LEGAL EDUCATION IN THE UNITED STATES: WHO'S IN CHARGE? WHY DOES IT MATTER?

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I. REGULATORS AND STAKEHOLDERS IN U.S. LEGAL EDUCATION

Legal education in the United States has been a work in progress for the past three hundred years. Part I identifies the primary sources of influence upon legal education in the United States. Part II describes the principal components of the modern curriculum and categories of teaching staff at American law schools. Part III discusses the impact of the influencers on the product of legal education. Part IV concludes that the diverse roles assumed by law graduates need to be recognized and reflected in the offerings of legal education.

Just as the regulation of lawyers has increased, so has regulation of legal education. Yet the forces which shape legal education are complex and include the government, voluntary institutions, professional organizations, the market, and even the media.

The role of the federal government in legal education in the United States is indirect. There is nothing equivalent to a Ministry of Education as found in other countries. The United States Department of Education does not approve law schools. Rather, it is required to maintain a list of agencies deemed suitable for accrediting higher education institutions, law schools among them.[1] The list is divided into two segments: regional accrediting authorities, which focus on general standards for college and universities, and specialist accrediting bodies, which focus on distinct subject-matter programs.[2]

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[1] U.S. Dep't of Educ., Financial Aid for Postsecondary Students Accreditation in the United States, http://www.ed.gov/admins/finaid/accred/accreditation.html#Overview (last visited Sept. 23, 2005).

[2] *See* U.S. Dep't of Educ., Accreditation in the United States, http://www.ed.gov/print/admins/finaid/accred/accreditation.html#Recognition. (Last visited September 23, 2005). The list of specialist accrediting bodies range from the Accreditation Commission for Acupuncture and Oriental Medicine to The Joint review Committee on Radiologic Technology to the National Association of Schools of Dance Commission on Accreditation.

The accreditation process is non-governmental and voluntary, but it has an important effect on law students. In the broadest sense, it serves as a status symbol that enhances the value of the degree offered. In relation to the power of the federal government, it is an essential prerequisite for attaining federal financial support.[3] In the United States, students are individually responsible for a significant proportion of the costs of their education. The federal government provides approximately 70 percent of all financial aid to post-secondary students in the United States, currently amounting to more than $67 billion per year.[4] Eighty percent of U.S. law students use educational loans as their primary source of financial aid.[5] Law schools receive federal funds in a variety of other ways including research grants and payment for contracted services. Thus, the power of the federal government in legal education is largely the power of the purse.[6] Financial aid, although principally in the form of loans requiring repayment, makes legal education widely available to those academically qualified. The ensuing debt impacts career choices because salary needs are influenced by loan repayment demands. The requirement that students attend accredited law schools to qualify for financial aid significantly influences their choice of law school.

The role of state governments is similarly indirect, but more powerful. It is illegal to practice law in the United States without a license and licensure is the exclusive province of state government.[7] State authorities, located within the judicial branch, are responsible for determining admission to the bar and continuing

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[3] Federal government subsidized loans are available to law students only if they attend ABA accredited law schools. George B. Shepard & William G. Shepard, *Scholarly Restraints? ABA Accreditation and Legal Education*, 19 CARDOZO L. REV. 2091, 2124 (1998).

[4] U.S. Dep't of Educ., http://www.ed.gov/finaid/landing.jhtml?src=ln (last visited Feb. 19, 2006).

[5] Law Sch. Admission Council, Financial Aid for Law School, http://www.lsac.org/LSAC.asp?url=/lsac/financial-aid-best-bets.asp (last visited Feb. 19, 2006).

[6] While it is impossible to generalize with accuracy, law schools are primarily funded by 1) tuition, either by direct receipt or in the case of public schools by payment transfer from state government for tuition received; 2) gifts, gift income and grants; and 3) payments for contracted services.

[7] Lawyers admitted in one state are typically permitted to practice in another on a limited case-by-case basis at the discretion of the court handling the matter (and often when the out-of-state lawyer has local co-counsel; licensure and practice in

eligibility to practice law. Typically, states require proof of competence, character, and fitness as the prerequisites of licensure. Competence is described as having a suitable educational credential, plus obtaining a passing grade on a bar examination.[8] Thus the determination of what constitutes a "suitable educational credential" is a required precondition of entry into the profession under state law. Of the fifty-six jurisdictions that admit lawyers to practice, twenty will not permit an applicant to sit for the bar examination without having first graduated from an ABA-approved law school.[9] Of the remaining, eleven other jurisdictions permit non-ABA-approved school graduates to take the exam only if they have been licensed in another state and have practiced there from periods ranging from three to ten years; twenty jurisdictions have varying provisions permitting graduates of foreign law schools to take the bar exam; and seven states permit taking the exam conditioned upon law office study, or an office/law school combination of studies. A handful of jurisdictions have unique requirements, such as a certain number of credits obtained at an ABA-approved school, a degree from a provisionally ABA-approved school, or additional years of law study.[10] Unless one has completed his or her legal studies outside of the United States, or wishes to take the bar after being licensed and having practiced for a number of years in a different state, few states will license an individual who has not graduated from a non-ABA-approved law school. In effect, state governments influence legal education by heavily favoring ABA-accredited schools in the licensing process.

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one state for a defined period of years may be a permitted basis for admission to the bar in another state in certain circumstances).

[8] In Wisconsin, graduation from an in-state approved law school and satisfactory completion of numerous courses in identified areas result in the "diploma privilege," or satisfaction of the competency requirement without taking the bar examination. *See* Wisconsin Court System, Diploma Privilege, http://www.wicourts.gov/services/attorney/bardiploma.htm (last visited Feb, 23, 2006).

[9] Nat'l Conference of Bar Examiners [NCBE] & The Am. Bar Ass'n [ABA] Section of Legal Educ. & Admission to the Bar, Comprehensive Guide to Bar Admission Requirements 2005, at 10-13 (2005), *available at* http://www.abanet.org/legaled/publications/compguide2005/chart3.pdf.

[10] *Id*.

U.S. law schools are subject to myriad regulations that, though unrelated to schools' educational mission, potentially impact the educational process. For example, laws concerning employment, including working conditions and prohibitions against discrimination; laws affecting student admissions, such as disability accommodations; and the management of student records may be addressed on the federal, state, and/or local level. Law schools located within larger colleges or universities must comply with institution-wide hierarchical policies addressing such diverse issues as course approvals and faculty tenure. Consequently, the indirect nature of federal and state control of legal education is supplemented by numerous legal requirements of a diverse nature which must be satisfied on an ongoing basis.

Neither public nor private law schools are immune from financial distress. Alumni and employers of school graduates see themselves as stakeholders in the institution, and they are identified by the administration as potential donors. In addition, a strong pool of student applicants is critical to financial viability. The need to court these funding sources, as well as to attract dollars from grant-bestowing entities, places pressure on law schools to effectively market themselves to multiple constituencies and distinguish themselves from peers. In recent years the publication of *U.S. News and World Report*'s annual ranking of law schools[11] has undisputedly impacted individual schools' ability to attract students, much to the consternation of administration and faculty critical of the accuracy of the rankings[12] yet willing to manipulate data and take actions to improve their institutions' rank.[13] It is increasingly common for law schools to identify

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[11] *See America's Best Graduate Schools 2006: Top 100 Law Schools*, U.S. NEWS & WORLD REP., *available at* http://www.usnews.com/usnews/edu/grad/rankings/law/brief/lawrank_brief.php.

[12] *See* STEPHEN KLEIN & LAURA HAMILTON, THE VALIDITY OF THE U.S. NEWS AND WORLD REPORT RANKING OF ABA LAW SCHOOLS (1998) (commissioned by the Ass'n of Am. Law Schools [AALS]); *see also* Terry Carter, *Rankled by the Rankings*, ABA J., Mar. 1998, at 46.

[13] *See* Leigh Jones, *Law Schools Play the Ranking Game*, NAT'L L.J., Apr. 18, 2005; Michael Ariens, *Law School Branding and the Future of Legal Education*, 34 ST. MARY'S L.J. 301, 321-22 (2003).

themselves as special in a variety of ways, including overall quality, distinct areas of specialization, flexible class scheduling, emphasis on the use of technology, and/or regional or global focus.[14] Individual schools see themselves as participants in a competitive market and seek to distinguish themselves in order to gain advantage.

Three voluntary organizations are of particular importance to the structure of legal education: the National Conference of Bar Examiners, the American Association of Law Schools, and above all, the American Bar Association.

The National Conference of Bar Examiners (NCBE) was created in 1931 as a non-profit corporation that works in conjunction with others to develop, maintain, and apply reasonable and uniform standards of education and character for eligibility for admission to practice law.[15] The NCBE develops the Multistate Bar Examination (MBE) (a multiple choice exam on substantive areas of law) and the Multistate Professional Responsibility Examination (MPRE) (a multiple choice exam on law of lawyer conduct) as well as the less-widely used Multistate Performance Test (MPE) (comprised of three ninety-minute questions attempting to determine lawyering skills) and the Multistate Essay Examination (MEE) (comprised of six thirty-minute essay questions within ten pre-announced areas of substantive law).[16] These examinations are described more fully in Part III A, below. In addition, the NCBE conducts character examinations, publishes statistical information, performs research, and assists bar admission authorities in general matters.[17]

The American Association of Law Schools (AALS) is a non-profit association of 166 law schools.[18] The purpose of the association is "the improvement of the legal profession through legal education."[19] It serves as the learned society for law teachers and

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[14] Ariens, *supra* note 13, at 348-50.

[15] NCBE, Mission Statement, http://www.ncbex.org (last visited Feb. 19, 2006).

[16] NCBE, Multistate Tests, at http://www.ncbex.org/tests.htm (last visited Feb. 19, 2006).

[17] *See* NCBE, http://www.ncbex.org (last visited Feb. 19, 2006).

[18] AALS, About AALS, http://www.aals.org/about.php (last visited Feb. 19, 2006).

[19] *Id.*

is legal education's principal representative to the federal government and to other national higher education organizations and learned societies.[20] Membership consists of law schools; individual faculty and administrative staff are involved in the AALS's governance activities and participate in eighty-five sections of subject-matter interest.[21]

The AALS is known for its annual meeting, a national gathering of law faculty that offers workshops and scholarly presentations, its faculty recruitment conference, and an applicant registry service.[22] It further plays an important role in participating in ABA-accreditation site visits to member schools, reviewing conditions of key concern to faculty.[23]

Chief among influential voluntary organizations is the American Bar Association. The ABA is a membership organization claiming membership of over 400,000 of the United States's 1,150,000 lawyers.[24] The ABA seeks "to be the national representative of the legal profession, serving the public and the profession by promoting justice, professional excellence and respect for the law."[25] While the ABA's membership consists of a minority of the profession, it has no substantial competitors.

In the context of legal education, the primacy of influence of the ABA results from its position as the sole accreditor of law schools recognized by the United States government. The organization first published standards for law schools in the late 1920s.[26] A decade later, twenty states required bar applicants to

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[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] ABA SECTION OF LEGAL EDUC. & ADMISSION TO THE BAR, OVERVIEW OF THE ABA ACCREDITATION AND SITE VISIT PROCESS AND MEMORANDUM CONCERNING THE CONDUCT OF THE SITE VISIT 4 (2005) [hereinafter OVERVIEW OF ACCREDITATION].

[24] ABA, About the ABA, http://www.abanet.org/about/home.html (last visited Feb. 19, 2006) [hereinafter ABA, About the ABA]; ABA, NATIONAL LAWYER POPULATION BY STATE (2005), *available at* http://www.abanet.org/marketresearch/2005nbroflawyersbystate.pdf.

[25] ABA, About the ABA, *supra* note 24.

[26] Ariens, *supra* note 13, at 310.

be graduates of ABA-approved schools.[27] The accreditation process is accomplished by way of a determination of whether the school has satisfied the ABA's Standards for Approval of Law Schools. The process has two primary components, self study and site visits.[28]

The self-study process commences more than a year in advance of the year of the site visit.[29] The process contemplates consultation with all constituencies of the school, including the faculty, administration, students, and alumni as well as the bench and bar.[30] The resulting document identifies the components of the law school's educational program and its goals; it also analyzes the school's strengths, weaknesses, and educational output, such as bar examination performance and placement data in relation to its goals.[31]

New and proposed law schools are encouraged to conduct feasibility studies, which consider the need for the school in the geographic area, the school's mission, and prospective funding sources to determine its ability to operate in compliance with the standards.[32]

Site visit teams for schools seeking provisional approval—those determined to be operating in substantial compliance with the accreditation standards with a reliable plan for attaining full compliance within three years—are visited annually by teams of five to seven members.[33]

Fully approved schools are normally visited by seven-member teams.[34] Teams consist of a lawyer, judge, or public member; a university administrator; and members of faculty or staff at other law schools.[35] The visit, typically lasting three days, consists

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[27] *Id.* at 311.

[28] *See* ABA, The American Bar Association's Role in the Law School Accreditation Process, http://www.abanet.org/legaled/accreditation/abarole.html (last visited Feb. 19, 2006).

[29] OVERVIEW OF ACCREDITATION, *supra* note 23, at 3.

[30] *Id.* at 3-4.

[31] *Id*. at 4.

[32] *Id.*

[33] *Id.* at 2-3.

[34] *Id.* at 2.

[35] *Id*. at 3.

of numerous classroom visits; time spent examining clinical programs, including field placements; and evaluation of the library, physical facilities, technological capabilities, and student and administrative services.[36] The visit encompasses extensive conversations with the dean; meetings with individual faculty, professional staff, and student leaders; and open meetings with students.[37] Also expected is a records review including a sample of examinations, student-written work, faculty scholarship, admission files, and financial records.[38] The culmination of the visit results in a site evaluation report tendered to the ABA Accrediting Committee, which is composed of legal educators, judges, practicing lawyers, bar examiners and public non-lawyer members.[39] The committee finds full compliance and continues accreditation, specifically identifies non-compliance, or seeks additional information.[40] The entire process occurs every seven years, although a 2002 ABA Task Force on Accreditation Processes has recommended moving to a ten-year review, with a limited five-year interim submission by the school resulting in a report without a site visit.[41]

There are currently 191 ABA-accredited law schools in the United States, 166 of which are currently members of the American Association of Law Schools.[42] When the ABA site visit is to an AALS member school, one member of the ABA site evaluation team is an AALS member responsible for both participating in the ABA review and writing a separate report to the AALS membership review committee for compliance with its membership requirements.[43] While the AALS has no authority with respect to accreditation, its membership values focus upon faculty

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[36] *Id.* at 5, 7-10.

[37] *Id.* at 4.

[38] *Id.* at 10.

[39] *Id.*

[40] *Id.* at 12.

[41] Memorandum from John A. Sebert, Consultant on Legal Education, ABA, to Deans of ABA-approved Law Schools et al., Recommendations of the Task Force on the Accreditation Process, Sept. 13, 2003, *available at* http://www.abanet.org/legaled/accreditation/acinfo.html (follow "cover memo" hyperlink).

[42] AALS, *supra* note 18.

[43] Overview of Accreditation, *supra* note 23, at 4.

competence, faculty governance, academic rigor, and institutional support (both physical and financial) for faculty scholarship and curricular development.[44] The AALS Membership Committee acts upon its review of the separate report and the site visit report of the ABA, although the ABA does not have equivalent access to the AALS report in makings its accreditation determination.[45] In the event of a determination of material failure to comply with the requirements of AALS membership, a member school may be censured, placed on probation, suspended, or excluded from membership.[46]

The final major influence on the American law school is the institutional faculty. Embedded in U.S. higher education is the value of faculty governance. Within the constraints of budget, accreditation, and rules of the parent institution, faculty members are responsible for the fundamental decisions concerning curriculum and program, hires, employment security, and job duties. The ABA's accreditation standards note that faculty responsibilities include participation in the governance of the school.[47] The AALS bylaws are far more explicit, stating "A member school shall vest in the faculty primary responsibility for determining institutional policy."[48]

The American law school has been shaped by diverse pressures asserted by staff members, trade and other professional organizations, regulatory bodies, and market forces. The result is a range of institutions responding in diverse ways to similar pressures. Their impacts are best assessed following a description of the evolving offerings and faculty of the modern American law school.

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[44] AALS Bylaws, art. 6, § 6-1, *available at* http://www.aals.org/about_handbook_requirements.php.

[45] OVERVIEW OF ACCREDITATION, *supra* note 23, at 4.

[46] AALS Bylaws, *supra* note 44, § 7-1.

[47] ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, STANDARDS FOR APPROVAL OF LAW SCHOOLS, Standard 404(a)(3) (2005), *available at* http://www.abanet.org/legaled/standards/2005-2006standardsbook.pdf [hereinafter ABA LAW SCHOOL STANDARDS].

[48] AALS Bylaws, *supra* note 44, § 6-5(a).

II. The Resulting Shape of Legal Education

A. Law School Offerings

The original method of legal instruction in the United States, apprenticeship, was in vogue for more than one hundred years.[49] An aspiring lawyer attached himself to a practitioner or judge and learned his trade.[50] In the early nineteenth century, the publication of several well-regarded treatises on a variety of legal subjects made doctrine more accessible.[51] A number of proprietary law schools became popular by incorporating lecture into the vocational preparation process. College-affiliated law schools also came into being.[52] In 1892, the ABA recommended law school as a three-year course of study; in 1921, it became the recommended minimum, and the ABA published its first list of approved law schools that year.[53] The 1921 ABA recommendations required at least two years of college study prior to law school entrance;[54] currently the minimum admissions requirement is completion of three-fourths of the credits needed towards an undergraduate degree.[55]

The first year of instruction is largely standardized and consists of courses in contracts, torts, property, criminal law, and civil procedure.[56] Students are exposed to a substantial amount of doctrine and focus on mastering basic legal reasoning and analysis. In the 1870s, Professor Christopher Langdell of

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[49] *See* Eric Mills Holmes, *Education for Competent Lawyering—Case Method in a Functional Context*, 76 Colum. L. Rev. 535, 542 (1976).

[50] *Id.*

[51] *See id.* at 543.

[52] Harvard Law School was founded in 1817, Yale in 1824. J.W. Hurst, The Growth of American Law 256-260 (1950). Columbia Law School was founded in 1858, the University of Chicago in 1859. M.H. Hoeflich, *Plus Ça Change, Plus C'est La Même Chose: The Integration of Theory and Practice in Legal Education*, 66 Temp. L. Rev. 123, 128 (1993). The University of Wisconsin Law School was founded in 1868. Paul Carrington & Erika King, *Law and the Wisconsin Idea*, 47 J. Legal Educ. 297, 307 (1997).

[53] James M. Peden, *The History of Law School Administration*, *in* 2 The History of Legal Education in the United States 1105, 1114-15 (Steve Sheppard ed., 1999).

[54] *Id.* at 1117.

[55] ABA Law School Standards, *supra* note 47, Standard 502(a).

[56] *See*, *e.g.*, University of Wisconsin Law School, First-Year Program and Beyond, http://www.law.wisc.edu/prospective/firstyear.htm (last visited Feb. 20, 2006).

Harvard Law School promoted the practice of learning law through the analysis of appellate court opinions, commonly referred to as the case method.[57] Case books evolved into compilations of "Cases and Materials," supplementing the selected opinions with notes and problems.[58] Classes consist of varying degrees of lecture and calling upon students to explicate the reasoning and holding of the opinions, statutes, and rules under consideration. Within these courses, the focus varies. Emphasizing national or local law, looking for rules or identifying policy considerations, examining the impacts of other disciplines, or focusing on the problem method and cultivating practitioner's skills are some of the distinct approaches that distinguish schools or the predilections of individual law teachers.

The second- and third-year curriculum offerings are far more diverse. Trends indicate an explosive growth in the number of course offerings. A recent study found that between 1994 and 1997, eighty-three responding law schools added 1,574 new courses and seminars, with a mean of nineteen and a median of fifteen new courses added.[59] Upper-level courses include large sections of courses addressing subjects of core contemporary legal knowledge such as evidence, administrative law, constitutional law,[60] taxation, trusts and estates, labor law, and business associations.[61] Numerous seminars, often reflecting individual faculty members' areas of interest, are common.[62] A significant number of additional courses focus on skills training, whether

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Constitutional Law appears with some degree of frequency in the first year curriculum. *See*, *e.g.,* Stanford Law School, First-Year Curriculum, http://www.law.stanford.edu/courses (last visited Feb. 20, 2006).

[57] *See* Holmes, *supra* note 49, at 543.

[58] *Id*. at 548.

[59] Deborah Jones Merritt & Jennifer Cihon, *New Course Offerings in the Upper-Level Curriculum: Report of an AALS Survey*, 47 J. LEGAL ED. 524, 528 (2001).

[60] Sometimes appearing in the first year curriculum.

[61] *See*, *e.g.*, University of Wisconsin Law School, Basic Curriculum Guide, http://www.law.wisc.edu/current/basic_curriculum.htm (last visited Feb. 20, 2006).

[62] *See*, *e.g.*, University of Wisconsin Law School, General Course Description for 730 – Federal Law and Indian Tribes, http://www.law.wisc.edu/courses (follow "Spring 2006 Course Schedule" hyperlink; then follow "Federal Indian Law (Advanced Seminar)" hyperlink).

through focus on legal writing, simulation courses as negotiations, trial advocacy, alternative dispute resolution, or various field and clinical placements.[63]

A review of the history of law school offerings must be seen, not as the transition from the vocational training of the apprenticeship model to the ivory tower, but rather as an attempt to strike a balance between skills-based training and the theoretical study of law as science.[64] Even Professor Langdell presumed that legal education would be supplemented by practical experience.[65] The fundamental debate centered upon whether skills training should be accomplished within the law school or via some affiliation with a law office as a clerk preceding the completion of legal studies.[66] The notion of the purely scholarly law school has long been criticized.[67] The University of Denver School of Law opened a clinic, referred to as a Legal Aid Dispensary, in 1904.[68] Participation in the clinic, which had students meeting clients, preparing pleadings, and conducting litigation, was made compulsory in 1905.[69] A student-practice rule authorizing court practice by law students has been part of the Colorado Revised Statutes since 1909.[70] Clinical programs, defined as practical for-credit offerings in which law students represent clients under faculty supervision, existed at the University of Southern California by 1928, Duke by 1931, and the University of Tennessee by 1947.[71]

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[63] Judith Wegner, *The Curriculum: Patterns and Possibilities*, 51 J. LEGAL EDUC. 431, 432-44 (2001).

[64] Hoeflich, *supra* note 52, at 123.

[65] *Id.* at 140; *see also* WILLIAM R. JOHNSON, SCHOOLED LAWYERS: A STUDY IN THE CLASH OF PROFESSIONAL CULTURES 48-49 (1978) (concerning Wisconsin); ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICAN FROM THE 1850S TO THE 1980S 24-25 (1983) (describing Yale).

[66] *See* Hoeflich, *supra* note 52, at 140.

[67] *See id.*

[68] Alan Merson, *Denver Law Students in Court: The First Sixty-Five Years*, *in* CLINICAL EDUCATION AND THE LAW SCHOOL OF THE FUTURE 138, 138 (Edmund W. Kitch ed., 1970).

[69] *Id*.

[70] *Id.* at 139.

[71] Douglas Blaze, *Déjà Vu All Over Again: Reflections on Fifty Years of Clinical Education*, 64 TENN. LAW REV. 939, 939, 940 n.3 (1997).

In a report authored in 1932 to the Alumni Advisory Board of the University of Chicago Law School, Jerome Frank proposed "The Clinical-Law School."[72] His specific recommendations included that a "considerable" proportion of the faculty have substantial experience in the actual practice of law,[73] that the case method be expanded to include a study of cases—the entire file of pleadings, transcripts, and all court papers, not just appellate decisions;[74] that students, accompanied by their teachers, attend actual court proceedings;[75] and that each law school house a clinic that would include "virtually every kind of service rendered by law offices"[76] so that students would "observe the true relation between the contents of upper court opinions and the work of the practicing lawyers and the courts."[77]

Widespread acceptance of clinical education as part of the law school mission was accelerated with the founding of the Council on Legal Education for Professional Responsibility (CLEPR), which commenced a ten-year program to support clinical education in 1968 funded by the Ford Foundation.[78] The ABA passed its model rule on Student Practice in 1969.[79] A report of the proceedings on its National Conference on Clinical Legal Education, held in June of 1973, noted that 117 of the then-151 accredited law schools had some sort of clinical legal education program.[80]

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[72] Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907, 917-920 (1933).

[73] *Id.* at 914.

[74] *Id.* at 916.

[75] *Id.* at 915.

[76] *Id.* at 918.

[77] *Id.*

[78] Stephen Wizner & Jane Aiken, *Teaching and Doing: the Role of Law School Clinics in Enhancing Access to Justice*, 73 FORDHAM L. REV. 997, 998 n.7 (2004).

[79] Justine A. Dunlap & Peter A. Joy, *Reflection-in-Action: Designing New Clinical Teacher Training by Using Lessons Learned from New Clinicians*, 11 CLINICAL L. REV. 49, 51 n.3 (2004) (citing Proposed Model Rule Relative to Legal Assistance by Law Students, 94 Rep. of the A.B.A. 290, 290 (1969)).

[80] Murray Teigh Bloom, *Impressions from CLEPR's Fifth Anniversary Meeting*, *in* CLINICAL EDUCATION FOR THE LAW STUDENT: CONFERENCE PROCEEDINGS BUCK HILL FALLS, JUNE, 1973, at 115, 115 (Council on Legal Educ. for Prof. Responsibility ed., 1973).

The clinical legal education movement of the 1960s and 1970s reflected concerns about law reform and social justice seen in the civil rights, women's, environmental, poverty law, antiwar, and consumer movements; clinics expanded and their offerings grew, spurred by students' demands for "relevance."[81] The 1980s saw a shift to a less social-minded, more skills-oriented curriculum.[82] As alternative dispute resolution mechanisms displace a growing percentage of litigation, traditional trial advocacy courses vie for attention with offerings in mediation and negotiations. As the millennium drew to a close, the emphasis of the skills component of the curriculum received an enormous boost with the issuance of the ABA's MacCrate Report in 1992,[83] which identified ten fundamental skills and four fundamental values that lawyers must possess to be effective professionals.[84] The report indicated that skills development must begin prior to attending law school and continue throughout the course of a lawyer's career.[85] It is undisputed, however, that its primary impact has been upon law school curricula.[86]

Near uniformity in the overall structure and content of U.S. education should not be taken to infer widespread agreement that the model is correct. Concerns noted in the early twentieth

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[81] *See generally* Leah Wortham et al., *Clinical Legal Education: Reflections on the Past Fifteen Years and Aspirations for the Future*, 36 CATH. U. L. REV. 337 (1987) (panel discussion delivered at the Catholic University Law School Conference on Clinical Education, October 18, 1986, describing the tone of that time, and the interplay between the political and social landscape in the United States and legal education).

[82] Jon C. Durbin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. REV. 1461, 1466-67 (1998).

[83] ABA SECTION OF LEGAL EDUC. & ADMISSION TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992).

[84] Fundamental skills: (1) problem solving, (2) legal analysis and reasoning, (3) legal research, (4) factual investigation, (5) communication, (6) counseling, (7) negotiation, (8) litigation and alternative dispute resolution procedures, (9) organization and management of legal work ,and (10) recognizing and resolving ethical dilemmas; Fundamental values: (1) provision of competent representation (2) striving to promote justice, fairness and morality, (3) striving to improve the profession and (4) professional self development. *Id.* at 121-21 (Part II).

[85] *Id.* at 325-38 (Part IV).

[86] *See* Russell Engler, *The Maccrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow*, 8 CLINICAL L. REV. 109, 144-49 (2001).

century continue to be debated. Identified by 1981 by Professor Roger Cranton, the concerns are those of the questionable assumption of a unitary bar, the rigid structure of seven years of higher education, student boredom in the second and third years, lack of exposure to practical experience, the trade school orientation of much law school teaching and most student behavior, isolation of the law school from university scholarship and intellectual interests, and lack of a coherent theory of the purposes of legal education or the nature of law.[87] Lack of resolution of these issues, as well as attempts to appease all of the influencers, leads law schools to attempt to serve multiple missions with limited resources.

B. Law School Teachers

The continuing debate over what law schools should teach is accompanied by the question of who shall teach it. The creation of the academic law school gave rise to the profession of law professor. Early law schools were staffed by practitioners and judges.[88] The transition to the academic law school brought recognition that the talents of one distinguished within the profession do not necessarily translate into skill as a teacher.[89] As noted by Daniel Mayes, a founder of the University of Transylvania Law School:

> He is best suited to the business of instruction in a given subject, who has a thorough understanding of the subject so far as it is proposed to teach it, whose ambition is to teach it successfully, and who has no views or ambition beyond this . . . who can and will let himself down to the exact level of beginner's ignorance, and patiently and perseveringly enlighten that ignorance, and raise up the pupil step

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[87] Roger C. Cranton, *Change and Continuity in Legal Education*, 79 Mich. L. Rev. 460, 473 (1981).

[88] Stephen M. Feldman, *The Transformation of an Academic Discipline: Law Professors in the Past and Future (or Toy Story Too)*, 54 J. Legal Educ. 471, 473 (2004).

[89] *See*, *e.g.*, Daniel Mayes, *An Address to the Students of Law in Transylvania University*, *in* Gladsome Light of Jurisprudence: Learning the Law in England and the United States in the 18th and 19th Centuries 145 (Michael H. Hoeflich ed., 1988).

> by step, in regular method, to the desired point of knowledge. . . .[90]

By the early twentieth century, the sought-after law professor was one inexperienced, and typically disinterested in the practice of law:

> It was inevitable that those who have administered those numerous university law schools which are shaped according to the Langdell pattern should, for the most part, seek as law teachers those who have had little or no contacts with or a positive distaste for the rough-and-tumble activities of the average lawyer's life. It is significant that an official historian of Harvard Law School wrote in 1918 that, for law teaching, "previous experience in practice becomes unnecessary as is continuance in practice after teaching begins." For Langdell, the founder of the Harvard method, had said in vigorous fashion: "What qualifies a person to teach law is not experience in . . . the trial or argument of causes – not experience, in short, in using law, but experience in learning law. . . ."[91]

Academic affiliation gave rise to the role of law teacher as scholar. It became expected that as academics, law professors would contribute to the body of legal knowledge, chiefly through scholarly publications.[92] The view of law as a science further generated interest in empirical research and exploration of the "law and" disciplines.[93] Law professors as social thinkers advanced schools of thought, such as legal realism and critical legal studies.[94] Law professors also became activists both as technicians, drafting legislation and model laws, and as policy consultants on

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[90] *Id.* at 159.

[91] Frank, *supra* note 72, at 908. Frank actually misquotes Langdell. *See* A RECORD OF THE COMMEMORATION, NOVEMBER FIFTH TO EIGHTH, 1886, ON THE TWO HUNDRED FIFTIETH ANNIVERSARY OF THE FOUNDING OF HARVARD COLLEGE 86 (1887) ("What qualifies a person, therefore, to teach law is not experience in the work of a lawyer's office, not experience in dealing with men, not experience in the trial or argument of causes, – not experience, in short, in using the law, but experience in learning law. . . .").

[92] Feldman, *supra* note 88, at 480.

[93] *Id.* Examples include law and economics, law and bioethics, and sociology and law.

[94] *See id*. at 486-87.

a national and international level. These roles are accepted within our society as a natural extension of professorial duties. They are clearly distinct, however, from teaching, and call for different talents.

As clinical programs and skills-oriented courses became more integrated into the curriculum, the lack of talented practitioners on staff became a real deficiency. Law schools have attempted to fill the gap by hiring clinicians—full-time instructors with practice experience who combine class room instruction with supervision of students in practice settings, or specialize in teaching legal writing—and adjuncts—local practitioners and judges with specialization or skills expertise who wish to teach on a part-time basis. This diversification of teaching staff has added new levels of complexity to law school administration and programming. Questions of pay equity, status, and power within the structure of faculty governance abound.

III. Impacts of the Influences

A. National Conference of Bar Examiners

The fact that admission to the bar is governed by state law requirements is significantly mitigated by the activities of the National Conference of Bar Examiners. The majority of state bar examinations have adopted the Multistate Bar Examination (MBE) a six-hour, two-hundred-question multiple-choice examination covering contracts, torts, constitutional law, criminal law, evidence, and real property.[95] Of the fifty-six jurisdictions admitting persons to the bar, fifty-three use the MBE as a component of the test.[96] Seventeen states administer the Multistate Essay Examination (MEE), a three-hour, six-question essay exam which draws its questions from the areas of agency and partnership, commercial paper, conflict of laws, corporations, decedent's

[95] NCBE, The MBE, http://www.ncbex.org/tests.htm (last visited Feb. 22, 2006).

[96] NCBE, Multistate Examination Use, http://www.ncbex.org/tests/use.htm (last visited Feb. 22, 2006) [hereinafter Multistate Exam Use]. The exceptions are Louisiana, Washington and Puerto State. *Id.*

estates, family law, federal civil procedure, sales, secured transactions, and trusts and future interests.[97] The Multistate Professional Responsibility Examination (MPRE), a sixty-question multiple choice exam focusing on the rules of law governing lawyer conduct, is administered in fifty-two jurisdictions.[98] The fourth standardized test prepared by the NCBE, the Multistate Performance Test (MPT) is currently utilized in seventeen jurisdictions.[99] This test attempts to examine the applicant's use of lawyering skills by presenting a file of source documents and a library of research materials.[100] The examinee is directed to undertake a specific task such as preparing a memorandum, will, contract provision, or a trial plan for discovery, witness examination, or a closing argument.[101] Law school curricular offerings and student course selection are inevitably impacted by the subject matter covered by the test. Law schools are compelled to cover, and students are influenced to enroll in, courses concerning subjects to be examined.

The correlation between the pass rate for students attending accredited versus unaccredited law schools is dramatic. In 2004, 68,203 aspiring lawyers who had attended ABA-approved law schools took the bar; their pass rate was 68 percent.[102] Non-ABA-approved schools were attended by 3,457 examinees; their pass rate was 26 percent.[103] U.S. ABA-approved law schools, in comparison, effectively prepare law students for admission to the

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[97] NCBE, The MEE, http://www.ncbex.org/tests/mee_set.htm (last visited Feb. 22, 2006); Multistate Exam Use, *supra* note 96.

[98] NCBE, The MPRE, http://www.ncbex.org/tests/mpre_set.htm (last visited Feb. 22, 2006); Multistate Exam Use, *supra* note 96. The exceptions are Maryland, Puerto Rico, Washington and Wisconsin. *Id.*

[99] Multistate Exam Use, *supra* note 96.

[100] NCBE, The MPT, http://www.ncbex.org/tests/mpt_set.htm (last visited Feb. 22, 2006).

[101] *Id*.

[102] *2004 Statistics*, BAR EXAMINER, May 2005, at 1, 9.

[103] *Id.* The 2003 pass rate was sixty-eight per cent versus twenty-three percent. *2003 Statistics*, BAR EXAMINER, May 2004, at 1, 9. For 2002, the rates were sixty-seven per cent and twenty-three per cent. *2002 Statistics*, BAR EXAMINER, May 2003, at 1, 9. For 2001, the rates were seventy per cent and twenty-five per cent. *2001 Statistics*, BAR EXAMINER, May 2002, at 1, 9. For 2000, the rates were sixty-eight per cent and twenty-eight per cent. *2000 Statistics*, BAR EXAMINER, May 2001, at 1, 9.

bar. A ten-year summary of bar passage rates indicates that annual numbers range from 75 to 79 percent of all first-time bar-takers achieving a passing score.[104] Compared to international pass rates, the United States ranks extremely high.[105] The confidence level that U.S. students will likely pass if they are successful in law school studies at accredited schools results in a less stressful learning environment, permitting students to profit from elective as well as required courses. Controlling the bar admissions process as well as controlling the quality of course offerings creates an environment of effective learning.

B. The ABA

As the accrediting body, the influence of the ABA cannot be understated. While the power of the ABA has contributed greatly to the overall quality of legal education in the United States two concerns must be noted. Both are related to the fact that the organization, above all else, is a trade association. Bar associations have historically engaged in a variety of anti-competitive practices, ranging from published minimum fee schedules[106] to bans on lawyer advertising,[107] to concerted lobbying to expand the list of tasks which may be performed exclusively by lawyers.[108] Its role in accreditation has been reviewed recently, resulting in the initiation of litigation against it by the U.S. Department of Justice.[109] The ensuing consent decree prohibited, among other things, the adoption or enforcement of any standard, interpretation, or rule imposing requirements on salary or benefits for law school employees; collecting and disseminating compensation data; and reviewing the data in conjunction with the accreditation process. It prohibited any law school from offering transfer credits for any course at a state-accredited law school beyond a requirement that two-thirds of one's credits must be obtained at an ABA-approved law school, and it forbid

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[104] *2004 Statistics*, *supra* note 102, at 14-16.

[105] In Japan, bar passage rate is as low as two percent. *See* Hisashi Aizawa, *Japanese Legal Education in Transition*, 24 Wis. Int'l L.J. 131, 145 (2006).

[106] Held illegal in *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975).

[107] Held illegal in *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977).

[108] Richard Abel, American Lawyers 112-15 (1989).

[109] United States v. Am. Bar Ass'n, 934 F. Supp. 435 (D.D.C. 1996).

for-profit status of a law school as a disqualifying characteristic for ABA approval.[110]

While few would argue that the ABA has failed to demonstrate sincere concern towards the improvement of quality in legal education, some of its actions have clearly disadvantaged identifiable groups from entry into the profession. The early decisions to accredit only full-time, non-proprietary law schools, and to require a college education, not only limited the number of law students but also disproportionately impacted certain groups, especially immigrants.[111] Contemporary standards, including those which require substantial in-residence study,[112] limit the number of credits obtainable through distance education,[113] and limit the hours of outside employment by law students[114] continue to make a legal education especially difficult for the economically disadvantaged, particularly those with obligations to support other family members. Problems facing minority groups and women seeking entry to law school[115] and equal participation in the legal[116] and law teaching professions[117] are a historical and continuing concern,[118] reflecting the exertion of pressure

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[110] *Id.*

[111] *See* Shepard & Shepard, *supra* note 3, at 2118-19.

[112] ABA LAW SCHOOL STANDARDS, *supra* note 47, Standard 304(b).

[113] *Id.* Standard 306(e).

[114] *Id.* Standard 304(f).

[115] *See*, *e.g.*, Lani Guinier et al., *Becoming Gentlemen: Women's Experience at One Ivy League Law School*, 142 U. PA. L. REV. 1 (1994).

[116] *See*, *e.g.*, *The Jewish Student and New York Jobs - Discriminatory Effects in Law Firm Hiring Practices*, 73 YALE L.J. 625 (1964).

[117] *See*, *e.g.*, Mary Elizabeth Basile, *False Starts: Harvard Law School's Efforts Towards Integrating Women Into the Faculty, 1928-1981*, 28 HARV. J.L. & GENDER 143 (2005).

[118] The notion of preserving "quality" does not stand as an explanation for discrimination. The Dean of the Yale Law School in 1926 argued against basing admission on grades noting that increasing the number of students with "foreign" backgrounds would leave Yale with "an inferior student body ethnically and socially." John Henry Schlefel, *American Legal Realism and Empirical Social Science: From the Yale Experience*, 28 BUFF. L. REV. 459, 472 n.69 (1979). Quotas formerly used to limit the number of Jews in higher education are now a matter of concern for Asian Americans. *See* Daren R. Mooko, *The Asian American College Student as Model Minority: The Myth, The Paradox and the Deception*, 16 VT. CONNECTION 47 (1995), *available at* http://www.uvm.edu/~vtconn/?Page=v16/mooko.html. For Jewish quotas, see ABEL, *supra* note 108, at 85.

to exclude groups deemed undesirable from becoming lawyers.[119]

The second concern is the profession's self-interest that law school graduates enter the profession ready to contribute to the profitability of their employers. This desire for instant preparedness has a significant impact on course offerings and course selection by students, concerned about their marketability.[120]

The external pressure for emphasis on skills teaching has been a modern constant. As noted twenty-five years ago, "Legal education today is being subjected to criticism which is unprecedented in scope and extent. The bench and bar argue that law graduates are not fully trained to assume professional duties. They argue that law school should better prepare their graduates for advocacy and counseling roles."[121] It is difficult to dispute the importance of this preparation as part of a law school's mission. Few, however, are asking what is being displaced in legal education by acceding to these demands.

In addition, the curriculum has been affected by the growth of large law firms and the ensuing trend of lawyer specialization. In 1963, there were a total of forty-three law firms in the United

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[119] *See* National Lawyers Guild, About Us, http://www.nlg.org/about/aboutus.htm (last visited Apr. 17, 2006). This critique is not intended to be limited to the ABA. The AALS clearly engaged in similar bigotry. *See* STEVENS, *supra* note 65, at 109 n.69.

[120] Accreditation Standard 302(a) requires:

> (a) A law school shall require that each student receive substantial instruction in:
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> (1) the substantive law generally regarded as necessary to effective and responsible participation in the legal profession; and
>
> (2) legal analysis and reasoning, legal research, problem solving, and oral communication;
>
> (3) writing in a legal context, including at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year;
>
> (4) other professional skills generally regarded as necessary for effective and responsible participation in the legal profession; and
>
> (5) the history, goals, structure, values and responsibilities of the legal profession and its members.

ABA LAW SCHOOL STANDARDS, *supra* note 47, Standard 302(a).

[121] Cranton, *supra* note 87, at 469.

States with more than fifty lawyers.[122] "Elite" corporate law firms then employed a small fraction of law graduates; the majority practiced alone or in pairs.[123] The National Association of Law Placement tracks data of initial employment of lawyers by gender. Changes indicated by that data may be summarized as follows:

LAWYERS ENTERING PRIVATE PRACTICE[124]

	1982		*2002*	
Size of Firm	Men	Women	Men	Women
Solo	5.8	7.7	2.3	1.8
2–10	38.9	36.9	28.2	27.5
11–25	14.4	9.8	10.3	13.5
26–50	10.7	10.1	6.7	6.4
51–100	9.5	11.7	7.0	6.9
100+	13.9	17.0	38.3	40.4

As law firms have restructured to expand in size, they have departmentalized into areas of specialization. Numerous small firms have similarly rejected the traditional role of lawyers as generalists and refer to themselves as "boutique" firms limiting their practice to discrete areas of law. The result is an ever-increasing demand for newly minted "specialist" lawyers influencing offerings and enrollments in discrete subject matter offerings. Large law firms increasingly make offers of employment to new graduates within a specific department rather than within the firm at large.

This reality has similarly influenced job-seeking students in course selection. The annual *U.S. News and World Report* rankings include nine specialty areas.[125] *The Official Guide to Legal*

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[122] QUINTON JOHNSTONE & DAN HOPSON, JR., LAWYERS AND THEIR WORK: AN ANALYSIS OF THE LEGAL PROFESSION IN THE UNITED STATES AND ENGLAND 25 (1967).

[123] *Id.*

[124] Ass'n for Legal Career Professionals (NALP), Employment Patterns - 20 Year Trends - 1982-2002, http://www.nalp.org/content/index.php?pid=169 (last visited Feb. 22, 2006).

[125] *See America's Best Graduate Schools 2006: Complete Guide to Law Schools*, U.S. NEWS & WORLD REP., *available at* http://www.usnews.com/usnews/edu/grad/rankings/law/lawindex_brief.php.

Specialties, published in 2000, serves as a guidance counselor for law students, matching curriculum to career opportunities.[126] Certain law schools have responded, adopting areas of concentration, which certify a student's achievement in a particular substantive area upon fulfilling certain course requirements within the standard curriculum, or through offerings of other departments on campus.[127]

The combined result is pressure on faculty and students to direct curricular focus in three areas: substantive courses tested on the bar exam, skills courses making students practice-ready, and substantive courses in specialty areas. Thus relegated to fourth-place status is an entirely different constellation of courses of great importance, but bereft of an external advocacy group.

In 1968, Willard Hurst reflected that the law must be seen as "process (providing legitimated means for the emergence of public policy decisions and their adaptation to experience) and as function (providing, or legitimating other provision, for the operational needs of society and of individual life.)"[128] The job of the law school had moved away from imparting a fixed body of knowledge. He advocated, instead, for seeing law as the "evolving product of distinctive processes for using power,"[129] and the task of law school to include studying "the behavior of the bar in matters which did not come into formal proceedings before an official agency."[130] Trained lawyers counsel individual clients and represent them in court, but that is not all they do.

Whether functioning as a counselor or advocate on behalf of an individual or institutional client; as a member of the executive,

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[126] Lisa L. Abrams, The Official Guide to Legal Specialties: an Insiders Guide to Every Major Practice Area (2000). The book has thirty chapters, each identifying an area of specialization from "Admiralty and Maritime Law" to "Trusts and Estates." Each chapter lists classes and law school experiences recommended by lawyers practicing in the area being described, as well as a listing of key skills.

[127] *See*, *e.g.*, Baylor Law, Areas of Concentration, http://law.baylor.edu/advocacy/areas_concentration.htm (last visited Feb. 22, 2006).

[128] W.R. Hurst, *Changing Responsibilities of the Law School: 1868-1968*, 1968 Wis. L. Rev. 336, 337.

[129] *Id.* at 343.

[130] *Id.* at 340.

legislative, or administrative branches of government; as a lobbyist or staff to an advocacy group or other non-governmental organizations; the job of a lawyer is that of problem solver, charged with identifying, accommodating and resolving competing interests. Lawyers function as social planners and policy makers.[131]

Where does the curriculum address preparation for this role? It is in the study of legal process, and the broad array of courses that expose law students to myriad issues confronting society. Jurisprudence, sociology of law, legal history, law and economics, law and literature, bioethics and the law, and comparative law courses are but a few. To be a skilled lawyer, one must appreciate the complexities of the modern world. Courses with interdisciplinary content, and those that enrich one's understanding of the role of law in society, provide a context for evaluating problems lawyers are called upon to resolve.

Leonardo Bruni, scholar and statesman of fifteenth-century Florence, noted that, while the study of the civil law might be more marketable, study of the humanities has as its aim the superior purpose of the creation of the good man.[132] Becoming a lawyer in the United States is the culmination of a seven-year, post-secondary-school process. The purpose of the last three years must be to enhance, not to undermine, the goals of the first four. Those who clamor for law graduates ready to bill their hours the week after bar admission are not advocating for broadly educated attorneys. Law schools must embrace in their mission the objective of producing well-rounded graduates, with an appreciation of the humanities and social science, not just skills and doctrine. Trade associations must not be permitted to define key professional attributes too narrowly.

C. The Faculty and AALS

The tenure system in the United States provides traditional faculty, including law professors, with lifetime job security absent egregious circumstances. Prior to achieving tenure, law faculty

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[131] Esther Lucile Brown, Lawyers, Law School and the Public Service 22, 94-96 (1948).

[132] Robert E. Proctor, Defining the Humanities: How Rediscovering a Tradition Can Improve Our Schools 3 (2d ed. 1998).

are subject to rigorous review at the school and parent-institution levels with regard to their teaching, scholarship, and service. Thereafter continued excellence in terms of scholarly activity, teaching competence and participation in the life of the governance of the institution and the larger community are encouraged, but not generally enforced with any vigor.

Compared to other academics, law professors are well compensated. Compared to attorneys in private practice with similar credentials, they are not. Thus the decision to be a law professor seems best described as a lifestyle choice, and non-economic job satisfaction is of great importance. A significant source of satisfaction comes from the freedom generally afforded to faculty. Professors are encouraged to identify their own areas of scholarly interest; with seniority, changing interests are supported and decreased productivity is permitted. With length of service, self-identified teaching interests are likely honored. Once a course assignment is given, supervision is largely ended. Course content, selection, and use of teaching materials and classroom techniques are all matters of individual choice.[133] Different professors teaching the "same" course at the same school are free to provide totally different experiences. The AALS site visit process and ensuing report is used by the faculty to advocate for increased institutional support for faculty development.

This freedom nurtures creativity and promotes excellence among the self-directed. Yet it frees individuals from the obligations of community citizenship, and it allows them to refrain from taking individual responsibility for achieving and maintaining institution-wide excellence. Participation in faculty governance can be poorly rewarded and often rates as a low priority among faculty members. The losses from absence of strong leadership appear to have been exacerbated as law school staff members have diversified in background and classification. The influx of clinicians and adjuncts has introduced new interest groups. Their

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[133] "This fragmentation of the curriculum into a bewildering array of largely elective courses, as well as the individual stamp which law teachers impress upon the same courses and even the same teaching materials, make it difficult to determine with precision just what is being taught in the law schools." Barry B. Boyer & Roger Cranton, *American Legal Education: An Agenda for Research and Reform*, 59 CORNELL L. REV. 221, 230 (1974).

role in the administration and governance of the school is frequently ill-defined. Concerns for equitable treatment by these groups, as well as women and minority faculty and staff are topics of increasing, and deserved, attention.[134]

Whatever warm feelings faculty possess towards their institution, few place community development above individual autonomy over the course of their careers. The result is that those most keenly interested in the law school are fragmented and disorganized in asserting influence on what the school should be doing. Experience shows that the notion of faculty speaking with one voice is naive, to say the least. If any group appears willing to reduce its influence in the role of U.S. legal education, it appears to be the traditional law faculty. Structure and culture must be revisited so that those most directly involved in the process of legal education exert an appropriate degree of influence.

IV. THE FUTURE

Law schools surely produce legal knowledge; I have focused on their role in the production of lawyers. The American Bar Association and National Conference of Bar Examiners exert influence upon institutional structure and offerings, reflecting one view of what type of training makes a "good" lawyer. The American Association of Law Schools and institutional faculties are similarly concerned with providing quality legal education, but express little consensus as to what that education should provide. Energies tend to focus on discrete subject matter areas rather than the totality of a legal education. There is a general awareness that the role of lawyers in society continues to evolve. The decrease in litigation, the increase in the use of technology, and the globalization of human interactions are but three examples of change impacting what lawyers do. Law school graduates use their education in widely varied capacities.

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[134] *See*, *e.g.*, David S. Romantz, *The Truth about Cats and Dogs: Legal Writing Courses and the Law School Curriculum*, 52 KAN. L. REV. 105, 132 (2003) (addressing legal writing programs and instructors); *see also* Margaret Martin Barry, et al., *Clinical Education for the Millennium: the Third Wave*, 7 CLINICAL L. REV. 1, 30-32 (2000); Richard K. Neumann, Jr., *Women in Legal Education: A Statistical Update*, 73 UMKC L. REV. 419 (2004).

U.S. law schools today, not much differently than one hundred years ago, are subject to multiple demands from varied constituencies. The diffusion of power over legal education continues to pull us in opposite directions. While some believe three years of post-graduate education is too long, it is not long enough to accomplish all of the diverse goals of a legal education. The solution is not to agree on a single "correct" curriculum, but rather to offer distinct paths and work toward better advising of law students. The law school catalog might be considered "rich" rather than "chaotic" if we focus on offering well-described choices.

The greatest deficiency in the first year of law school is that students end the term with an excellent understanding of what judges do, but with minimal exposure to the work of lawyers. They then face two years of elective education, ill-prepared to choose among courses that will aid them to become a generalist or specialist, counselor, litigator, or public servant. The greatest strength of the current curriculum is that its variety makes all things possible. The faculty needs to work with practicing lawyers of all stripes to obtain a clear understanding of the varied careers available to lawyers. The bar needs to accept the responsibility assigned to it in the MacCrate report to provide life-long learning, and must not relinquish the expectation that all graduates be fully-formed practitioners. We must face up to the myth of the unitary bar and present the diverse methods, from clinical experience to lecture, and varied subject matter offerings, so that students can graduate prepared both to pass bar exams and to pursue personal goals within a broadly defined profession.