
SPECIAL REPORT

Some quick fixes

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Abstract As legal education incorporates more clinical offerings into the three-year JD curriculum, it becomes more like the training of other professionals. But this isn't enough. Other professionals also are expected to serve post-graduation apprenticeships before they are deemed fully prepared to practice and so licensed to do so. Building an apprenticeship model into post-graduation legal training is a step toward redressing what are inaccurately perceived as shortfalls of legal education. Another step would be moving away from the current one-size-fits-all JD to include alternatives that involve less lengthy and intensive training and certification for specific legal tasks.

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To listen to critics, the present system for preparing lawyers to practice works for practically no one: It is overly expensive for students (who must fund their education with large loans), unhelpful for law firms (which must hire graduates who know too little to be of value), and needlessly expensive for clients (who must then bear the costs of training). This is all the fault of law schools, we are told, which don't prepare law students to practice, despite forcing them to take on huge debts.

For many law graduates, the result is economic hardship. A lucky few, particularly those who attend highly ranked law schools, get jobs at so-called "big law" firms that pay high salaries. Even this may not last, though, as clients increasingly question why they should subsidize six-figure salaries to teach new lawyers the basic nuts and bolts of practice. Their unwillingness to do so will likely grow, given the increasing availability of technologies that can perform the routine tasks these young lawyers do at a fraction of the cost. Despite such pressures, the profession ambles along largely unchanged, trusting that because earlier predictions of disruption were premature, no such disruption is coming. That's probably a foolish bet.

In fact, the problem is not with legal education, and law schools have responded to a degree too little acknowledged in the profession. The past two decades have witnessed an explosion in offerings to better prepare lawyers for practice. Legal clinics are the most obvious example—having matured considerably since the early years, when they were confined to providing simple legal services to the poor. Clinics today have retained that social justice mission, while improving their pedagogy and expanding into a wide array of practice areas relevant for law graduates, including corporate law, employment law, environmental law, intellectual property law, international law, public policy, and many more. Clinics have been supplemented, moreover, by courses in trial practice, negotiation, deal-making, and various sorts of legal problem-solving, not to mention internships and externships that provide rich opportunities to apply in practice what students have learned in their classes.

Obviously, law schools could do a more to improve legal education. But the fact is, no matter how much law schools do, law students will never graduate fully prepared to practice. Nor should anyone expect them to be. In no profession do students complete their formal schooling prepared to practice: Doctors, dentists, teachers, psychologists, nurses, even rabbis

and priests – all of whom already have clinical experience integrated into their professional training – are expected to spend the first few years after school in an apprenticeship of some sort. There is no reason law should be different.

In fact, law is not different – at least as respects apprenticeship. That’s just another, more formal word for what young lawyers do now. The difference is simply that, unlike in every other profession, lawyers do their apprenticeship after they have taken and passed the licensing exam, which means they are called (and compensated as if they are) full-fledged lawyers. This mismatch between the expectation that they are fully prepared professionals and the reality that they need the first few years of practice to learn is the source of most of the tensions that dominate discussion.

But what if we did things differently? What if we made the model for entry to the legal profession look more like that used in every other profession? Suppose, for instance, that we did not allow graduates to sit for the bar exam upon graduation, but instead required them to work as “legal interns” for two or three years first. Suppose further that, during the period of their internship, we capped salaries at some reasonable amount, reflecting their status as trainees. We might look to graduate or other legal fellowships as a benchmark, but let’s assume, for the sake of argument, a salary of \$45,000 per year. There is still the problem of student loans, of course. One possibility would be to obtain formal recognition that the internship is part of the educational period and so extend loan deferral. Alternatively, we could permit law firms to compete by offering support for loan repayment on top of the basic salary. Either way, the main point is to openly recognize that new law graduates need on-the-job experience and to provide that at affordable levels while bringing down the costs to firms and clients.

We could go further, too, by recognizing that a one-size-fits-all, three-year J.D. degree is a poor design given the needs and expectations of the legal profession today. It cannot possibly be the case, after all, that the training required to do big firm litigation or corporate work is the same as that needed to do simple trusts or estate law. “The practice of law” need not be treated monolithically, in other words, but might be broken down into a few, more discrete categories. As is already done in many other countries, we could recognize one or two-year degrees that entitled the holder to provide certain kinds of simple legal services, as well as a three-year degree (or even longer degrees) for certain kinds of practice. Shorter degrees would cost less and have different expectations for the apprenticeship period — lowering the cost threshold for many aspiring lawyers for whom a simpler legal practice is attractive. The resulting mix would make a broader array of legal services more widely available at lower costs. It would also enable law schools to develop more robust and varied economic models that might eventually ease some of the debt burdens on students.

There are, obviously, still many questions to be answered and details to be worked out. But the core insight is straightforward enough. We should recognize greater variability in the knowledge and experience needed to practice different kinds of law, and then introduce greater variability into the system of training lawyers — in both formal legal education and the inevitable and necessary apprenticeship required to prepare properly. Doing so, would provide much needed flexibility to rationalize and distribute the costs entailed in training lawyers and serving clients.