consumerism means in legal education is that the model generally applied is both simplistic and invalid. If the student is the consumer and an education purchased with tuition money is the product, then students should be trying to get the most for their money by maximising their learning. In fact, their behaviour indicates that they work hard at getting the least. If law schools were really selling education, they could set the highest price which the product could command and serve whatever customers were willing to pay for it. However, if Harvard, for instance, started selling its degrees to the highest bidder, rather than making its students prove themselves in a demanding environment, those degrees would not be worth much.

There is no single model that adequately describes what is being bought and sold in law schools. One useful model has the student buying a credential primarily with her effort rather than an education with her money. The rational economic actor wants to maximise her credential and minimise her effort and chooses undemanding teachers who give the high grades. She spends time lobbying the administration to inflate her marks. Faculties can appease these demands without cost to themselves. In the short-term, the benefits are obvious. More students will get better jobs and the faculty's graduates look better in relation to the competition.

To analyse the long-term results, a model where the student is the product and the potential employers are the customers is required. In this model, the inflation of credentials amounts to misleading advertising and will eventually lead to the loss of the individual law school's reputation. A slight variation on this model retains the idea that the law student is the product but posits the public at large as the consumer with the law school being potentially subject to product liability suits. There are clearly problems with this model. In a free economy, consumers can decide how much of a product they want to buy. No one thinks we need more lawyers. The student-as-consumer model provides a better explanation. As long as the consumer is willing to buy, we should be willing to sell the product, whether that product is an education or a credential.

Who we consider to be the consumer will determine the dynamic of the classroom and the type of learning that goes on there. Law schools have long claimed that they teach disciplined thinking, a claim which is a major selling point for law schools and graduates alike. Historically, the vehicle for teaching this is the Socratic method. In fact, the true Socratic method is all but extinct in American law schools, abandoned because students are hostile to it. Many teachers and law schools have decided that students are the consumers and should get the style of teaching they prefer. What students want is, not to be turned into disciplined thinkers, but to be taught enough black letter law to pass the bar exam and to be turned loose to practise law. Hence we should stop falsely advertising the virtues of law training as a discipline for the mind and preparation for leadership. The fact is that many other academic fields have more intellectual rigour than law as law is now being taught.

But maybe our students really want an education and are afraid to say so. When graduating from law school meant something, those who made it felt a sense of accomplishment. Our present graduates look around and see classmates who graduated in spite of their inability to write a coherent English sentence and people with mediocre intellects who graduated without even studying hard. This is another justification for acting in what we know is the students' long-term interests and setting some standards in spite of what students say and possible accusations of paternalism.

**Law schools without lawyers? Winds of change in legal education**

G C Lilly

81 *Virginia Law Review*, Spring 1995, pp 1421-1470

There is a familiar debate in fashion these days about the nature and breadth of the disjunction between legal education and the legal profession. There is a body of opinion that the gap between the profession and the academy is growing wider and that, at a time when law firms are increasingly preoccupied with the pursuit of profit, law schools are tending to direct their scholarship and educational efforts away from the profession into theoretical dialogues involving the social and behavioural sciences.

The degree of alienation between the schools and the profession must be measured by the changes within each. There have been gradual significant changes in legal education over the last 25 years which began with elite law schools such as Yale drawing closer to other disciplines. The result was a general reorientation of many law schools towards 'university legal training', that is toward a theoretical, conceptual, and interdisciplinary study of law and away from the profession.

There are diverse perspectives from which law may be taught, studied and researched. These include an approach which emphasises the practical operational aspects of law, the 'doctrinal' approach, which

searches for patterns in legal materials and tries to impose order, and the theoretical approach, which embraces a good deal of the ongoing interdisciplinary work. 'Theory' is illustrated by an approach to law in which the scholar takes another discipline as the starting point, employs its methodology and attempts to unearth fresh explanations of legal phenomena or to construct a platform for reform.

The vulnerabilities of the doctrinal approach to law are easily discerned. As it is confined largely to authoritative legal texts where change is incremental, there is little room for originality. In contrast, the social sciences, broadly defined, offer a rich source of ideas and fresh perspectives for thinking about legal problems. The limitations of the doctrinal approach are illustrated when the legal rules under analysis implicate public or social values or when they are founded on assumptions about institutional or individual behaviour. Legal texts cannot inform or illuminate the reality of that behaviour and need supplementation from other disciplines.

Other factors contributing to the decline of theory are related to the kind of people attracted to the doctrinal approach. They tend to hold a close kinship with practitioners and, given the disparity between incomes earned in private practice and the academy, are probably choosing practising over teaching. Further, in recent years, people accepting appointments to elite law faculties commonly have had an advanced degree in a discipline not related to law. Some are not lawyers. The academic lawyers appointed to highly-ranked schools, as a group, have less experience in the profession than do faculty appointees generally and are therefore less likely to be familiar with professional concerns. The homogeneous culture that once dominated law schools and provided a shared heritage with the profession has disintegrated and the once cohesive law faculties have been balkanised by such varied influences as the social sciences and critical legal studies.

The influence of nonlegal disciplines has affected appointments, research and, in many instances, the academic culture of some law schools. There is both more attention to the role of law as a social and economic force and more peer review of legal scholarship than there was a decade ago. Increasingly, the decisive criterion for the award of tenure is scholarship and, since the new scholarly thrust is towards the abstract and the interdisciplinary, tenure candidates sometimes have a shallow grasp of doctrine and may also have a weak grasp of legal institutions.

It is unclear what impact the new scholarly thrust has on teaching. However, since increased demands are placed on faculty to improve their scholarly production, it is reasonable to expect that the relative importance of scholarship will increase at the expense of other faculty activities, such as teaching. Further, the law schools are increasingly absorbing the academic cultures of other disciplines, which has negative implications for the priority and quality of teaching.

The uneasy relationship between the academy and the profession is exacerbated by changes in the latter. The large modern law firm is, to an unprecedented extent, driven by market forces and run along business lines. This has had and will continue to have many implications. The modern environment of accelerating competition, stable demand, excess capacity and formidable fixed costs has changed the way firms operate. Furthermore, the life of the professional lawyer, once secure and predictable, now seems fraught with uncertainty and roused by the mounting expectations of the firms' senior partners. Firm loyalty has withered, the observance of professional ethics is an increasing problem and the work life of successful partners and associates is often all-consuming, with no time for reflection, hobbies or ideas. There is constant pressure at all levels of the firm to be economically competitive. The high ratio of partners to associates adds to the monetary claims at the top of the hierarchy.

While these trends do not permeate the whole profession, they are concentrated in the large urban firms which set the tone of the profession and attract the best students from the best schools. The perception of the profession is likely to affect the type of student who chooses to study law. The decline of mentoring in the firms and their increasing unwillingness to spend the resources to provide training means that large firms will become more dependent on the law schools to give students the traditional foundation in doctrinal analysis and legal reasoning.

The sum of the available evidence suggests that the current movement towards interdisciplinary theory will continue and will spread down to other law schools. In the past, there has been an easy and natural flow of top legal talent between the academy and the profession. Now, one of the main bonds between the leading law schools and the profession, that of scholarly work addressed to the bench and bar, has frayed. There is a growing disdain in the academy for practitioners and, in some cases, law itself. The profession is responding by

increasingly regarding academics as being unable to function in the real world. Firms favour doctrine and, for obvious financial reasons, would like to shift as much professional training as possible to the schools. If the schools lose touch with the elite law firms, those firms will probably react. Whether this reaction will simply raise the clamour related to the debate or take other forms, such as reduced support or a redirection of recruiting efforts, is difficult to predict.

If the major law schools wanted to narrow the gap that separates them from the profession, they could do so by showing more foresight and flexibility in the appointment and tenuring of young faculty members. Doctrine and theory are complementary and should be used together to achieve a synergistic balance. The key to realigning the academy and the profession is to have a significant proportion of the tenured faculty who are from the profession and who address its problems. In the profession itself perhaps the best hope for reform is for the law schools to reconnect themselves with the practising bar and to train students to confront practice with dignity and professionalism.

## RESEARCH

### REVIEW ARTICLE

**Legal education at the close of the twentieth century: descriptions and analyses of students, financing, and professional expectations and attitudes**
L F Wightman
Law School Admission Council
1995

This important report and the one on women in legal education discussed in the following review article are the first two to appear out of a planned series of publications to be developed from a national longitudinal study of legal education and entry into the legal profession in the United States, known as the Bar Passage Study. It is claimed that this study, sponsored by the Law School Admission Council (LSAC), represents the most comprehensive research into legal education ever conducted and will provide insights into law school practices and their educational consequences. Indeed, the sheer volume of data collected by the researchers is quite overwhelming, with responses from nearly 29,000 students from 155 ABA approved law schools across America.

This initial report examines only first-year law students in the fall of 1991. It seeks answers to such key questions as who is admitted to law school, how are students allocated across law schools and what are some of the social, financial and professional consequences of the selection and allocation process. However, the author contends that the focus is not merely to provide a snapshot of the characteristics of law school students at a given point of time nor is it the first attempt to study the relationships between selected demographic variables and the allocation of applicants to different law schools. Rather, the intention is to contrast the data and findings with two often cited earlier studies (Warkov and Zelan in 1961 and Cappell and Pipkin in 1975), in order to establish historical trends.

Furthermore, this first report was designed to satisfy three more far-reaching objectives: first, to provide an extensive and comprehensive statistical profile of students in US law schools; secondly, to furnish the baseline data to facilitate other research reports; and finally, to assist in formulating hypotheses and testing theories about legal education to foster a far-reaching research program. With such a harvest of data gleaned in this project, the focus of this review article will be upon the design of the study, the nature of the analyses performed and the structure of the report, rather than the more salient findings.

The data collected originated from two sources. The LSAC operating database provided Law School Admission Test (LSAT) scores, undergraduate grade-point averages (UGPA) and selected background data, such as undergraduate degree-granting institutions. However, the principal source was a searching questionnaire administered to a population of all first-year entering students in 163 participating law schools. Perhaps because the questionnaire was in most cases distributed during law school orientation programs, the researchers were able to achieve a very high response rate of 75% (or 28,889 of the first-year law students). With the enormous volume of data obtained from these numbers, it is perplexing why no attempt was made to draw a representative sample, rather than survey the entire population. Presumably, neither money nor time were in short supply, although it is to be noted that this first report took four years to emerge from the time the questionnaire was administered.

The first chapter explains the various schemes which were used to classify the student and the law school data for the purposes of analysis. Law schools were grouped into three strata using the variable of entering-class median LSAT score. Cluster analysis was used to home in on selected law school characteristics (size, cost, selectivity and faculty/student ratio) and features of the student body (percentage minority, median