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It's time to rethink law school

By Frank H. Wu

There are two schools of thought about legal education. One insists that law schools are fundamentally fine. They face only a momentary lull in demand. They will recover so long as they continue to do as they have done. Another contends that the educational program leading into legal practice is fundamentally flawed. It needs reform even if the marketplace improves. The recent economic crisis exposed problems that always had been there.

I count myself among those who embrace the latter view. Adaptation is mandatory, not optional. But it already is underway, in need of encouragement.

Anyone who offers observations about a subject of such significance should take care at the outset to frame the issues: The rule of law is the basis of our democracy; it constitutes the ideals we offer the world.

Our aspirations in the abstract, as well as our ability to lead the lives we take for granted in mundane aspects, depends on an independent, principled bench and the members of the bar who advance causes and represent clients. We conduct elections generally free of corruption, preceded by campaigns in which candidates declare their philosophies, thanks to law. We are able to buy food and drugs that have been tested and usually are not tainted, with recourse if there has been a mistake, thanks to law.

The tech boom that defines San Francisco is based primarily on engineering and science. But inventions generate entrepreneurial success only as they are

monetized. A legal infrastructure protects intellectual property and enables initial public offerings.

Likewise, recent progress in the recognition of the rights of lesbian, gay, bisexual and transgender individuals has been embodied by legal transformation. Discriminatory conventions of the past have given way to antidiscrimination norms, though there remain unresolved tensions related to asserted religious exemptions. Although observers may disagree on the proper outcomes to disputes, everyone acknowledges that law is paramount. All government regulation takes the form of law in some sense, and social justice movements that proceed through law avoid chaos.

Thus the assertion, made by angry bloggers and then repeated by the mainstream media, that legal education is worthless should be accepted as the hyperbole it is. There is and always will be a role for lawyers. So there also must be a means of preparing them for their roles as leaders.

Yet the critics have a point. There should be vigorous discussion of how many lawyers are optimal, how they are trained, and what they should pay for the privilege of joining the profession.

The problem of legal education is more than one problem. At least three major concerns should be addressed.

First, there appears to be a glut of lawyers. Ironically, there also is unmet legal need. This contradiction is explained by the maldistribution of lawyers. A surplus of lawyers wish to work in so-called "Biglaw." A deficit of lawyers, meanwhile, are available for old-fashioned general practice. There is insufficient funding for

government lawyers, including those who would offer services to the poor: city attorneys, prosecutors and public defenders have workloads that cannot reasonably ensure competent representation, and nontrivial levels of work are simply being left undone.

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On its face, this supply and demand imbalance is not merely a problem for law schools. It is a general problem facing the legal profession. It is the result of inexorable forces, including technological advances, structural innovations such as outsourcing and contract positions, and increasing sophistication on the part of purchasers of services.

Lawyers once possessed magic knowledge, not widely available; specialists commanded a premium over peers without similar expertise. But much of what we do can now be accessed by the public over the Internet, and either they cannot discern quality or they are satisfied with "good enough." It can be done by individuals overseas, with less training, or in allied fields such as accounting. And it can be packaged as a commodity, with the financial risks associated with uncertainty being shifted onto the lawyer rather than burdening the client.

Some law firms sought to conceptualize themselves as businesses. Other law firms preferred to regard themselves as a true partnership of professionals. Re-

gardless of their culture, they find themselves facing the same challenges as other industries in an era of hyperaccelerating change, and they cannot suppose they are above competition.

Second, there is the cost structure of higher education. There is a lack of appreciation between professors and students, which is mutual, complete and regrettable. Almost all academics balk at crude characterizations of "return on investment." They value learning intrinsically, valuable in its own right; not instrumentally, a means to an end. Almost all who call themselves consumers (and the families paying the bills) demand measurements of job placement. They no longer believe, if they ever did, that critical thinking by itself is useful. The same unease is spreading beyond law schools to liberal arts colleges. The importance of American creativity to American competitiveness is not appreciated, and both are threatened.

Until recently, these considerations in the law school context were masked by the same exuberant expectations that led to the recession. People assumed law school was a great bet: for any student who was accepted, at any school, for any graduate regardless of their performance. Law school was promoted as a reasonable default option, even for those unsure of what lawyers do for a living. That was not true before, but it has become obvious now: Law school is for people who want to work in law or who have a well-thought out plan related to law.

Student loan debt is on the cusp of becoming the public policy hot button for the middle class.

Law schools are in danger; we must act

Its effects are not uniform. The notion that higher education can be a public good has been all but lost. Individuals pursuing a profession are being told implicitly that they will not be subsidized in the effort. Those who do not come from privilege will not be materially supported in upward mobility, and those from all backgrounds who wish to enter public service as a career will not be helped either.

Law schools face complications of existential magnitude altering their business model. The two tactics that were most popular in the past are no longer available. Those expedients were increasing tuition or increasing enrollment (or both). Tuition is the subject of populist outrage. The drop in applications is unprecedented, steep, with no bounce back.

Law schools are turning to alternate revenue sources, such as private philanthropy, new curricula and straightforward commercial activity. These may be necessary but they are not sufficient; they are off by at least an order of magnitude in fiscal terms. Moreover, the demands to improve rankings, enhance services and employ graduates accumulates on the expenditure side of the ledger.

Third, there are the perennial complaints about the skills imparted during three years of formal schooling. The century-old case method is transitioning to-

ward skills training. The task forces of the American Bar Association and the California State Bar are urging us along.

The analysis of appellate decisions remains integral to the first year courses, but it would amount to an incomplete education at best. A competent lawyer must be able to reason from precedent and interpret statutes according to canons, but it would be an incompetent lawyer, even if restricted to appellate practice, who could accomplish only those tasks. Whether it is substantive areas that were nonexistent a generation ago, such as the Internet, or techniques such as alternative dispute resolution, which were regarded as fads, there is so much more law to which a lawyer ought to be exposed. This is exacerbated by the demands within law firms, which are conducive to neither training nor mentoring.

A lawyer should be like a doctor. There isn't any medical school graduate who altogether lacks clinical experience. Every licensed physician has seen a live patient presenting actual symptoms before they charge anyone for a diagnosis. Yet some law school graduates manage to do quite well by book learning alone. They need not interview, counsel or draft to earn honors if their exams and seminar papers are good enough.

The type of lawyers that the world looks for also have multiple

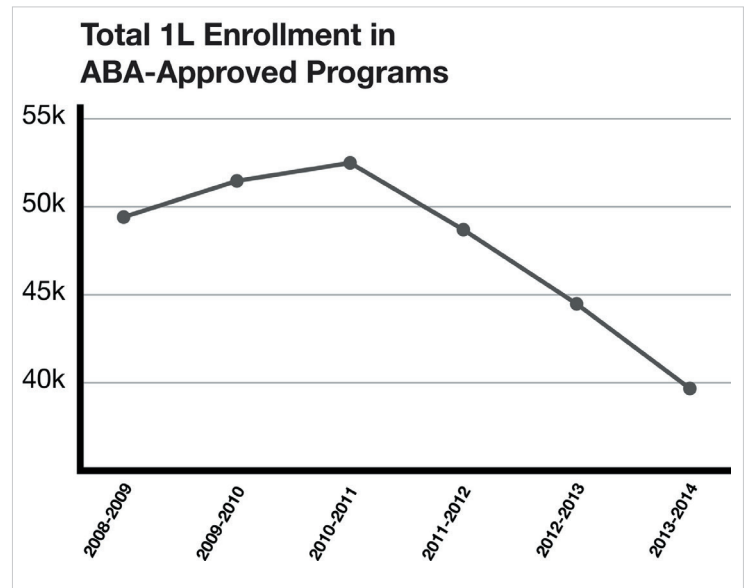


Illustration by Rei Estrada/Daily Journal

skill sets. They blend STEM (science, technology, engineering and math) backgrounds with the legal discipline. They were accountants, or, at a minimum, they can read a balance sheet and determine if a venture is making money. They are fluent at a business level, not merely conversationally, in another language. They are partners to their clients, taking seriously not only the concepts of representation but also advice and counsel.

Put all this together. There has not been, in the recollection of anyone now living, a similar set of challenges for law schools. As with all such situations, however, leaders must spot the issues. We are in danger. We should not deny

that.

I welcome the opportunity. We must cooperate — bench, bar, teachers, students — to take apart the system and put it back together again better.

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