

CHANGES AHEAD FOR LEGAL EDUCATION?

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*We don't need no education
We don't need no thought control
No dark sarcasm in the classroom
Teachers leave them kids alone
Hey teacher leave them kids alone*

—Pink Floyd,
“Another Brick in the Wall”
(Part II)

When I was reading the recent report of the ABA Task Force on the Future of Legal Education^{Ftn 1} in the United States, for some reason the words from Pink Floyd’s commentary on British education kept creeping into my head. Is the status of U.S. law schools as dire as the ABA’s report can be read to make it seem? Are changes coming to law schools that will perhaps dramatically alter how lawyers are educated and how the profession operates? Is the next generation of lawyers going to be better prepared than their predecessors or will they be “just another brick in the wall,” maintaining the status quo?

I am not sufficiently naïve to think I’m in an expert position from which to judge the task force’s report, or to definitively evaluate the state of legal education in this country. As an adjunct professor, I have only a very small stake in this game. Nevertheless, a few of the report’s conclusions are worth comment. If ever fulfilled, some of the task force’s report’s suggestions have merit.

More Skills, Lower Costs

One of the principal themes of the ABA task force is that legal education needs a shift in emphasis from teaching strictly the knowledge necessary to understand the law

to greater emphasis on the skills necessary to deliver legal services (*i.e.*, to actually practice law). As laid out in the stiff rhetoric of the report,

The balance between doctrinal instruction and focused preparation for the delivery of legal services needs to shift still further toward developing the competencies and professionalism required of people who will deliver services to clients.Ftn 2

Teaching skills to new lawyers was once the expected province of employers: Private law firms, nonprofits, and government agencies would mold young lawyers in the culture and ways of practicing law of those particular offices. But now employers have in part shifted this task onto the schools; many employers now want new law grads to have some such experience already. So law students quite naturally desire more skills training or internship opportunities. That law schools ought to provide greater skills education seems to be perceived as a growing universal truth—indeed, a very informal poll of my professional responsibility class this recent semester indicated that the students perceived a paucity of “hands-on” legal experience as the weakest aspect of their education. They desired more opportunities to deal with real clients, in realistic situations, than law schools normally provide. Those students who chose a larger dose of clinical programs in order to fill that need could only do so by devoting less attention to the substantive subjects they also need to prepare for the bar exam.

The ABA report recognizes that change in the law school approach to curriculum and practical skills training will not be easily accomplished. Our method of educating and training future lawyers has not changed significantly for many years, and law school faculties have been hired with advanced scholarship and to a lesser extent teaching ability in mind. Indeed, the emphasis on and cost of faculty scholarship, despite its potential prestige for the school, was an area of criticism in the task force’s report and identified as a reason for rising tuition. Recognizing that altering such a longstanding approach also can take considerable time, the ABA at least urges encouraging law schools to experiment and innovate more, and thus allow a greater diversity of educational method options. The report also notes that ABA law school accreditation would have to move away from its present uniform standards to support such changes, and that state bar admission requirements may need some changes to facilitate such differences. The report states that the current accreditation system “reinforces a far higher level of standardization in law schools and legal education than is necessary to turn out capable lawyers.”

The ABA task force also focused on the rising cost of legal education and increasing debt load that so many graduating law students face. One of the report’s most pointed critiques is that law school scholarships are heavily weighted towards

merit and not financial need, with result that those students who enter law school with the weakest credentials (lower LSAT scores and lower undergraduate GPAs) tend to incur the greatest debt, which also may impact diversity in law schools and ultimately in the profession.

Although perhaps tangential to its emphasis on law school education, the report also focuses on the need to expand the definition of legal services providers to include more nonlawyer paraprofessionals and legal technicians, calling on courts and bar associations to:

... [D]evise and consider for adoption new or improved frameworks for licensing or otherwise authorizing providers of legal and related services. This should include authorizing bar admission for people whose preparation may be other than the traditional four years of college plus three years of classroom-based law school education, and licensing persons other than holders of a J.D. to deliver limited legal services.

Good Solutions?

Not unexpectedly, some constituencies are not in agreement with the report's findings. Proposals to reduce faculty costs and reduce the emphasis on research and scholarship met with disagreement from many who feel that the advancement of the law would suffer without such efforts and that universities should remain focused on more than just producing technicians. Greater licensing of nonlawyers or relaxing various accreditation and admission standards will face opposition from those who believe current standards best protect the public. Still others have already questioned how any of the task force's suggestions will actually affect the rising cost of legal education. In the end, the report calls for establishing a separate task force to study reforms for the financing of legal education and establishing a center for continued assessment and improvement of the system of legal education.

Does professional responsibility training have a place in the report? The report does not focus on such training, except to cite it as an example of a core-type obligation that must remain intact whatever changes are made in legal education. Certainly, incorporating greater "hands on" training in issues of professional responsibility can be consistent with increased practical skills training, for example, providing students with more real-life situational experience in recognizing conflicts of interest or dealing with difficult candor and honesty issues. Professional responsibility scholarship unfortunately may be a second-tier topic for most law professors, so proposed changes in that regard, whatever they be, may not radically alter the education landscape. Lowering the cost of legal education, especially if it increases diversity and the ability of

new lawyers to accept public law or service-oriented positions, is hard to criticize from a professional ethics perspective.

“Them kids” do still need a solid legal education in order to function as ethical professionals. Whether the ABA task force’s report results directly in changes or merely improves the long-term dialogue, some changes seem inevitable and likely for the better.

Notes

1 American Bar Association. Report and Recommendations: Task Force on the Future of Legal Education (January 2014). <http://tinyurl.com/lyzumtj> Last visited May 29, 2014.

2 *Id.* at 3.