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What Can We Learn from Law School?

Legal Education Reflects Issues Found in All of Higher Education

Julie Margetta Morgan December 2011

Introduction and summary

Lawyers play a relatively small role in the American workforce, but they seem to play a big role in the American imagination. Television shows such as *The Good Wife* and *Suits* portray a luxurious and exciting lifestyle at “Big Law” and boutique law firms, while *Law and Order* depicts district attorneys working relentlessly in the pursuit of justice. And mainstream media follows the developments in legal education with a level of interest that seems out of proportion with its relevance to their readership.¹

As they continue to read articles about the legal education crisis in *The New York Times* or *The Wall Street Journal*, many people may wonder: Why do we care so much about law school? For higher education policymakers, though, it may be more worthwhile to consider: Why *should* we care about legal education?

As a matter of scale, it seems silly to spend much time thinking about law school. Last year only about 155,000 students were enrolled at law schools accredited by the American Bar Association, or ABA, whereas almost 6 million students were enrolled in degree programs at community colleges that same year.² But the small scale of the legal education sector is exactly why it may be worth some attention.

A recent *New York Times* article on the economics of law school described legal education as “a singular creature of American capitalism, one that is so durable that it seems utterly impervious to change.”³ But to those who work in higher education policy, the story of impossibly high demand even in the face of climbing tuition and low success rates seems all too familiar.

It’s certainly the story of for-profit colleges that tend to charge extremely high rates to students who will make modest salaries, if they graduate at all. And in many ways, it’s the story of all American colleges—most of which continue to raise their prices without ever having to account for whether they deliver a service of value.

The reason to focus on law school is not, as *The New York Times* claims, that it is a peculiar form of education. It's that legal education suffers from many of the same doubts and problems that plague all of higher education. But with only 198 fully ABA-approved law schools in operation, legal education is the bite-sized version of the phenomena that are forcing change in all of our colleges.⁴ And, like for-profit colleges, law schools primarily prepare students for a well-defined career area, making it easier to assess how well they serve their students.

Of course, there are some key differences between law schools and, say, community colleges. Law students have already graduated from some kind of undergraduate program, proving that they have the skills and resources to carry them through a postsecondary program, making completion rates less of a concern. Because law schools have a selective admissions process, their students probably will not need any kind of remedial education—a huge part of the services community colleges provide their students. And law students tend to be more informed consumers of information about their education than other students. But these differences actually help narrow our focus to the issues that bridge across legal education and undergraduate programs, including questions of cost, quality, and preparedness for employment.

This report explores the field of legal education with the hope that putting a magnifying glass to this small part of higher education will help us better understand the problems that face all colleges. (see sidebar) It details the steady rise in law school enrollment, despite high tuition rates and a heavy reliance on student loan debt. And it describes the unpleasant surprise that awaits law students upon graduation: Though a few lucky grads will make more than \$130,000 per year, most new lawyers can expect annual salaries of around \$63,000. With monthly loan payments near \$1,000, graduates are finding that membership in the legal profession is not the golden ticket they thought it would be.

The problems facing higher education

For many years the primary policy issue in higher education was equality of access. Policymakers and researchers focused on whether under-represented groups like low-income students or students of color had the educational and financial resources necessary to get into college. Now many have turned to a new problem: Not enough students are graduating from college with the skills they need to compete in the workforce.

Labor economists have shown that there is a growing demand for workers with postsecondary education and training in the United States. In fact, Anthony Carnevale of the Georgetown Center for Education and the Workforce argues that two-thirds of the jobs created by 2018 will require workers that have some postsecondary education.⁵ But based on current college attendance and completion rates, we will not have enough qualified workers to fill those jobs.

In 2008 only 42 percent of Americans aged 25 to 34 had an associate's degree or higher.⁶ Colleges must find ways to get more students into—and through—college. But it's not enough to simply produce more college graduates. Those students must also be prepared for the occupational areas that are likely to grow over the next few decades.

Although business is the most popular college major these days, many of the jobs of the future will be in health care or in the science, technology, engineering, and math fields.⁷ If we do not find a way to get students into fields that are likely to grow, the mismatch between workers' skills and workforce needs will continue.

There are a few key obstacles that keep colleges from fulfilling the needs of students and of the workforce:

- **Preparation.** Many students who arrive on college campuses are simply not prepared to do college-level coursework. The Depart-

ment of Education reports that 34 percent of entering-college students require at least one remedial education course.⁸

- **Price.** A key issue in getting students through college is affordability. The price of a college degree at a four-year private college has risen 75 percent over the last 20 years.⁹ Financial aid has not kept pace—the Pell Grant grew only 39 percent in that same time period.¹⁰ Many students decide not to attend college or drop out without a degree due to concerns over cost. Others are taking on an increasingly large debt burden—the average debt for students who borrow to complete a bachelor's degree is \$24,000.
- **Quality.** Many colleges simply are not offering the quality of education that students need to prepare for a successful career. Researchers Richard Arum and Josipa Roksa found that of 2,300 students at four-year universities, 45 percent did not have any significant learning gains in the first two years, and 36 percent did not have any significant learning gains over all four years.¹¹ Low academic standards are a persistent issue in for-profit education. A recent Government Accountability Office, or GAO, report demonstrated through a secret-shopper investigation that some for-profit institutions gave students passing grades despite grossly substandard performance.¹²
- **Information.** Access to information can mitigate the problems of preparation, price, and quality described above, helping students choose colleges that fit their career goals, academic preparedness, and budget. But prospective college students do not have access to reliable, comparable information. Though the federal government and nonprofit organizations make information available, most students do not access these resources.¹³ And many colleges make it nearly impossible for students to find any information about their prices, financial aid options, and employment outcomes.

These observations show that in legal education—as in the rest of higher education—forces such as rising tuition and limited availability of jobs are changing the value proposition of earning a degree. Schools, students, and policymakers, however, are slow to respond.

Schools assume that since students absorbed previous tuition hikes with student loans, they will continue to do so, and that today's stagnant methods of delivering legal education will always be the best choice. Students assume that the big payoff to legal education will always be the same, encouraging them to take on debt that they can only pay if they earn top salaries. And policymakers assumed by passing off quality-control functions to accreditors, they could rest assured that the federal investment in student loans was secure.

Accrediting agencies—voluntary membership organizations comprised of colleges and universities—purport to certify the quality of postsecondary institutions. But recent scrutiny of the accreditation process shows that their focus on the inputs of a college program rather than its outputs results in a system that lets in subpar traditional institutions and often keeps out innovative nontraditional programs.

The crisis in higher education these days is not that college is no longer “worth it.” It's that the value proposition for a college degree—in this case, a law degree—is changing, but schools, students, and policymakers have not changed with it. As the value of a college degree fluctuates, students must adjust their plans regarding attendance and financing accordingly. And colleges must strive for innovations in educational delivery that both improve education and contain costs. Finally, policymakers must make sure that accreditors not only ensure quality but also encourage their members to provide a high-value education to students.

To facilitate more flexibility on the part of students, schools, and policymakers, the following policy changes should be implemented:

- The Bureau of Labor Statistics should collect and publish average employment and salary data for recent entrants into an occupation.
- Accreditors in all sectors of higher education should create standard definitions for employment and salary statistics, and require member schools to make such information readily available to students. Accreditors should audit member schools' adherence with these standards from time to time.
- The National Advisory Committee on Institutional Quality and Integrity should conduct a review and submit a report to Congress and the Department of Education on accrediting standards that stifle innovation or drive up tuition costs in higher education.

- Congress should provide funds to colleges through the Fund for Innovation in Postsecondary Education for projects that use technology or other innovative solutions to drive down tuition costs while maintaining or improving educational quality.

A brief primer on legal education

Today's law school education model has its roots in the 1870s, when Harvard Law School Dean Christopher Columbus Langdell instituted the case method, a model of education that is still used today in most law school courses.¹⁴ According to Langdell, the best way to teach law students was to read and discuss court opinions, drawing out principles of law from these texts.¹⁵ This method is typically combined with the Socratic method, in which professors pose a series of questions to a student to draw out the finer points of a particular case or legal principle.

Though Langdell's peers initially objected to the case method, it quickly became the most widely used method of teaching the law.¹⁶ There's just one problem with the case method: It does not teach students how to practice law. The original American models of legal education relied heavily on apprenticeships, but that practice no longer predominates. Now law schools try to bring practical skills to the classroom through coursework like legal writing, research, client counseling, and clinical experiences. But these courses are not necessarily a substitute for actual legal experience. A recent article in *The New York Times* illustrates the problem:

Here is what students will rarely encounter in Contracts: actual contracts, the sort that lawyers need to draft and file. Likewise,

Criminal Law class is normally filled with case studies about common law crimes—like murder and theft—but hardly mentions plea bargaining, even though a vast majority of criminal cases are resolved by that method.¹⁷

As the legal workforce gets more competitive, law schools seem to be embracing the idea that practical knowledge might give students an edge in the marketplace. Some law schools are substituting case-simulation courses in for the Socratic method and even making clinical experiences a requirement of graduation.¹⁸ Still, these efforts are likely to remain only a small part of legal education.¹⁹

With all the diversity of educational models in undergraduate education, including online, hybrid online-physical programs, apprenticeships, and experiential learning programs, it is striking to observe the homogeneity of legal education. There are still a few schools, however, that offer alternative models of legal education. Concord School of Law, a for-profit, online law school owned by Kaplan University, offers students the opportunity to study law from home. Alternative schools like Kaplan tend to not be accredited by the American Bar Association, however, and Concord's pass rate on the California bar examination is extremely low, at 36 percent for first-time takers.²⁰

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