The State of the American Legal Profession and the Nation’s Law Schools


In John Flood’s chapter, he raises the question whether the rule of law should be taught within legal education, and if so, to what extent? It is essential to grasp the challenges facing legal education in order to even begin to answer this question.

Those challenges have many sources and come from many fronts:

► under-served clients,

► increased legal technology,

► underemployed lawyers,

► increased demand for legal services affordable to an under-served public,

► pressure to include non-lawyer technical training as part of an overall curriculum,

► admission of non-lawyers as members of law firms,
► the creation of public-private partnerships between global law firms and international institutions, and

► the persistence of the Socratic case method as the standard educational model for legal education (at least in the U.S.). Id. at 7-8.

Training initiatives through the American Bar Association, the English Law Society and the International Law Institute, have developed the common aim of instilling the ideal of the rule of law in “overseas lawyers who might not receive any such training in their own countries.” Id. at 8.

Among the most difficult problems facing legal education from a U.S. perspective are the high debt levels, declining law school application rates, and employability of recent graduates, particularly since the 2008-09 Great Recession.

A growing fear in some quarters of computer technology overtaking the legal profession, while very real, is overstated and, many believe, unfounded.

This is not as bleak an outlook as one might think. As Flood puts it, there are core professional values that “computers cannot provide, notwithstanding massive computing power – counseling, a robust understanding of law, an appreciation of client interests, the provision of reasons, and interaction with the legal system....” Id. at 10. These core professional values are a central part of the rule of law and illustrate a fundamental connection between the two. Id.

**The Future of Legal Education**

The Report and Recommendations of the American Bar Association Task Force on the Future of Legal Education was commissioned in 2012 and published in 2014. The Task Force identified forces and factors, some overlapping, that must be taken into account to improve the legal education system and to address its problems. Its key conclusions touched on pricing and funding of legal education, accreditation, innovation, skills and competencies and broader delivery of legal and
related services. Among the principles that guided the Task Force in its work were the following:

1. The system of legal education in the United States should meet society’s need for persons who have knowledge and ability to deliver legal services;
2. The system of legal education should be decentralized and include both public and governmental parties;
3. The system of legal education should minimize obstacles for those who wish to pursue a career in legal services and who have the ability to do so;
4. Law schools and other organizations that provide programs of legal education are accountable, in respects appropriate for the program, for delivering the public value of legal education;
5. Law schools and other organizations that provide programs of legal education are accountable, in respects appropriate to the program, for delivering the private value of a legal education;
6. Law schools are not solely responsible for the public value of providing legal education to lawyers.

As the Report noted, while there are many problems relating to legal education, the most profound ones – the price of legal education and the culture of law schools – are not susceptible to any quick fix. Id. at 4.

A fundamental tension lies beneath these problems. The training of lawyers requires public value, but that training also provides private value.

Public value perspective

Lawyers play a central role in the effective functioning of an ordered society, and that society has a profound interest in lawyers who are competent, available, and whose actions reflect professionalism. This public-value perspective obligates law schools to deliver training programs with certain characteristics, as with the requirement that law schools teach professional responsibility, a requirement that stemmed from public concern over the ethics of lawyers. Id. at 6.
Private value perspective

Legal education provides private value. It provides those who pursue it with skills, knowledge and credentials to enable them to earn a livelihood. This private value perspective suggests that law schools may need to respond to consumer preferences, regardless of the preferences of those within the law school, to ensure continued financial sustainability of their training programs. Id. at 7.

Given the public and private value that training of lawyers delivers, the Report recognizes that there is a “constant, never fully resolvable tension regarding the character of the education of lawyers.” Id. at 7.

Take one example: faculty scholarship. Many would urge that faculty scholarship should have a substantial role in legal education, promoting public value by developing more intellectually astute lawyers and “improving law as a system of legal ordering.” Id. at 7. Others might argue that law schools devote too many resources to faculty scholarship that increases the cost of legal education while increasing the loan repayment obligations of law school graduates. Id.

This tension over the character of legal education is also played out in the debate over the length of the Juris Doctor program, with public value considerations favoring a longer program to ensure that lawyers can deliver the highest quality service to clients, developing in graduates a greater knowledge of legal doctrine, a greater range of law practice-related competencies, greater facility in legal analysis, and deeper instilment of the legal profession’s values. On the other hand, private value considerations favor a shorter training program to lessen the out of pocket outlay and deferred earnings. Id.

Specific recommendations of the Task Force called for a broad range of actions and undertakings by the American Bar Association, the Council of the Section of Legal Education and Admissions to the Bar, State Supreme Courts, State Bar Associations, and other regulators of lawyers and law practice, Universities and other institutions of higher learning, law schools, law faculty members, the legal profession and those who inform the public about legal education.
Task Force Recommendations for Law Schools

While the scope of these recommendations is broad, let us take a quick look at the recommendations for law schools:

1. Each law school should develop and implement a plan to reduce the cost and limit increases in the cost of delivering the J.D. education, and continually assess and improve the plan.
2. Each law school should develop and implement a plan to manage the extent of law school investment in faculty scholarly activity, and continually assess success in accomplishing goals in the plan.
3. Each law school should develop a clear statement of the value of the law school’s program of education and other services will provide, including relation to employment opportunities, and communicate that statement to students and prospective students.
4. Adopt an institution-wide responsibility to promote career success of graduates and develop plans for meeting that responsibility.
5. Develop comprehensive programs of financial counseling for law students and continually assess the effectiveness of such programs. Id. at 34.

Task Force Recommendations for Law Faculty Members

Corresponding recommendations for law faculty members urge them to become informed about the subjects of the Task Force Report and its Recommendations, in order to play an effective role in improving legal education, and to recognize the role of status as a motivator but reduce its role as a measure of personal and institutional success.
CONCLUSION

Law schools today are facing a new era with structural changes in the legal profession, one that many perceive as a legal industry. The reality in 2017 is that there are fewer highly qualified college graduates applying to Juris Doctor programs.

Law school graduates cannot continue to be saddled with unrealistically high debt. Efforts must be redoubled to keep law school tuition at a reasonable level, which in turn will require that law schools give attention to other revenue streams such as annual giving, continuing education, and exploration of additional programs.

Law school leaders can most effectively advance the law school and determine what academic programs to emphasize by having buy-in from faculty and university leadership, as well as alumni and law students. All voices must be heard with respect to central questions and recommendations such as those addressed by the American Bar Association Task Force on the Future of Legal Education.

Anything less than a full commitment to addressing and seeking workable solutions for the problems facing modern legal education will not work. Anything less will impede the historical and time-honored role of law schools as the main gateway to the legal profession. To the generation that follows us, we owe our best efforts to achieve these goals.

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