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A Modest Response to a Simple Proposal

by Dean Camille A. Nelson

Counterpoint



In his essay, *Rethinking Law School Admissions Through Accreditation: A Simple Proposal*, Attorney Yurko presents some interesting ideas. The upshot is a suggestion for greater regulation of the market in legal education, due to a market failure that has resulted in significant student debt load, and an assumed inoculation of law schools from the consequences of lower placement rates.

But legal education does not exist in a vacuum. There has been a decline in the “market for lawyers” post-2008, as the US economy shifted from a period of relative expansion to one of economic stagnation, and ultimately financial crisis.

As the demand for traditional professional legal services decreases, there is an inevitable and predictable impact upon legal education as well. Given this interconnectivity, it is folly to assume that one can be fixed (i.e. law schools), without a corollary remedial assessment of the other (the legal profession). Moreover, law schools find themselves in the mix in other complex and, often complicated, systems beyond the legal profession. These other “partners in legal education” also often have strong views about the way forward in terms of the education of future lawyers.

It is increasingly important for law schools to be in dialogue with the practicing bar and bench, just as it is important to recognize that law schools must be responsive to the larger university systems of which they are often a part, the dictates of the Department of Education and accreditors, all while being vulnerable to *U.S. News and World Report* ratings. Law schools have complex governance structures, and it should not be forgotten that many of them also provide legal and community services in addition to graduate education.

Additionally, many schools have already done what Mr. Yurko suggests. They have “restructured their programs to include more clerkships, internships, and other practical experiences, which often lead to jobs.” Indeed the monumental work, *Educating Lawyers: Preparation for the Profession of Law*. (William

M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, Lee S. Shulman. San Francisco: Jossey-Bass, 2007), also known as the Carnegie Report on Legal Education, produced seismic shifts in that direction. Importantly, however, law schools can seek to include all the clerkships, internships, externships, and experiential opportunities they want – and we do want – but we are only one piece of that puzzle. The bar and the bench are our obvious partners in this respect, and we rely on them.

The notion that increased accreditor regulation of law schools would mean “...that each law school would spend more money on its legal placement efforts than it does today” would likely elicit enthusiasm, but for the reality that the funds for investment in career placement services necessarily come from somewhere (especially if the number of matriculating students is summarily regulated by accreditors) and, as we know, increasing tuition should not be an option. So many law schools have quietly, or not so quietly, started shifted resources in more painful ways that have other impacts on the community, not the least of which is institutional morale, and the possibility of diminished student services in other areas. Thus, such allocations, investments, and shifts are not so easy after all — they have real-life consequences for our students, staff, administrators, and faculty.

For this reason, and others, I cannot embrace a suggestion that would turn over to the ABA the regulatory capacity to downsize law schools. I would rather that we leave the inevitable right-sizing of law schools to the market of consumers of our services, the potential students themselves, many of whom gauge value in ways not exclusively captured by aspirations of big firm or traditional practice possibilities, and for whom other legal, business, public service, and justice concerns might also influence their desire to study law. Indeed, the decline in applications to law schools is appropriately making those of us who are willing and able to be more responsive and accountable to student and graduate needs better situate ourselves for the shifting demand for legal education, and transformed legal services, both in terms of substance and delivery.

There is no doubt that “traditional” lawyering has been recalibrated, given the intersecting forces of globalization, technology, and rapid innovation in business and legal practices. Perhaps this is as it should be as, heretofore, legal practice has been, by definition, a backward looking profession, as demanded by our system of precedent, as opposed to necessarily future-oriented. I think that Attorney Yurko and I, therefore, agree that the crucial issues for legal education and practice relate to where we go from here. Where we may part company is the appropriate course of action.

While it is the case that many law schools have been strategically shrinking the size of their entering classes, to empower accreditors to mandate such reductions ignores some key variables. For instance, many law schools are not in a position to unilaterally shrink their class sizes – they are part of university systems that are interconnected in complex ways beyond the reach and purview of the ABA. Additionally, if taken to its logical conclusion, some law schools would be forced to close due to low placement rates. One can make an argument that some law school closures may be necessary. But *which* schools close and *which* schools remain is embedded with a hierarchical underpinning that furthers elitism within

the legal profession. As the top schools, meaning elite schools, generally have the best employment placement rates, they would ostensibly be immune from regulatory accretor reductions. However, those schools which face challenges in this regard, disparately found at the lower end of the *U.S. News and World Report* rankings, would be reduced in size by the ABA under Attorney Yurko's model.

Were this to happen, the push to open up the legal profession to people from all walks of life would be curtailed. The legal profession would witness a significant reshaping of its demographics and its ability to provide broad-based and meaningful access to legal services would also be stymied. In this mix, we might wish to analogize between legal education and medical education and consider whether we ought to be thinking more seriously about residency programs, apprenticeships, pro bono legal services, grassroots legal enterprises, and innovative uses of technology, all towards the end of furthering experiential, entrepreneurial, and employment opportunities for law school graduates, whilst simultaneously making affordable legal services a real possibility.

That this has not happened in the last couple of decades when we have had a "surplus" of attorneys is disturbing. For their part, law schools have been investing in clinical, pro bono, and experiential programs designed to train and supervise students while bringing legal services to domestic and international communities. I think there are further opportunities for bridging this justice gap if the practicing bar, bench, tech-entrepreneurs and law schools could come together in meaningful partnerships to deliberate, and ultimately problem-solve, around this serious societal, and supply-line economic issue.

So we have to figure out how to preserve access to the legal profession for those individuals desirous of becoming lawyers, responsibly manage the costs associated with law school, provide potential applicants with information about the quantifiable costs and opportunity costs of attending law school, and work with the bar and bench to ensure that there are meaningful opportunities for graduates to enter the profession as practitioners, including filling the justice gap. There is much room for dialogue with the bar, the judiciary, the ABA, the AALS, bar affinity associations, law school deans, university provosts and presidents, students, and graduates in terms of these myriad concerns.

At the end of the day, I would urge an expanded appreciation for the work that lawyers have done, continue to do, and will do in the future. We are not, and have never been, a static profession. Instead, perhaps betraying my Canadian roots, I prefer to think of us as having a "Living Tree" approach to our profession. By that I mean that as a community we are not frozen, but rather we are progressively building upon what is best and strongest about our profession, whilst simultaneously advancing to meet the needs of an ever changing and diverse society, with evolving legal delivery demands and substantive requirements.

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