4ᵗʰ Conference on the Future of Legal Services, April 2021
Provocation from Professor Michael Madison, University of Pittsburgh School of Law
Home: http://madisonian.net/home // Twitter: @profmadison
Podcast ("The Future Law Podcast," with Dan Hunter): http://thefuturelawpodcast.com/
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Overview

Legal education – law schools in the US and some other countries; law departments elsewhere – has long operated on the premise that its purpose is to train lawyers. The system is a sort of pipeline, or assembly line, with "practitioner" as its end product. That imagined character of the educational system was its strength. Today, and looking ahead, that character is its Achilles' heel.

Why? Because unresolved disagreements about the expected character of that intended "practitioner" leave futurists (at the grand scale) and reformers (at the modest scale) with little guidance as to where and how to intervene. I offer examples of the disagreements below, going beyond platitudes about how the law degree prepares graduates for diverse careers. The important point here is that today, that significance of the disagreements is growing. One might say, better, that the character of the profession is not simply diverse, but is fragmented and getting more so, under pressure from technology changes, globalization, economics, and similar forces affecting other traditional professions. The academic side of the law faces pressure to fragment, too.

I offer a brief suggestion as to how legal education might adapt itself productively to modern conditions.

Fragmentation today

In a recent presentation to a conference on leadership education, I offered the following three models of the modern lawyer, the expected "product" of the education pipeline. Each model drives education, training, practice, and recognition in certain sectors of the contemporary legal profession. Each has robust grounding in the practice of law when that is examined in a backward-looking mode. For obvious reasons, they pull against one another more than they align with one another. That's the fragmentation that we see today. It is my judgment that the fragmentation is getting worse.

The models are drawn from the US experience. They will not translate automatically into experience in other jurisdictions. In some respects, they will not translate at all. The point is to show that conversations about the future of law must excavate these conflicts about concepts of "the lawyer," to resolve them or better, to get past them altogether.

First is the "rule of law" model. This may be a particularly American version of the lawyer, because of the distinctive role that trained lawyers have long played in designing and running public institutions in the US. Even apart from the US experience, however, this model captures a critical view of the special purposes of law and the special roles of lawyers in society, going back to ancient Rome. Today, this model shows up especially in private organizations, namely law firms. Lawyers should be trained to take their places at the bar to responsibly operate the levers of power, to structure law and legal systems for the benefit of all of society.

Second is the "social justice" model. This speaks to the idea that people become lawyers in order to advance ideals of rights and justice in society, through law, at both large and small scales. This model is less formal in its orientation than the "rule of law" model, because of the frequent lack

of precision in concepts of "rights" and "justice." That lack of precision makes the lawyer's role all the more important. Lawyers should be trained to change the system, not only to operate it, and to change it in some very specific, concrete ways oriented to justice and the underserved." Because this model evokes the fictional hero of the novel "To Kill a Mockingbird," I call it the "Atticus Finch" model.

Third is the "client service" model. This captures the idea that the lawyer/client relationship provides the essential foundation for all of the good that the lawyer and the law might do in society, and the lawyer's role is not merely to guide and advise the client but to advance the client's interests as strenuously as possible. Lawyers' highest calling is not society as a whole (the first model) and not just the underserved (the second model). This has become particularly salient over the last 50 years, with the rise of large corporate law firms and associated client demands, along with the development of a robust philosophy of legal ethics and professional responsibility. I call this the "Saul Goodman" model, after the incredibly effective, client-obsessed but soul-less lawyer in the TV series *Breaking Bad* and *Better Call Saul*.

In my view, legal education is likely to come up short, in the future, to the extent that it commits itself to reforms that track any one of these three models, or even to a blend of these three models (as seems more plausible). Each of these models captures something critical in how lawyers have operated in the world over the last 100-150 years, but each misses something critical in how lawyers are likely to operate in the world – and how law and governance are likely to operate in the world – over the century to come.

We can use technology as a case study. Does technology challenge human lawyering because of threats to the rule of law? If so, that leads to one set of changes to the educational system. Or is it because the ideas of justice and access to justice have new forms and new salience? That's an Atticus Finch model question; changes take different forms. Or is it because client service has gotten that much more complex? That's a Saul Goodman model question; again, the curriculum should change in still different ways.

A better vision

I propose a conceptual re-thinking. It's an "infrastructural" model, because that word captures the idea that we can and should equip every single one of our graduates with foundational capabilities that will help them thrive no matter where they go or what they do, in law or otherwise. Some of our graduates will serve as judges, someday; some will be restauranteurs or real estate developers; some will own their own law practices; some will re-invent their neighborhoods and communities through organizing. Knowledge infrastructures, social infrastructures, and physical infrastructures are "infrastructural" because they provide unpredictable but key multiplier effects to users and students.

My proposal focuses on that attribute and eliminates the "pipeline" concept that underlies my first three models. I suggest that the legal education "pipeline" be replaced by a different conceptual assumption: that legal education should produce graduates trained to thrive productively by *serving* in some respects related to law and legal systems, but without expecting that each graduate serve in a specific way. I might refer to this as the Bob Dylan model, but I'll call it the "John Oliver" model, after the HBO comic and host, because in 2015 he produced a magnificent segment about the critical role that actual infrastructure plays in well-functioning societies.

I can explore details in other work. Here I suggest two virtues of this approach.

One, it places "new" competencies and skills – such as technology competencies, emotional intelligence, leadership, collaboration, and project management – at the forefront of the educational

experience, rather than treating them as add-ons or afterthoughts to the existing curriculum, and it does so without assuming that those new skills are needed because new graduates will apply them in any specific setting. Traditionally "legal" content – analytic content – would build on that foundation, along with introductions to other professional disciplines.

Two, it welcomes a broad and much needed re-imagining of the character and role of law and governance in the world at large. More than lawyers' skills need re-thinking today; technology, globalization, and economic disruptions mean that the forms of our legal system – and governance systems – require systematic re-thinking as well.

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