Reforming Legal Education: Law Schools at the Crossroads

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Contents

Acknowledgements .................................................. vii

1 Legal Education at the Crossroads ...................................... 1
   David M. Moss

2 Washington and Lee University School of Law: Reforming the
   Third Year of Law School .............................................. 11
   Lyman Johnson, Robert Danforth, and David Millon

3 Curriculum Reforms at Washburn University School of Law ........... 41
   Michael Hunter Schwartz and Jeremiah A. Ho

4 Reforming the Traditional Curriculum at the University of
   Iowa College of Law .................................................. 79
   Brian R. Farrell

5 Nova Southeastern University Shepard Broad Law Center
   Curriculum Mapping Project ........................................... 93
   Debra Moss Curtis and David M. Moss

6 Promoting Experiential Learning at Golden Gate University
   School of Law Through Curriculum Reform ......................... 115
   Rachel A. Von Cleve

7 Creating an Outcomes-Based Curriculum at Charlotte School
   of Law ...................................................................... 139
   Cynthia F. Adcock

8 Learning-Centered Education at Western State College of Law ... 177
   Paula Manning
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We would like to acknowledge our many supportive colleagues at the Neag School of Education at the University of Connecticut and at the Shepard Broad Law Center at Nova Southeastern University. We also sincerely acknowledge the exceptional contributors to this book and appreciate their patience and unwavering professional commitment. Additionally, we would like to recognize everyone at Information Age Publishing for encouraging our professional autonomy while offering timely support. Finally, we would like to thank both of our families for their encouragement.
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Legal education is at the crossroads of reform. There has been a confluence of conditions and events that have brought the legal education academy to this critical point, including significant reports calling for the reform of law schools, an emphasis on data-driven decision making across the educational spectrum, advances in our understandings of how individuals actually learn, and technological innovations to promote effective instruction. At the nexus of this crossroads stands the law faculty facing numerous challenges regarding how to navigate the many pathways of opportunity that lie ahead. Programmatic decisions made in the coming months and years will likely set the standards and benchmarks for law school curriculum for decades to come.

Historically, discourse surrounding the reform of legal education transpired within a limited segment of the legal education academy, typically involving only key individuals serving on select committees and offering only modest proposals for change. More recently, a purposeful effort has yielded a more spirited reform-minded discussion and has drawn in numerous stakeholders from both within and beyond schools of law. Select law schools have allocated considerable effort toward curricular reform, along with...
other improvement measures, in an effort to fundamentally transform the
preparation of lawyers. Their collective work has yielded bold and forward-
thinking developments in legal education, and examples of such innovative
and reform-minded efforts are presented in the following chapters of this
book. Prior to briefly outlining the content of each contributed piece, this
introductory chapter will address several key issues underpinning our chal-
lenge to reform the very culture of legal education in the United States.

The conversation on how to best prepare lawyers is no longer confined
to the offices, conference rooms, and hallways of the legal education acad-
emy. In the fall of 2011, the \textit{New York Times} ran a feature article titled, "What
They Don't Teach Law Students: Lawyering." The criticism was blunt, as the
article explained, "Law schools have long emphasized the theoretical over
the useful, with classes that are often overstuffed with antiquated distinc-
tions, like the variety of property law in post-feudal England. Professors are
rewarded for chin-stroking scholarship" (Segal, 2011). Although perpetu-
ating the false dichotomy of the practical versus the theoretical, the article
does draw attention to the need for a curriculum to manage to be both.

Most certainly there are foundational ways of considering legal issues that
are most effectively addressed from a strong theoretical position, but at the
same time our students must be able to leverage such a robust conceptual
underpinning into useful ways for considering the many real-world issues of
practicing law. Theory and practice are not mutually exclusive, and like all
programs in higher education that find themselves balancing the need for
an academically rigorous curriculum with an applied perspective, we must
find such a balance.

Perhaps even more alarming than the perception of an outdated cur-
riculum that stands in stark contrast to the desire for more of an applied
approach to preparing lawyers are the grim statistics regarding the legal
services market. The \textit{Times} article reveals that the top 250 law firms have
lost nearly 10,000 jobs in recent years. Additionally, the salaries of those
who manage to secure a position are not necessarily in line with the cost of
a legal education.

Concurrently, many legal services clients are shying away from under-
writing the additional legal training often necessary for those new hires,
which has in essence been "built-in" to the continuum of legal education
for many years. That is, it has been understood that law schools can get
graduates only so far in their legal training and that the actual learning
of how to be a lawyer should take place once those graduates begin their
careers. Traditionally, recent graduates of law schools could count on their
firms investing in them through a lengthy and exhaustive mentoring pro-
cess that helped bridge the gap between a law school education and mak-
ing it possible for them to contribute as productive members of a firm or
organization. However, pricey client bills for services essentially rendered
by lawyers in training have brought into question this so-called postgraduate education.

For generations, the mantra of law schools has been to teach graduates “how to think,” recognizing the fluid nature of practicing law (and perhaps even the law itself). But the time is long past in which schools of law can entirely base their curriculum upon such rhetoric and consider reforms that result in graduates who are able to critically analyze both ideas and arguments while at the same time are best prepared to apply those skills immediately upon graduation. There will most certainly always be a learning curve for any newly minted lawyer, and thus the notion of practice ready must be carefully considered as schools of law contemplate such reforms.

Organizational change, especially within the milieu of a system that greatly values norms and traditions (such legal education) is a challenging prospect to consider. As noted throughout the following chapters of this book, perhaps the foremost barrier to change is faculty buy-in to such transformation. Numerous examples of strategies to promote faculty engagement are discussed within the subsequent narratives, but at its core, faculty must perceive a need for change. The bleak prospects for many law school graduates, along with the client-driven pressures to reconsider the billing model of new lawyers whose preparation might not be aligned with the actual responsibilities of their position, are apparently not adequate to yield substantial reforms across the legal education academy. Thus, law faculty must first become dissatisfied with the current state of affairs before any significant change can be considered.

Dissatisfaction with the status quo as a precursor to a shift or adaptation in one’s thinking is a core tenet of conceptual change theory (James & Folen, 1999; Fosher, Strike, Hewson, & Gertzog, 1982). Conceptual change theory posits that such dissatisfaction is a challenging threshold to achieve, in that our conceptions regarding a particular circumstance, such as the effectiveness of law school curriculum to meet the needs of all stakeholders, are often deep seated and tenacious. Merely acknowledging the situation is rarely adequate to motivate an individual to change. Compelling evidence (data) is widely viewed as a necessary catalyst to promote acute dissatisfaction regarding a given reality. But embracing that discontent, which might come only in the face of compelling data that clearly illustrates various shortcomings and lack of desired aims, is only the first step of the model. This conceptual change theory, explaining how people fundamentally adjust their thinking, also demands that once such cognitive and affective dissonance is realized, viable and powerful alternatives must be presented that serve to resolve the newly recognized conflict.

This speaks to two primary roles for data in the reform process. First, data must be utilized to expose the realities of the law school experience for students and faculty—the good, bad, and the ugly. This can best foster
a genuine state of dissatisfaction, if one is indeed warranted. Such data is internal and documents various successes and shortcomings of a given program. Following, additional data can be considered that illustrates exemplary models for the preparation of lawyers and thus helps to resolve any dissatisfaction with the current state of affairs. This might be internal and external. Every law school enjoys pockets of excellence, areas in which they excel at a given goal, but a key to wide-scale reform is to collect and disseminate data in areas of excellence such that they can be better understood and replicated on a wider scale. In this way, data serves as the key to a conceptual change model; first by fostering dissatisfaction and then by offering viable alternatives to the status quo.

This book attempts to achieve both these aims of conceptual change theory. By presenting data-driven narratives in the subsequent chapters, law schools are encouraged to first consider their present curriculum and programs, along with any need to collect new forms of internal data, as a means to establish any warranted dissatisfaction with the status quo. Also embedded within these chapters are exemplars of reform that are designed to offer a pathway to viable alternatives for the reform of curriculum, teaching, and learning within law schools.

Keeping in mind the persistent nature of beliefs about teaching and learning, the concluding chapter of this book discusses an idea known as “apprenticeship of observation” (Lortie, 1975). This theory describes the reality that law faculty, regardless of area of expertise or nature of appointment, approaches their teaching responsibilities having spent thousands of hours as students over the course of their lifetime. This purported apprenticeship via observation is greatly responsible for the many preconceived notions about teaching we all bring to our classrooms. It explains the genesis of our preconceptions about teaching and learning. The recognition that such an “apprenticeship” is a powerful and enduring one demands the consideration of a conceptual change model for reform, which offers a mechanism to genuinely consider significant changes in light of deep-seated beliefs.

Therefore, it is not surprising that most law school curricula haven’t evolved dramatically, and that most classes haven’t substantially changed in the way that they are taught. A course design and execution representing an updated version of what a teacher experienced in law school is often considered exemplary practice. Moving beyond the inherent limitations of such an apprenticeship model, we need to realign our thinking toward a trajectory that not merely replicates and improves upon our experiences as students, but reimagines many facets of the law school experience itself.

As most law schools consider reforms, changes to the scope and sequence of curriculum is a logical starting point. But curriculum is not a straightforward construct. Moss, Osborn, and Kaufman (2003) write,
Curriculum is a complex and multifaceted concept. Yet, most people would likely define it by merely reciting the predominant subjects taught... synonymous with the catalogue of familiar classes experienced by untold numbers of students over the years. Perhaps the most critical question with regard to curriculum centers on the notion of the value or worth of knowledge. Without addressing the issues underlying the normative implications of what we ought to teach, curriculum development as an enterprise is usually relegated to merely a technical undertaking. The resulting products of this technical effort are destined to foster a coverage-of-content mentality common to so many classrooms today. Without a philosophical compass, the process offers no guidance to answer questions of what is most important to teach and why. (pp. 3-4)

Although not uniquely addressing law school curriculum in the previous passage, the ideas underpinning a coverage-of-content mentality most certainly ring true. A key point from this quote also centers around the notion that curriculum is not merely a compilation of content and associated learning goals, but that there is fundamental (often only implied) value to what we choose to teach and how we decide to teach it.

Thus, reforming law school curriculum is much more than rethinking the sequence of courses or adding a technological veneer of enhancement. Shuffling courses across the 3 years of law school is likely to accomplish little in terms of meeting the balance of theory and practice required of a curriculum to best serve all concerned parties. In contrast, significant discussions about what law faculty value in terms of a professional knowledge base coupled with an exploration of best practice pedagogies to promote authentic learning is really the first step in considering curriculum. The "technical" steps of sequencing and staffing courses, although not to be underestimated as critical steps, should not drive the curricular discussions underpinning reform. In this sense, curriculum and courses committees (in all their designations) should be as much about educational philosophy and learning theory as they are about gatekeeping for new courses and reordering the established ones.

The consideration of revised and updated roles for traditional structures within law schools is a theme that persists across the various chapters of this book. The book concludes with the chapter titled, "Essential Elements for the Reform of Legal Education" by David M. Moss and Debra Moss Curtis, in which the salient themes that have emerged from examining the contributed chapters of reform are presented. The essential elements for reform are discussed under the following headings:

- Law School Mission
- Role of Faculty
- Law School Curriculum
Data-Driven Reform
Practical Considerations

As such, the final chapter serves to echo and elaborate upon the key recommendations seen throughout the book.

Chapter 2, “Washington and Lee University School of Law: Reforming the Third Year of Law School,” by Lyman Johnson, Robert Danforth, and David Millon, is an insightful and compelling account of exploring experiential learning within a context defined by strong faculty governance and collegiality. Instituting reforms in an intellectual atmosphere of respect and civility is a key lesson learned from this contribution.

Chapter 3, by Michael Hunter Schwartz and Jeremiah A. Ho, titled “Curriculum Reforms at Washburn University School of Law,” explicitly offers constructive recommendations for schools of law in terms of a data-driven model for reform. The authors note, “Reforming the curriculum of an established law school is never a singular matter of changing from an older model to a newer one,” invoking the theory of conceptual change introduced earlier within this introductory chapter. Like many chapters presented within this book, the process of reform remains ongoing.

In the next chapter, “Reforming the Traditional Curriculum at the University of Iowa College of Law,” Brian R. Farrell describes how controversy underpinning reform initiatives diminished after examining data collected for a mandated review. This timely and persuasive chapter explicitly addresses the notion that simply doing things because we have always done them a certain way is a poor justification for our established practices, including the way we assign grades to our students. The long tradition of legal writing at the University of Iowa is also addressed.

In Chapter 5, titled “Nova Southeastern University Curriculum Mapping Project” by Debra Moss Curtis and David M. Moss, the authors (and editors of this book) address the challenging transition to an evidence-based culture of reform. Navigating the balance between core course requirements and electives along with the need to pilot any reform proposals are key themes of this chapter. Discussing the process of curriculum mapping as a public form of reflection as faculty come to understand the intended versus the delivered curriculum is also a key premise of this chapter. The very public discourse to come about as a result of curriculum mapping is also addressed within the often delicate context of faculty evaluation.

Next, “Promoting Experiential Learning at Golden Gate University School of Law Through Curriculum Reform” by Rachel A. Van Cleave, reminds us of the important lesson of compromise and not letting the perfect get in the way of the excellent. Within this chapter, the very notion of what it means to be rigorous is addressed within a context in which data suggested that many first-year students were overwhelmed by a curriculum...
defined by a coverage of content and a lack of continuity. The long-term impact of including a "lawyering elective" is still unknown, but early data suggest that changes to law school curriculum can have impactful changes on student and faculty attitudes and beliefs. Extensive appendices support this true-to-life chapter.

In Chapter 7, "Creating an Outcomes-Based Curriculum at Charlotte School of Law," Cynthia F. Adcock illustrates that this recently opened and accredited school of law is driven by principles of assessment in higher education utilizing the headings:

- Educating the Educators
- Identifying Desired Educational Outcomes
- Defining Desired Educational Outcomes
- Mapping the Outcomes Across the Curriculum

The chapter offers insight into a program that, like many, has struggled with the notion of practice ready and yet has made significant strides to understand and meet the needs of their students. Close to completing a comprehensive curriculum map, the faculty has developed a common language regarding their vision for the school, yet resources for reform remain a challenge. Outcomes and assessment frameworks are included in the appendices.

Paula Manning authored the next chapter, titled "Learning-Centered Education at Western State College of Law." Acknowledging the difficult reality that failure is an essential element of reform, the chapter outlines the reflective evaluation process underway and ongoing at this school. Moving beyond curriculum as a singular focus for reform, she notes, "Some of the most valuable changes at the law school have been with regard to pedagogy and other aspects of the educational system, including building a collaborative working environment for students." Formative assessment is explicitly addressed within this important contribution.

In Chapter 9, "Leveraging Academic Support Programs for Innovative Teaching Methods Across the Curriculum" by Rebecca C. Flanagan, the book begins to offer a summative perspective by moving beyond the case studies of legal education programs and by highlighting important issues underpinning teaching and learning that impact every law school curriculum. Offering a brief accounting of the reform of law schools within a concise conceptual framework, the chapter makes a compelling case for fundamentally shifting the emphasis of legal education toward one of learning. Moving beyond accepted wisdom, the chapter argues that academic support programs can be laboratories for change and innovation, serving the needs of all students pursuing a law degree.
As noted previously, the final chapter elaborates on key themes and offers a summative look at the challenges presented in this book.

Bringing to life many of the recommendations from the seminal writings in legal education of the past decade, this book is designed to serve as a catalyst for the consideration of the reform of law school curriculum and program design. Throughout the following chapters, issues of program design, such as the nature of externships, along with more traditional notions of law school curriculum are taken together holistically. At the same time, matters of faculty and student issues are also concurrently presented. This integrated approach yields realistic and authentic portraits of law schools that are actively engaged in the reform process. For each contributed chapter, it is indeed an ongoing process of data-driven reform. This approach also acknowledges the reality that the reform of legal education requires a timeline and commitment consistent with the numerous challenges of reforming an established, multifaceted, and in many ways successful academic culture.

Although recently there has been public condemnation of many practices of legal education, a significant barrier to fundamental and structural reform is the reality that on many levels we are quite successful at our endeavors. This critical point should not be overlooked, and yet concurrently cannot be a convenient justification to ignore many of the recent advances in thinking regarding legal education. Operating from a perceived position of strength can certainly offer initiative and momentum to any reform process. In that sense, there is much to admire and respect within the following contributions, however closing the gap in terms of where we are today and the tremendous potential for legal education remains a significant challenge.

Thus, as law schools examine their own practice and consider the data required to put in motion a conceptual change model for reform, this book will serve as an important resource to initiate and extend the reform process. We encourage all stakeholders in legal education to leverage this book by breaking new ground in terms of policy and practice such that this decade will not see our profession fall behind the high standards for learning and teaching consistent with the very best of higher education. In that way, legal education can proactively lead both the academy and the legal professions instead of being resigned to responding to a changing landscape of expectations and outcomes that has left us behind.

REFERENCES

In today’s volatile law school environment, curriculum reform has emerged as a significant focus. It is commonly understood that law schools effectively teach certain analytical skills, but are less successful in other areas, and often scramble to adapt to evolving aims. Reforming Legal Education: Law Schools at the Crossroads demonstrates how law schools are successfully reforming their curriculum—and lays the framework to show how all schools of law can engage in a continuous reform model that proactively shapes our profession.

It is expected that faculty and professional staff engaged in legal education will utilize this book as a primary resource to guide their respective reform efforts. Each contributed chapter presents a case study of a data-driven curriculum reform effort. The initial chapters set the conceptual context for the book, while the final chapter offers summative recommendations for considering legal education reform as derived from the earlier case study chapters. Reforming Legal Education adds significantly to the literature in legal education, as we gain first hand insight into evidence based reform for the legal education community.