

7-25-2016

America's law schools need to be reformed

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Recommended Citation

Romero, Aldemaro Jr., "America's law schools need to be reformed" (2016). *CUNY Academic Works*.
http://academicworks.cuny.edu/bb_pubs/65

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Regional

America's law schools need to be reformed

Increasing costs, decreasing enrollments and doubts about its practical value has placed legal education in the U.S. under a controversial light. Until the mid-19th century legal training was essentially technical in nature. During that time many lawyers – like Abraham Lincoln – could afford to study the law by themselves without even attending any law school. By passing the bar exam, they were admitted into the legal profession.

After the Civil War legal education started to change. In 1870 a lawyer named Christopher Langdell was named dean of the Harvard Law School. During his 25 years at the helm of that school he changed the curricular structure, drastically reforming legal education. He introduced the “case method” approach, aimed at improving the critical thinking of students for purposes of class discussion. This meant that legal studies began to look more academic with a premium placed on scholarship rather than on practical skills. Law schools started to look more like other university studies – particularly like the humanities – than they did a vocational school. The teaching of the law, that used to take place in rented rooms away from the main campus of the university, was now welcomed in better buildings on campus whose construction was regularly funded by their alumni.

Since then, teaching in law schools began to look like the one popularized by the actor John Houseman in his role of Professor Kingsfield in “The Paper Chase” movie and subsequent TV series. The Socratic method became the favorite

Dr. Aldemaro Romero Jr. Letters from Academia

tool of the classroom, with students called on cold and expected to answer questions about examples from the casebook.

In recent years many have called for a reform in the way teaching takes place in law schools. Yet, we have seen little movement in that direction. For example, clients at law firms have been complaining that they have to pay high fees – usually several hundreds of dollars an hour – to lawyers who lack practical experience while they are being trained by their law firms or elsewhere in practical skills. This concern has been countered by law schools, which argue that the law has so many different specialties that if they were to provide practical training in each one of them it would be impossible to do in the three years of study common at law schools. This is an attention-grabbing argument because other professional schools, including medicine, do require years of hands-on experience before they allow their graduates to practice on their own.

At the end of the day it all may have to do with prestige. School rankings have

become of utmost importance when it comes to competing for and recruiting top students – as well as securing alumni donations. Therefore, law schools have emphasized the recruitment of legal scholars renowned for their research instead of

people with practical experience to be professors. A study published in 2010 in the South Carolina Law Review showed that since 2000 faculty hired at top-tier law schools had, on average, only one year of legal experience with nearly half of them not having ever practiced law. There are other signs of disdain towards practical experience in law schools. In an article published in 2011 in The New York Times, it was asserted that there is a wide belief that after lawyers have spent more than eight or nine years practicing, their chances of getting a tenure-track job at law schools start to dwindle.

Yet, efforts aimed at changing the approach of how to teach law has found mediocre success because of the apprehension tenure-track faculty feel towards change. Among the attempts for change has been to increase emphasis on opportunities for students to practice in legal clinics that are designed to help people with modest or no resources get legal counseling free of charge, allowing students to get practical experience under faculty supervision. Good examples of that are the CUNY School of Law in Queens, NY, and Washington University’s Law School in St. Louis. Yet, according to the Center for the Study of Applied Legal Education, the percentage of law schools requiring this practical training is very low.

Thus, law schools keep emphasizing scholarship over practical experience. Besides good grades, the highest accolade a law student can obtain is to make it into the scholarly journals that focus on legal issues and that are published by an organization of students at a law school or a bar associ-

ation, also known as “law reviews.”

Today there are more than 600 law reviews in the U.S. generating over 10,000 articles per year. Although many of these publications comply with the high standards of scholarship of other disciplines, their practical value is generally considered very low. According to a study published in 2011 in The Northwestern University Law Review on the decisions by the U.S. Supreme Court in the previous 61 years, only one third of their decisions cited legal scholarship. In a famous quote by Supreme Court Justice Stephen G. Breyer, “There is evidence that law review articles have left terra firma to soar into outer space.”

The problem is that even if the majority in the legal profession agrees what needs to be done, they will face what in academia is called “passive resistance” to change, and that can be an intractable barrier. The hope is that law firms, their clients and law students start to demand changes. The latter are paying top money for tuition – most of which ends up supporting faculty scholarship. The whole system should also place less emphasis on the name of the graduating institution while seeking to reduce the cost of legal education. On balance, after graduating from law school those newly minted lawyers have spent countless hours learning a lot of theories and facts that will be of little use in their day-to-day practice.

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