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Legal education in the United States has been controversial in the last few years due to its cost, decreasing enrollments, and doubts about its practical value. Until the mid-nineteenth century legal training was essentially technical in nature. At that time many lawyers—like Abraham Lincoln—could afford to study the law by themselves without even attending law school and then, by passing the bar exam, were admitted in the legal profession.

Things started to change after the American Civil War. In 1870, Christopher Langdell, a practicing lawyer, was named dean of the Harvard Law School and during his twenty-five years at the helm of that school he changed the curricular structure, reshaping legal education to this day. Langdell introduced the "case method" aimed at improving the critical thinking of students into more and more theoretical circumstances while starting to ignore the particulars of the practice. What this meant was that legal studies began to look more academic with a premium on scholarship rather than practical skills. In other words, law schools started to look more like other university studies—particularly in the humanities fields—than a vocational school. Even physically, the teaching of the law, which 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 routinely funded by their alumni.

Since then, teaching in law schools has looked like the image popularized by the actor John Houseman in his role of Professor Kingsfield in *The Paper Chase* movie and subsequent TV series when applying "the Socratic method" in the classroom. Students started to be called in the cold and were expected to answer questions about cases from the casebook for each subject.

Despite calls from many quarters in recent years to change the way the law is taught at the university level, we have not seen much of a transformation. On one hand you have clients complaining that they have to pay high fees (usually several hundreds of dollars per hour) to lawyers who lack practical experience while they are being trained by their law firms or elsewhere on practical skills. On

the other hand, you have law schools arguing that the law has so many different specialties that if you were to provide practical training in each one of them that would be impossible to complete in the three years you are supposed to spend at law school. This is an interesting argument because another professional school—medicine—does require years of hand-on experience before doctors are allowed to practice on their own.

Part of the problem is that in the race for prestige, which is closely tied to admission of top students while enhancing attractiveness to potential donors, law schools seem to be more interested in recruiting legal scholars renowned for their research than people with practical experience as professors. A 2010 study authored by Brent E. Newton in the *South Carolina Law Review* showed that since the year 2000 faculty hired at top-tier law schools had only one year of legal experience on average with nearly half of them never having practiced law. Further, according to an article published in the *New York Times*, "it is widely believed that after lawyers have spent more than eight or nine years practicing, their chances of getting a tenure-track job at law school start to dwindle" which additionally shows disdain towards practical experience in law schools.[1]

Attempts to change the approach of how to teach law have found mediocre success, which is usually tied to the persistent fear tenure-track faculty feel towards change. One of the most important innovations has been to increase the emphasis on opportunities for students to practice in legal clinics, designed to help people with modest or no resources get legal counseling for free while for students get some practical experience under faculty supervision. Good examples of these are the CUNY School of Law in Queens, New York, 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 in the single digits.

Despite these obvious shortcomings, law schools keep emphasizing scholarly work over practical experience. The highest accolade a law student can obtain—besides top grades—is to make it into the law reviews of their institutions. Law reviews are scholarly journals that focus on legal issues and are published by an organization of students at a law school or a bar association.

Currently there are more than six hundred law reviews in the United States generating over ten thousand articles per year. Although many of these

1. David Segal, "What They Don't Teach Law Students: Lawyering," *New York Times*, November 19, 2011.

articles comply with the high standards of scholarship that you would find in other disciplines, their practical value is, for the most part, doubtful. A study published in 2011 in the *Northwestern University Law Review* showed that in the 61 previous years the Supreme Court had used legal scholarship in only about one-third of its decisions. As Supreme Court Justice Stephen G. Breyer said in a 2008 speech at New York University, "There is evidence that law review articles have left terra firma to soar into outer space."[2]

Given all this criticism about law school it is not surprising that we now see books making proposals of how to teach law. One of the first was Steven Harper's 2013 *The Lawyer Bubble: A Profession in Crisis*. Now we find another one, this time by Richard Posner. He has been a judge in the U. S. Court of Appeals for the Seventh Circuit (basically Illinois, Indiana, and Wisconsin) since 1981 and is a senior lecturer at the University of Chicago Law School. He has a great reputation in legal circles because he is the most-cited legal scholar, is highly prolific (he publishes a book per year on average), is considered by many the greatest living judge, and is someone who writes all of his own judicial opinions. He pioneered economic analysis of the law in the 1970s but has written about every imaginable legal topic since then.

In *Divergent Paths*, Posner aims at reforming the gap between the practical and the scholarly in the teaching of the law. His preoccupation is how we can provide a legal education that is less theory-driven and more relevant to the current and future demands of judging and lawyering in general, particularly at the federal level. The text of the book can be a dense one for those without a legal background, but still many of the messages regarding reforming law schools are clear and sound.

The book is divided into an introduction and two parts: 1) problems of the modern federal judiciary and 2) the academy to the rescue? Each of these parts are subdivided into three chapters each, for six total chapters: 1) structural deformation, 2) process deficiencies, 3) management deficiencies, 4) the contribution of scholarship, 5) the law school curriculum and 6) continuing judiciary education. The book ends with an epilogue and has a subject index.

To summarize all of the book in this article would be beyond the scope of this review since Posner refers to 55 problems (some of them very complex) and

2. Stephen G. Breyer, "Response of Justice Stephen G. Breyer," *New York University Annual Survey of American Law* 64 (2008): 33. It is interesting to note that four of the current justices of the U. S. Supreme Court were law professors at some point in their careers: Breyer, Ginsburg, Kagan, and Kennedy.

48 proposed solutions. Therefore, let me concentrate on the solutions he proposes for the problems highlighted in the introduction of this review regarding law schools. Posner believes that there should be major changes in the curriculum. He deems that more constitutional law should be taught in the first year of law school to provide a better context and that more interdisciplinary approaches are needed in order to deal with today's real legal problems. He is also critical of the "continued emphasis in legal-writing courses on the *Bluebook*" (a systematic method by which members of the legal profession communicate important information to one another about the sources and legal authorities upon which they rely in their work). He believes in focusing more on teaching writing in a way that will allow lawyers to communicate better not only with their peers but also with the general public. This is not surprising because as we are all witnessing in academia, regardless of the field, students who come to college are less and less capable of constructing intelligible sentences. To pretend that they can do that when immersing themselves into obscure legal prose is becoming more and more challenging. He recommends that academics should write shorter and simpler articles. Posner also reminds us—and with good reason—that the vast majority of law students do not get into law schools to the become scholars but to practice the law.

He also points out that there are political predispositions in many judicial decisions and that most law professors abstain from criticizing judges for whatever perceived or real political biases. He thinks that is a mistake and that the professors should concentrate on analyzing and criticizing the decisions, not the personalities. He insists that both faculty and students should conduct scientifically grounded research into the role of ideology and other factors in judging. He also says that most casebooks—the main printed sources used by law students—also fail in that regard. Given that the casebooks are very expensive (about $200 on average) he proposes that law professors just hand out the list of cases and the questions they should be considering; after all, the totality of those cases are available electronically through the LexisNexis database. No wonder he calls casebooks "an anachronism."

Another criticism he has is the obsession with the superficiality of teaching based on the reliance on precedents because—he affirms—many of those citations lack a comprehensive analysis of all of the facts, reason by which many lawyers pick and choose what they think is going to be most convenient for their arguments regardless of all the facts of the case.

He also proposes that, like many other professions, there should be more required training by lawyers after they graduate. His reasoning is very simple: law is becoming more and more complex and new approaches—even unconventional ones—are needed to advance certain cases and you can only learn that on your own via either online and/or one-on-one training camps.

Another interesting—and somewhat surprising—recommendation he makes is to teach less on relying on legal analysis (the kind of multifactor tests that lists considerations for the judge to weigh and compare) and develop more insight into how to decide cases. He does not believe in deciding cases in a manner that may look like following a cookbook but to actually develop the ability to come up with better discernment on cases given that they are becoming more complex and interdisciplinary in nature. He does believe that lawyers that aspire to be part of a court procedure in any fashion should be trained to have a solid preparation in doctrinal work by examining specific rules because students must understand that legal doctrine does not decide the most unusual (and interesting) cases.

This last point is interesting and he uses it to support his conviction that panel courts, like the supreme courts at either state or federal levels, should be composed by judges who have had different experiences before becoming a justice, especially if those experiences were in different branches of government.

He agrees that law schools should be emphasizing legal analyses of specific rules rather than the exploration of foundational questions typical of theoretical scholarship. He champions the idea of more clinical experience under the supervision of faculty.

Posner's book is, therefore, a valuable contribution to the discussion of the reforms that law schools need. The problem is that even if the majority in the legal profession agree about what needs to be done, they will encounter what in academia is called "passive resistance" to change that can be an insurmountable barrier. Unless, of course, law firms and their clients as well as law students start to demand changes. After all, students 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. After all, after graduating from law school those lawyers who have spent countless hours learning a lot of theories and facts will find them to be of little—if any— use in their day-to-day practice.