, and contract; choose their abode; pick their diet and callings in life; procreate or not; and hew their offspring as they see fit. Hobbes, T. (1985) *Leviathan*, p.264, Penguin Books, USA. When folks are living a life of rectitude there is an understanding, albeit an informal one, that others should leave them alone. *Melvin v. Reid*, Vol. 297, pp.91, 93 (Cal. App. 1931).

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- 56 Id.
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- 58 Id.
- 59 Id. We could capture and ship CO₂ from power plants to basalt-water-solution sinks to make chalk. See McGrath, B. (2013) 'Drill baby drill', *The New Yorker*, 2 December, p.24. We could bubble air through calcium-hydroxide-solutions to capture CO₂ and, thereafter, ship the same to sinks. Lackner, K., Grimes, P. and Ziock, H-J., *Capturing Carbon Dioxide from the Air* [online] http://www.netl.doe.gov/publications/proceedings/01/carbon_seq/7b1.pdf (accessed 20 May 2015).
- 60 The question is: What law governs life? The answer comes from sentient beings that live in harmony with their surroundings. Quinn, D. (1993) *Ishmael*, p.107, Bantam, USA. Humans take a lot of nutrients from nature that sustains all life. See also Commoner, B. (1971) *The Closing Circle: Nature, Man, and Technology*, pp.2–3, Alfred A. Knoff, USA.
- 61 Government warehouses phone information and rummages through the cache to find spies. The cost is privacy. A federal court has declared this activity unconstitutional. Klayman v. Obama, ___ F. Supp. 3d ___, Civ. Action No. 13-0841 (RJL), 16 December 2013.
- 62 Lizza, R. (2013) 'State of deception', *The New Yorker*, 6 December, p.48. See Kaufman, S. (2013) 'Lost on a digital planet', *International Herald Trib.*, 10/15/13, 2013 WLNR 25868816.
- 63 Lanier, Supra note 33 at p.64.
- 64 Hayek, F.A. (1994) *The Road to Serfdom*, pp.46–47, University of Chicago Press, USA.
- 65 Duly constituted legislatures, legislative activity, juridical boundary layouts, and physical space, produce laws for land that are ill-suited for cyberspace. Folks assume authorities can capture malefactors and sequester their property. That is problematic in cyberspace. Consider the damage done to target stores. Tracy, R. (2014) 'In a cyber breach, who pays?', *The Wall ST. J.*, Monday, 13 January, Part B, p.1, see *Wall Street Journal Online*, 12 January 2014, WSJ.com Edition, <http://advance.lexis.com/document?crd=2f591c67-146a-4810-b0e8...> Management cannot cauterise the wound; get a grip on an investigation; identify the hackers; run them to ground and bring them to justice. Tsukayama, H. (2013) *Target Says 40 Million Credit, Debit Cards May Have Been Compromised in Security Breach*, Technology Section, Washington Post, 20 December 12/20/13 Wash. Post (Wash., D.C.) A01, 2013 WLNR 31805600 [online] <http://lawschool.westlaw.com/desktopdefault.aspx> (accessed 22 May 2015).
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- 67 Id. at 90, 92.

- 68 We want order, certainty, and predictability to promote freedom and free will; and last, but not least, everybody according recognition of everybody else's innate talent, influence, and utility. See Hobbes, T. (1985) *Leviathan*, Penguin ed., pp.120–121; Rawls, J. (1999) *A Theory of Justice*, p.22, Harvard University Press, USA. See Brugger, (1996) 'Concretization of law and statutory interpretation', *Tul. Eur. & Civ. L. F.*, Vol. 11, pp.207–223. It is knowing vis-a-vie another person that there is a line beyond which one cannot not go. See Bahala, R. (1997) 'Hegelian reflections on unilateral actions in the world trade system', *Berkley J. Int'l. L.*, Vol. 15, No. 159, p.219 at fn. 225–229.
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- 71 Dahl, R.A. (2006) *A Preface to Democratic Theory*, Loc. 1382/ 378%-Loc. 1403/38%, University of Chicago Press, USA.
- 72 Id. at Loc.1428/39%.
- 73 Id. at Loc. 511/41%.
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- 83 Id. 32.
- 84 O'Rourke, Supra. note 56 at pp.2–3 (2007). Purge dogma from the market; let people do as the wish; choice should be driven by self interest; labour should be divided among those who do some things best; trade should be unfettered so everybody has a chance to gather wealth.
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- 94 Loral, *Supra*. note 90 at p.535.
- 95 Sanders v. FedEx Ground Packaging System, Inc. 188 P.3d 1200 (N.M. 2008); Best v. United States National Bank, 739 P.2d 554 (Ore.1987). See Speidel, R.E. (1996) 'The duty of good faith in contract performance and enforcement', *J. of L. Educ.*, Vol. 46, p.537.
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198 Id. at 150-51.
199 Hoffer, E. (2006) *The Ordeal of Change*, p.17, Hopewell Publications, USA.
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210 Id.
211 Id.
212 Id. Loc. 729/16%.
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234 *Id.* at Loc. 406/6%.

235 Learned people raised walls of opinion to shut out wisdom. Nowadays, the nation's foes are trained ignorance and bad thoughts. Bloom, *Supra.* note 228 at Loc. 131/2%, Loc. 174/2%.

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