2013

Introduction, Symposium: The State and Future of Legal Education

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Symposium: The State and Future of Legal Education

Introduction

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It is a great honor to introduce the contributions to this provocative Symposium dedicated to analyzing the current state of legal education and the promise of its future. The *McGeorge Law Review* has a long history of important and timely publications. Last year's annual Symposium was dedicated to the jurisprudence of The Honorable Anthony M. Kennedy, Associate Justice of the United State Supreme Court.[1] Justice Kennedy is the longest serving member of the Pacific McGeorge faculty, but is better known as the deciding voice on the United States Supreme Court in many closely contested cases. This year's Symposium topic is no less important and timely. Legal education has been in the journalistic crosshair of the *New York Times*, the *Wall Street Journal*, and a multitude of blogs and other forms of social media. Critics have provocatively challenged not just the financial value of a legal education, but its very purpose. In this Symposium, leading figures in American legal education describe how we can understand and respond to these ongoing challenges. The result is important, timely and energizing. At Pacific McGeorge we are particularly interested in these articles because we have fully embraced the need for reform, even as we cast a critical eye on hyperbolic attacks that do not advance the cause of effective legal education.

Before introducing the contributions to the Symposium, it is important to situate the discussion in its proper historical context. Debates about the future of legal education did not suddenly arise after the financial meltdown of 2008. The future of legal education has been a topic, perhaps not always phrased as such, since the sixth century B.C.E. Contemporary lawyers have inherited the role formerly assumed by rhetoricians in antiquity. Consider the situation in ancient Greece, as the Sophists confronted the destabilizing challenges of pan-Hellenism. At this important juncture, Isocrates embraced the goal of developing an education that could secure social stability within the emerging multicultural world. Centuries later, Roman orators dealt with the complexities of maintaining and administering a far-flung empire in accordance with law. Finally, with the

∗ Dean and Professor of Law, University of the Pacific, McGeorge School of Law. I want to thank Jeff Dodd (McGeorge 2013) for his excellent work as the Symposium Editor and Distinguished Professor of Law Michael Vitiello for his expert guidance as the faculty Symposium advisor to the *McGeorge Law Review*. This Symposium was already planned and underway when I assumed the Deanship of McGeorge in June 2012, and so the credit belongs to Jeff and Michael for conceiving such an excellent topic and bringing it to fruition.

1. Symposium: The Evolution of Justice Anthony M. Kennedy's Jurisprudence, 44 MCGEORGE L. REV. i–268 (2013).

invention of the printing press and the wide distribution of texts, the role of the lawyer was forever changed. To assume that legal educators today face an unprecedented challenge is, well, more than a bit presumptuous.

Nevertheless, the challenges facing lawyers, legal practice, and legal education today are no less daunting than these previous challenges. We cannot claim a unique status, but we must acknowledge that we are experiencing a profound sea change. First, the incessant globalization of legal regimes and legal services has indelibly marked the world, and this process is far from complete. Moreover, the incredible impact of computerization has revolutionized the practice of law, creating a more data-driven and easily segmented approach to legal questions. Finally, the economic pressures for efficiency in legal practice have generated expectations among clients that they will receive superior project management, focused problem-solving, and adept resolution of disputes through negotiation. These trends have all exposed weaknesses in the traditional model of legal education as the parsing of appellate opinions in a classroom dialogue. Professor Kingsfield seems rather quaint and largely irrelevant to the real world of contemporary legal practice.

As we face a challenge equal to that of the ancient Greeks, Romans, or even the medieval scribes who encountered the printing press, our response should hew closely to traditional educational values. Contemporary lawyers will require specialized training in skills and technology that are new to legal education, such as collaborative lawyering in a virtual world, the use of technology to reduce the cost of legal services, and the effort to manage complex and interdisciplinary projects. We should not be too fast to try and predict the future in detail, though. We all remember the disappointment when the individual jetpacks promised to us by cartoons when we were children failed to materialize in our adult lives. We need to respond to rapid change without becoming captive to gimmicks.

My thesis is that we must return to the roots of legal education that extend back to ancient Greece. In our contemporary period of flux we should not view a legal education as acquiring technical knowledge or encyclopedic mastery of the law on the books. To borrow from Thomas Kuhn, this is not the time to teach our students the "normal science" of law.[2] Instead, we must prepare them for a revolutionary period in which the classical attributes of effective lawyers will be all the more important because the specific settings in which these capacities are employed will be changing rapidly. Our graduates must embody superior communication skills, analytical precision, creative problem-solving, and the ability to persuade. Current law school graduates will likely be practicing law or engaging in other related pursuits past 2050. It will be a different world by then—a new paradigm, Kuhn would say—but I have no doubt that the demand for lawyers with these fundamental capabilities will persist.

2. THOMAS S. KUHN, THE STRUCTURE OF SCIENTIFIC REVOLUTIONS (2d ed. 1970).

Karl Llewellyn led the Realist movement during the past century, focusing on what lawyers actually do in the practice of law. In turn, he wrote about how legal education could better prepare students to be excellent lawyers. Counter to the reductionist impulse of many of today's critics, Llewellyn did not conclude that law schools needed to teach their students how to fill out forms, or navigate the hallways of the local courthouse. Instead, he argued that legal education must be viewed as a continuation of a liberal education which combined technical proficiency and broader learning. In particular, he challenged the belief that preparing students to practice law was inconsistent with the intellectual ideals of the university.

> The truth, the truth which cries out, is that the good work, the most effective work, of the lawyer in practice roots in and depends on vision, range, depth, balance, and rich humanity—those things which it is the function, and frequently the fortune, for the liberal arts to introduce and indeed to induce. The truth is therefore that the best *practical* training a University can give to any lawyer who is not by choice or unendowment doomed to be a hack or shyster—the best *practical training*, along with the best human training, is the study of law, within the professional school itself, as a liberal art.[3]

In many respects, his articulation of legal education as a liberal art hearkened back to the rhetorical competence that was the focus of ancient education.[4]

And so, despite the shrill attacks that mark the contemporary "crisis" in legal education, we should not be too quick to get caught up in the moment. Legal education must change in order to prepare tomorrow's lawyers to thrive amidst the many challenges that are now emerging, but that change is probably best defined as training our students to be prepared for a life of perpetual change. Predicting how legal practice will operate in twenty years is not the problem: the fact that nobody can accurately make this prediction is our challenge. I believe deeply that legal education should continue to play an important role in our society. It is a solemn and sacred task to train the guardians of justice, but it is even more vital during turbulent and transformative times. By going "back to the future"—by reclaiming a millennia-long tradition of education and bringing it to bear on present challenges—we can fulfill this task. Our Symposium contributors have provided a diverse range of insights into how we can begin this process.

In her contribution, Professor Katherine Kruse dismantles the false opposition between theory and practice in legal pedagogy. Kruse speaks with

3. KARL N. LLEWELLYN, *The Study of Law as a Liberal Art*, *in* JURISPRUDENCE: REALISM IN THEORY AND PRACTICE 375, 376 (1962).

4. *See* Francis J. Mootz III, *The Irrelevance of Contemporary Academic Philosophy for Law: Recovering the Rhetorical Tradition*, *in* ON PHILOSOPHY IN AMERICAN LAW (Francis J. Mootz III, ed., 2009); *see generally* Francis J. Mootz III, *Vico, Llewellyn and the Task of Legal Education*, 57 LOYOLA L. REV. 135–56 (2011).

authority as one of the country's leading voices regarding clinical education and lawyering ethics, having served for years in leadership positions in the Clinical Legal Education Association and the AALS Section on Clinical Legal Education and Litigation. She explains that the dichotomy between theoretical doctrinal courses and practical experiential courses fails to appreciate that doctrinal analysis is simply one of the many skills that lawyers must master to be effective. Many skills needed to afford adequate representation—research, factual investigation, counseling and persuasion—are subordinated to the focus on analytical precision. In response, many argue that live-client clinics and externships can round out legal education, but the severe cost constraints for law schools today means that simply grafting small enrollment experiential courses onto the curriculum is impractical and misses the mark. Kruse concludes that the basic program of legal education must be restructured to permit an integrated progression of skills training. The majority of her article offers provocative suggestions for how law schools can deliver comprehensive skills training in an era of financial constraint by rethinking the curriculum in fundamental ways.

Many critics argue that law school must be delivered at a lower cost and with more flexibility, leading to interest in online courses. Professor Gerald Hess is a leading expert on legal pedagogy, having founded and directed the Institute for Law Teaching at Gonzaga University School of Law and as the author of numerous books and articles on the topic. Hess concludes that technology has already transformed law school classes, but he advocates the model of blended classes that combine face-to-face instruction with online instruction. After providing a roadmap of the different course formats and the impediments to them under current accreditation standards, Hess argues that empirical research suggests that blended courses might provide the best education for law students. He provides design principles for creating effective blended courses and recommendations for creating effective blended courses in a law school curriculum.

My colleague, Professor Ruth Jones, has been an early and ardent advocate for the new emphasis on assessment in legal education, and as part of the change in higher education practices generally. Her leadership at the law school and the university on this topic has been consistent. In her contribution, she explains the nature of assessment and how a proper focus on assessment would bring welcome changes to legal pedagogy. Although the focus solely on outcomes under the testing regime of the No Child Left Behind Act provides a cautionary tale, Jones endorses the work of the ABA Outcome Measures Committee to include assessment as an accreditation standard. However, she argues that if law schools embrace assessment only to the degree necessary to maintain accreditation, they will miss the opportunity for genuine reform of legal education.

Professor John Osborn offers an alternative approach to the challenges in legal education by returning to the teacher-student interaction as the source of

creative developments that can assist students to find their way in the brave new world. Osborne is a renowned author, most famously of the novel *The Paper Chase*, and he brings his literary sensibility to bear in his focus on his students' needs. Recounting his experience teaching a new course in Estate Planning designed to provide a practical experience for students, he describes how his efforts evolved into a multi-faceted strategy that connected with the Office of Career Planning and the Development Office to brings students together with alumni to focus on the careers available in estate planning. The result was a successful educational experience that led to jobs for his students. Professor Osborn reminds us that it is not only the big ideas that produce big results, and that we must remain open to the fortuitous developments that arise out of our willingness to enter into a genuine and committed educational relationship with our students.

Two proposals for reforming legal education have gained attention recently: providing more focused curricula that permit students to specialize in an area of law and eliminating the third year of law school in favor of an apprenticeship of some form. In both cases, the impulse is to channel students more quickly into practice, thereby saving expenses. However, Professor Michael Olivas challenges both proposals, arguing that the former is largely illusory in practice, and the latter will create even more hierarchy in legal education that will work to the disadvantage of students from poor families or members of under-represented minorities. He speaks as a former member of the Council of the ABA Section on Legal Education and Admission to the Bar, and the former President of the American Association of Law Schools, but he also speaks as a graduate of an evening law program and a committed advocate for equal rights. Professor Olivas suggests that continued regulation of law schools through the ABA may well be necessary to prevent the balkanization of legal education to the detriment of the cause of social justice.

Beyond rethinking how we educate students to practice law, Professor Carrie Menkel-Meadow contends that we need to shape legal education to prepare students for the many roles beyond traditional lawyering that are now emerging. The current crisis concerns the loss of jobs in law firms, but there is an opportunity for people with legal training to find different kinds of work. Drawing from her experience as one of the founders and most important scholars of the modern alternative dispute resolution movement, she notes that her path from being a cause litigator to seeking broader approaches to social problems has accelerated in recent years, with the emergence of "collaborative lawyering" approaches to family law issues as one example. Just as business consultants emerged to fill a gap between traditional professional roles, and as architects shifted to become spatial designers in response to a decline in construction, so too lawyers will utilize their general training in new ways. To meet these new demands, Menkel-Meadow argues that legal education must self-consciously

foster communication skills, problem-solving, practical decisionmaking, and people management skills, among others.

As Dean at New York Law School, Richard Matasar had long championed the need for legal education to adapt to changing times, anticipating many of the issues that comprise the current "crisis" in legal education. Now serving as a Vice President at New York University, he takes the lessons of legal education and applies them to the broader university. If legal education is the "canary in the coal mine" of higher education, the question is whether this warning signal can be heeded in time to avoid a broader and more destabilizing crisis. Matasar carefully recounts the factors that produced the challenges in legal education and then describes the pressing need for legal education to define the outcomes of the program of study, to articulate the value of the degree, and to control costs. He draws from legal experience deep in the mine to address the sudden fascination with technology—and particularly MOOC-mania—that has gripped the popular imagination by reducing education to the transfer of knowledge and a credentialing process. In this way, law schools are not only a signal of the impending danger, but also a model of how the university should confront these contemporary challenges. At the end of the day, the Symposium contributors offer more questions than answers. The mark of their achievement is that they pose far more productive questions than legal education has been asking. While the press and talking heads loudly proclaim the answer to the "crisis" in legal education, the contributors are far more measured in tone and far more realistic in their approach. As all good lawyers know, it is asking a productive question that proves far more beneficial than offering short-sided answers.