

IF WE MAKE LEGAL EDUCATION MORE
EXPERIENTIAL,
WOULD IT REALLY MATTER?

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I THINK THE ANSWER IS YES. But, unfortunately, in virtually all of the debate surrounding legal education, there is a tremendous lack of clarity and precision about how we assess improvements in quality. And equally relevant, if a gain is real, was it worth the cost?

The purpose of this essay is to chip away at this serious conceptual gap. Until this gap is filled, experiential education will fall significantly short of its potential.

IS EXPERIENTIAL LEGAL EDUCATION BETTER? AND IF SO, AT WHAT COST?

Many legal educators believe that if we had more clinics, externships, and skills courses in law school, legal education would be better. Why? Because this more diversified curriculum would become more “experiential.”

Inside the legal education echo chamber, we often accept this claim as self-evident. The logic runs something like this: A competent lawyer needs domain knowledge + practical skills + a fiduciary disposition (i.e., the lawyer’s needs are subservient to the needs of clients and the rule of law). Since practical skills—and some would argue, a fiduciary disposition—cannot be effectively acquired through traditional Socratic or lecture teaching methods, the ostensible logic is that schools become better by embracing the “learning-by-doing” experiential approach.

That may be true. I would bet on it. But the per-unit cost of legal education is also probably going up as well. So, have we really created a viable and sustainable long-term improvement to legal education?

In my mind, the questions we should be asking instead are the following: (1) Among experiential teaching methods, which ones are the most effective at accelerating professional development? And (2) among these options, how much does each cost to operate? Quality and cost must be assessed simultaneously. After

they are evaluated, then we will be able to make choices and tradeoffs.

Let’s start with quality, which I define as moving lawyers toward their peak effectiveness potential as rapidly and cost-effectively as possible. This is an education design problem, as we are trying to find the right combination of education (building domain knowledge) and experience (acquiring and honing skills through practice). There is also likely to be an optimal way to *sequence* the various educational and experiential steps.

CREATING COMPELLING EVIDENCE OF EDUCATIONAL QUALITY

We legal educators have many ideas on how to improve educational quality, but we make no real progress if employers and students remain unconvinced. Can it be shown that because of a specific type of experiential curriculum at School X, its graduates are, during the first few years of practice, more capable lawyers than graduates of School Y?

[Side bar: If you are skeptical of this market test, it is worth noting that it was the preferences of law firm employers who gave rise to the existing national law school hierarchy. It happened about 100 years ago when a handful of law schools adopted the case method, required undergraduate education as a prerequisite to admission, and hired scholars as teachers. As a general matter, this was a far better education than a practitioner read-

ing lecture notes at the local YMCA. See William Henderson, “Successful Lawyer Skills and Behaviors,” in *Essential Qualities of the Professional Lawyer* ch 5 (P. Haskins ed., 2013).]

If a law school can produce, on balance, a better caliber of graduates than its competitors, then we are getting somewhere. As this information diffuses, employers (who want lawyers who make their lives easier) will preference law schools with the better graduates, and law students (who want more and better career options) will follow suit. Until we have this level of conceptual and empirical clarity, we might as well be debating art or literature.

If students and employers are responding to particular curricula, it is reasonable to assume they are responding to perceived value (i.e., quality as a function of price). I believe there are three steps needed to create a legal education curriculum that truly moves the market.

1. Clarity on Goals. We need to understand the knowledge, skills, and behaviors that are highly prized by legal and non-legal employers. Truth be told, this is tacit knowledge in most workplaces. It is hard intellectual work to translate tacit knowledge into something explicit that can be communicated and taught. But we are educators -- that is our job! If we think employers are missing something essential, we can add in additional factors. That’s our job, too.

2. Designing and Building the Program. Working backwards from our goals, let’s design and build curricula that will, overall, accelerate development toward those goals. This is harder and more rigorous than lesson planning from a casebook.

3. Communicating Value to the Market. If our program is indeed better, employers and students need to know it. This requires a crisp, accurate message and a receptive audience. This also requires planning and effort. That said, if our program truly is producing more effective lawyers, it logically follows that our graduates (i.e., the more effective lawyers) will be the most effective way to communicate that message.

Regarding point #3, in simple, practical terms, how would this work?

During the 1L year, we show our law students the roadmap we have developed (step #2) and spend the next two years filling in the knowledge, skills, and behaviors needed to achieve their career goals. This professional development process would be documented through a portfolio of work. This would enable students to communicate specific examples of initiative, collaborative learning, problem-solving, or a fiduciary disposition, etc., developed during law school. Students would also know their weaknesses, and have a clear plan for their future professional development. In a word,

they'd stand out from other law graduates because, as a group, they would be much more intentional and self-directed (i.e., they'd know where they are going and how to get there).

With such a curriculum in place, our law school would collaborate with employers to assess the performance of our graduates. By implication, the reference point for assessing quality would be graduates from other law schools. When our graduates fare better, future graduates will be more heavily recruited. Why? Because when an employer hires from our school, they would be more likely to get a lawyer who helps peers and clients while adding immediate enterprise value.

I suspect that many of my legal academic colleagues would argue the best law schools are not trade schools -- I 100% agree. But I am not talking about a trade school model. Rather, a world-class law school creates skilled problem-solvers who combine theory with practice and a fiduciary disposition. Graduates of a world-class law school would be reliably smart, competent, and trustworthy. This is a very difficult endeavor. It takes time, planning, collaboration, creativity and hard work. But the benefits are personal, organizational, and societal.

At a practical level, I think few law schools have targeted this goal with a full, unbridled institutional commitment. But the opportunity exists.

APPLIED RESEARCH

When I got tenure in 2009, I decided that I was going to spend the next several years doing applied research. I am a fact guy. Rather than argue that something is, or is not, better, I prefer to spend my time and effort gathering evidence and following the data. I am also a practical guy. The world is headed in this direction, thanks to the ubiquity of data in the digital age. And, on balance, that is a good thing because it has the potential to reduce conflict.

I have pursued applied work in two ways: (1) building stuff (curricula, selection systems, lawyer development tools, datasets for making strategic decisions, etc.) and assessing how well it works, and (2) observing and measuring the work of others.

A LAW SCHOOL CURRICULUM WORTH MEASURING

A couple of years ago, a really unique applied research opportunity fell onto my lap. I had a series of lengthy discussions on the future of legal education with Emily Spieler, who was then serving as dean of Northeastern University School of Law in Boston, a position she held for over a decade. One of the raps on legal education is that it is more alike than it is different. In fact, this very point was just made by the ABA Taskforce on Legal Education. See ABA Task Force On The

Future Of Legal Education, Report And Recommendations (Jan. 2014) at 2.

Emily, in contrast, said her school was unique -- that the curriculum better prepared students for practice and enabled them to make better career planning decisions. Also, Emily stated that Northeastern students were more sensitized to the needs of clients and the privilege and burden of being a lawyer--specifically, that Northeastern grads become aware, before graduation, that their own lack of competency and diligence has real-world consequences for real-world people. And that reality weighed on students' minds.

Tall claims. But if Northeastern could deliver those outcomes more effectively than the traditional unstructured law school curriculum, I wanted to know about it.

On a purely structural level, Northeastern Law is definitely unique. Most law schools are organized on either quarters (University of Chicago, my alma mater) or semesters (Indiana University, where I teach). Northeastern, however, has both. The 1L year curriculum at Northeastern is the traditional two-semester model. But after that, the school flips to quarters -- one quarter in law school, and one quarter in a cooperative placement with a legal employer, such as a judge, prosecutor's office, a law firm, a corporate legal department, or a public interest organization.

This classroom/coop sequence occurs four times over eight quarters. Because the cooperative placement is not viewed

as part of Northeastern's ABA-required course work -- all the contact hours are packed into two 1L semesters and four 2L/3L quarters -- students can be paid during cooperative placements. And, in any given semester, roughly 30 to 40% are getting paid.

This system has been up and running for 45 years--over 5,000 students have become lawyers through this program. What an amazing research opportunity!

Now imagine the faculty meeting where the law professors get together to discuss and deliberate over whether to adopt the Northeastern model. At Northeastern, "summer" means summer quarter, not summer vacation.

How did this unique curricular structure come into being? That is quite an interesting story. During the 1950s, the law school at Northeastern was shuttered. Yet, reflecting the zeitgeist of the times, a group of Northeastern law alumni and young lawyers who were skeptical of their own legal education (at elite national law schools) petitioned Northeastern to reopen the law school and feature a more progressive, forward-looking curriculum. The university administration agreed to reopen the law school on the condition that the school adopt the signature cooperative education model. So this crucial decision was essentially made at the birth of the law school over four decades ago. Once up and running, Northeastern Law implemented other innovations, such as the narrative grading policy--i.e., no letter grades and no GPA. This was done

in order to mitigate competition and encourage a focus on collaboration and skills development.

THE OUTCOMES ASSESSMENT PROJECT

Back in 2011, my conversations with Emily Spieler eventually led me to make a two-day pilgrimage to Boston to talk with Northeastern Law faculty, students, administrators, and coop employers. Suffice it to say, I was surprised by what I witnessed – a truly differentiated legal education with a substantial alumni/ae base spanning 45 years.

That pilgrimage eventually led to my involvement in Northeastern Law's Outcomes Assessment Project (OAP), which is something akin to The After the JD Project, but limited in scope to Northeastern -- although Northeastern will provide all of the project tools and templates to other law schools interested in studying their own alumni. From the outset, the OAP has been set up to scale to other law schools.

There are lots of tricky methodological issues with Northeastern. For example,

- It has a longstanding public interest tradition; Northeastern Law is overrepresented in government service, public interest, and non-profit sectors (including a sizeable contingent of law professors and legal

clinicians). See Research Bulletin No 1.

- Its student body was over 50% female almost from the outset, nearly 20 years before legal education as a whole.
- Because of its progressive roots, GLBT law students have long been drawn to Northeastern Law -- again, nearly two decades before it was deemed safe to be out.

Because of this distinctive profile, we have to worry that any differences in graduates are primarily due to a selection effect (who applied and enrolled) versus a treatment effect (they got a different type of education). That said, the admissions data show that Northeastern Law students are, like other law students, strongly influenced by the US News rankings. If a student gets admitted to Northeastern Law and BC, BU, or Harvard Law, Northeastern seldom wins.

Over the coming months, I am going to use OAP data to attempt to develop some analytical and empirical clarity to some of the questions surrounding experiential education. Preliminary data from our Research Bulletin No 3 suggest that the coop program does remarkably well in developing the three apprenticeships identified by the Carnegie Report. More on that later.