

Towards A New Model For Lawyer Licensing and Development

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“Lawyer formation” can be understood as the process by which a person becomes a competent, confident, and independent lawyer — by which is meant:

- **Competent:** The lawyer has established to the satisfaction of the relevant licensing authority that they possess the minimum capacities and characteristics necessary for licensure.
- **Confident:** The lawyer has acquired enough professional experience and received sufficient guidance and validation to attain emotional self-assurance and trust in their own abilities.
- **Independent:** The lawyer can serve clients, manage tasks, fulfil professional duties, and regulate themselves without requiring supervision or oversight by more experienced practitioners.

This formation process begins no later than the first day of formal legal education, and ends when a licensed lawyer meets all three of the foregoing conditions (an occasion that will arrive at different times for different people).

Our current model of lawyer formation does not ensure competence, confidence, or independence among the lawyers it certifies. It is fragmented, repetitive, and focused primarily on the interests of the entities (law schools, bar examiners, regulators) that administer each step. We need a new development model that is unified, strategically designed, and focused on the aspiring lawyer and the clients they will someday serve.

By taking the following three steps to reform the lawyer licensing and development process, we could make enormous strides towards producing a stronger, healthier, more capable, and more effective legal profession.

1. Design a competence assessment system that makes a law degree optional. Create a robust competence framework for new lawyer licensing, and assess bar applicants’ ability to satisfy its requirements — regardless of whether the applicant has completed a law degree. Follow the lead of the Solicitors Regulation Authority (SRA) in England & Wales, which in September will make the Solicitors Qualification Examination the sole “legal knowledge” test for bar admission. The SRA is concerned only with whether an applicant has acquired the skills and knowledge to pass the exam; it is not especially concerned where or how the applicant acquired those attributes.

North American regulators should develop a multi-dimensional competence framework that encompasses (a) legal reasoning and knowledge, (b) legal business skills and client service, and (c) empathy and emotional resilience. Regulators should then assess aspiring lawyers against this framework regardless of whether or to what extent they have completed law school. Regulators should also encourage the growth of non-school entities to give aspiring lawyers the knowledge, skills, and training needed to satisfy the competence framework and assessment system.

Under the current licensing system, the law degree acts as a proxy for a set of learning experiences that are presumed to advance the student towards competence. Rather than requiring aspiring lawyers to invest three years and hundreds of thousands of dollars to acquire this proxy certification, regulators should decide what a new lawyer should actually know and know how to be able to do, and design an assessment process that allows bar applicants to prepare themselves to pass it however they wish.

2. Require clinical or simulated practice experience for licensing. No jurisdiction in the United States requires aspiring lawyers to gain supervised practice experience before they receive their law license. In this regard, the US stands almost entirely alone in the world. Articling students in Canada, trainee solicitors in England, and *rechtsreferendare* in Germany are examples of apprenticed lawyers-in-training who spend one to three years in a legal work environment applying the legal knowledge and principles they learned in law school, under the supervision of experienced practitioners. American legal regulators should follow suit.

Even if a mandatory period of supervised post-graduate training in a legal workplace is not adopted by American regulators, there are other ways to ensure the necessary degree of exposure to practice realities. States could require that a law student complete a specified amount of clinical education in law school, as was recently recommended by the IAALS's "Building a Better Bar" report. Or they could require that licensing applicants successfully complete a virtual "simulated law firm" program, where would-be lawyers handle fictitious files, connect with clients and witnesses portrayed by actors, and learn the ropes of law practice in a training environment. Simulated law firms are currently part of the bar admission program in five Canadian provinces.

3. Mandate comprehensive CPD for lawyers in their first five years. One consistent shortfall in lawyer development across all jurisdictions is that new lawyers are credentialed and licensed too early. Most first-year lawyers are unprepared to carry out the tasks that clients and employers require of them, poorly trained to handle the basics of business management and client relations, and unready to handle the intense emotional disruption of the shift from academic to working life on their own.

Regulators therefore should continue the training and education of lawyers following their call to the Bar. Create a comprehensive professional development program designed to guide the growth of the novice lawyer throughout their first five years in the law. The program would provide asynchronous learning through online videos and interactive materials, mandatory in-person workshops and conferences for junior practitioners, access to extensive toolkits filled with resources for running a legal business, mentoring opportunities with multiple senior lawyers in their jurisdiction, and an anonymous Help Line that can be called any time day or night for assistance, support, or counselling.

A program like this would not be cheap to develop and deploy; but it would be much less costly than losing thousands of new lawyers to discouragement and depression every year, not to mention reducing the professional insurance costs of under-developed lawyers mishandling their own affairs and those of their clients. And, along with the other two steps described above, it would mark a new beginning in how the legal profession regards lawyer formation and accelerate the development of annual cohorts of strong, proficient, and confident lawyers.

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