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Legal Education in a Modern World: Evolution at Work

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LEGAL EDUCATION IN A MODERN WORLD: EVOLUTION AT WORK

Leo P. Martinez

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In 2014 I finished as President of the Association of American Law Schools, and I recently completed two years as a member of the ABA Task Force on Legal Education. I have taught at, lectured at, consulted with, or evaluated law schools in China, Japan, Germany, Italy, Hungary, the Netherlands, Spain, Argentina, Chile, more than forty law schools in the United States, and all three law schools in Puerto Rico. I look forward to visiting Africa and Australia to more nearly complete the set. With that stated limitation, this paper reflects my exposure to legal education around the world to date.

An abridged version of this paper was presented at the LatCrit South-North Exchange on Legal Education at the Universidad de los Andes in Bogota in June 2014. A very early version of this paper was presented at the 2nd International Forum of Law School Deans and Jurists held at Renmin University in Beijing in October 2010. Part of this paper summarizing the development of legal education in America and current curriculum reforms was presented at the China-European School of Law at the China University of Political Science and Law Conference on Legal Education: 21st Century Developments and Perspectives and was published as Leo P. Martinez, Curriculum Developments in American Law Schools in the 21st Century, 3 CHINA-EU LAW L.J. 43 (2014) (Digital Object Identifier (DOI) 10.1007/s12689-013-0032-6). This paper builds on the earlier works.
"[I]nstitutions must adapt to the laws of variation. They must be able to reflect a variety of responses that will permit them to adapt to changing times and needs."—Michael Kirby, former Justice of the High Court of Australia.¹

I. INTRODUCTION

Justice Kirby’s application of Darwinian theory to judicial appointments can be profitably extended to legal education. To be sure, the crafting of the perfect legal education is an inexact science. In the United States, legal education has been the subject of evolution, mostly by trial and error. In assessing where global legal education is headed, I begin Part II with a brief

overview of the evolution of legal education in the United States. Part III describes the Japanese, European, South American, and Chinese systems of legal education. Part IV describes attorney licensing in selected countries. Part V discusses the ABA's recent revamping of the accreditation model and the lessons that can be gleaned from global experience in legal education. I conclude with five observations that will affect legal education wherever located. Ultimately, the benefits of standardization must be carefully balanced with the problems of homogenization. Standardization can stifle useful innovation. As Darwin observed, adaption is key to the survival of species. By extension, Justice Kirby's observation can be seen to apply to legal education as well.

In discussing legal education, I necessarily paint with a broad brush to generally acquaint the reader with the large variations in legal education across continents. For the purposes of this article, this general approach allows a comparison across nations without getting bogged down in details unnecessary to make the broad points.

II. LEGAL EDUCATION IN THE UNITED STATES

A. The Apprentice System

In the early history of post-Revolutionary America many lawyers were self-taught, while most received their legal education through apprenticeships. The apprentice system was the most common method of obtaining a legal education, owing to the absence of law schools in colonial America. This system, generally unavailable to women, permitted men to receive an education and practical experience by working under an


3. Moline, supra note 2, at 780.
experienced practitioner of the law.  

The apprenticeship method, in its various forms, produced prominent figures in American history. Abraham Lincoln, for example, began his legal apprenticeship with no formal education beyond reading and writing. For the first twenty-one years of his life, in fact, Lincoln had only one year of formal education. Mindful of his ambition to become a lawyer, he joined local debate clubs to refine his oral advocacy skills. His mentor was an Illinois “Justice of Peace” named Bowling Green, under whose guidance Lincoln attended trials and was allowed to practice in an informal capacity. Additionally, Lincoln was allowed to draw deeds and bills of sales for his neighbors during the course of his apprenticeship under Green.

John Adams also provides a prominent example of an American lawyer-turned-president produced through the apprenticeship model. Unlike Lincoln though, his path through legal apprenticeship involved significant scholarly study. His first mentor was a leading Worcester, Massachusetts, lawyer named James Putnam. Adams was drawn to the literature of the law, “reading Coke, Fortescue, and other monuments of the common law [which] were essential preparation for the bar.” When he moved to Boston, Adams took on a new mentor, Jeremiah Gridley, the dean of the Massachusetts bar. Under Gridley, Adams engaged in vigorous study of Roman-based civil law, which remained a “lifelong intellectual pursuit.” Adams recalled that Gridley’s advice on the law was high-minded; the

4. Id.
5. FREDERICK TREVOR HILL, LINCOLN THE LAWYER 27 (1906).
7. HILL, supra note 5, at 28–29.
8. Id. at 29–30.
9. Id. at 57.
10. L. KINVIN WROTH, JOHN ADAMS: PATRIOT LAWYER, in AMERICA’S LAWYER PRESIDENTS: FROM LAW OFFICE TO OVAL OFFICE 7, 7 (Norman Gross ed., 2004). Adams’ relationship with Putnam was pursuant to a contract under which Adams agreed to study under Putnam’s supervision for a period of two years. DAVID MCCULLOUGH, JOHN ADAMS 44 (2001).
11. WROTH, supra note 10, at 7.
12. See id.
13. Id. at 8.
study of law itself was the goal and not the pursuit of wealth.14

Thomas Jefferson offers yet another exceptional example of an American lawyer-turned-president trained through apprenticeship, and he was actually responsible for establishing the first American law professorship.15 After graduating from The College of William and Mary, Jefferson turned to the study of law under an eminent attorney named George Wythe.16 Wythe guided Jefferson in practical matters, directed him to observe the General Court, and gave him considerable freedom in reading history, philosophy, and scientific works in addition to legal treatises.17 Perhaps Jefferson’s view of the legal education experience is summed up in his quip that “[a]ll that is necessary for a [law] student is access to a library, and directions in what order the books are to be read.”18 Some eighty years later, Abraham Lincoln expressed essentially the same view: “[T]he cheapest, quickest and best way [to become a lawyer was to] ‘read Blackstone’s Commentaries, . . . get a license, and go to the practice and still keep reading.’”19

In theory, the apprentice would spend several years learning the law as well as receiving practical experience. As the foregoing examples show, the accomplishments of some individual lawyers are nothing short of spectacular. Still, history does not well record lack of accomplishment and it is not surprising that the quality of education under the apprentice system varied with the skill and attention of the attorney giving instruction.20

This “apprentice model” of legal education was easily

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14. See McCULLOUGH, supra note 10, at 44.
16. Id.
17. Id.
19. FRIEDMAN, supra note 2, at 463 (citing Jack Northrup, The Education of a Western Lawyer, 12 AM. J. LEGAL HIST. 294, 294 (1968)).
adaptable, and "apprentice labor could fill a number of necessary functions."21 This aspect of the system also meant that apprentices were relegated to menial tasks, and even the most capable lawyers could not be relied upon to dedicate an adequate amount of time to their apprentices' legal educations.22 Not surprisingly, the apprentice system was devoid of exposure to legal theory.23 Questions of competence were not even addressed in any systematic way.24 As a result, self-taught lawyers fared worse in general and few of them achieved a level of competence necessary to adequately serve their clients' needs.25

B. Early Legal Education

The first American law schools emerged as individual professorships.26 Thomas Jefferson is credited with the founding of the first professorship of law in 1779 at The College of William and Mary.27 The first proprietary law schools emerged in 1784, which spurred the transformation of legal education in America.28

In 1790, professorships of law were established at Benjamin Franklin's College of Philadelphia and Brown College.29 Columbia followed in 1793, and Princeton followed in 1795.30 These university professorships were intended to instruct undergraduates in the study of law, a significant development reflecting the integration of law into American academia.31 Unlike the apprentice model, this early-American undergraduate

21. Id. at 321.
22. Id. at 322.
23. Id. at 319.
24. Id. at 322.
25. Id. at 321.
27. KONIG, supra note 15, at 20. Jefferson installed his former mentor Wythe as the first American professor of law. Id.
28. Id.
30. Id.
31. Id.
model of legal education concentrated primarily on teaching the theory of law as opposed to the practice of law.\textsuperscript{32}

Before these university law courses evolved into full law departments, independent “law schools” with no university affiliation developed as an intermediate step.\textsuperscript{33} The first schools dedicated exclusively to law “grew out of specialized law offices that employed several apprentices at one time.”\textsuperscript{34} Some attorneys found that teaching law was a lucrative enterprise, or at the very least an intellectually rewarding experience, and thus spent more time with their apprentices and less on their law practices.\textsuperscript{35} The most successful, long-lasting, and well-known of these early law schools was the Litchfield Law School, which offered a curriculum that consisted of lectures on the legal theory of William Blackstone, with collateral reading and examinations on Saturdays, spanning fourteen months, with two four-week breaks.\textsuperscript{36}

Harvard Law School began operating in 1817 as the first university-affiliated law school.\textsuperscript{37} At this time, the law degree was not a post-graduate degree, and it was not even standard to require any undergraduate work from law students.\textsuperscript{38} Classes consisted of lectures that demanded little from the students and offered little in terms of practical information and how to apply what was being taught.\textsuperscript{39} Structurally, legal education was still inconsistent. Like the apprentice model, how much the student learned depended heavily on the teacher.\textsuperscript{40}

C. The Advent of Christopher Columbus Langdell

A new era of legal education occurred with Christopher Columbus Langdell’s appointment as Dean of Harvard Law
School in 1870. At the time of Langdell's appointment, law school was eighteen months or less, and the curriculum was comprised of ungraded, rudimentary courses without exams or attendance requirements. Under Langdell, legal education was elevated to a postgraduate subject lasting three years.

"[Langdell] introduced entrance exams, graduation exams, rigorous coursework, and the case method." Langdell's innovative case method "replaced textbooks with appellate cases" organized "to illustrate the meaning and development of principles of law"—he sought to introduce the scientific method to legal education. In classrooms, Langdell integrated "Socratic dialogue" into discussions that engaged students in prolonged conversations, which required them to extract the applicable rule of law from "superfluous" facts of the cases before them. Langdell believed that students should derive doctrines of law from the intensive study of original sources and cultivate their own analytical skills. As Professor Ralph Michael Stein noted: "In a real sense, [Langdell's] method suggested an underlying respect for the law student as both scholar and junior colleague."

Langdell's legacy is seen today in the structure of contemporary American legal education. By the 1920s, owing probably to the influence of the Harvard Law School, the American Bar Association (ABA), and the Association of American Law Schools (AALS), this trend was fully begun. Today, despite the many countries that retain an undergraduate model of legal education, it is scarcely a matter of discussion in the United States that admission to law school generally requires

41. Moline, supra note 2, at 800.
42. Sonsteng et al., supra note 20, at 324–25.
43. Id. at 325.
44. Id. See also Katcher, supra note 2, at 361.
45. Sonsteng et al., supra note 20, at 325.
46. Id.
47. Stein, supra note 29, at 449.
48. Id. at 451.
49. Notwithstanding the emergence of professorships and proprietary law schools, apprenticeships remained the most common means of obtaining a legal education well into the 19th century. See Moline, supra note 2, at 801.
a college degree and that law school is a three-year graduate program.

D. The Modern Era

In 1928, there were 176 institutions that had a course of instruction that led to a law degree. By this time, the overwhelming majority of American law schools required a minimum of three years of law work to obtain a law degree—this was largely the result of the influence of the ABA and the AALS. Indeed, it was in the 1920s that the influence of these organizations began to be felt in American law schools.

Similarly, while in many of those institutions law was an undergraduate discipline, there were some schools that essentially admitted only college graduates. During Langdell's tenure as dean, for example, Harvard Law School first required its students to have a bachelor's degree in order to begin the study of law. By the 1920s, again owing probably to the influence of Harvard Law School, this trend was fully begun. Although the ABA was established in 1878, it was not until the mid-twentieth century that the ABA accreditation process required law schools to admit only applicants with a college degree. Today, despite the many countries that retain an undergraduate model of legal education, the norm in the United States and Canada is for a law degree to be obtained after at least three years of law school.
States is that admission to law school generally requires a college degree.

Of the 176 law schools that existed in the 1920s, many failed to be reaccredited by the 1950s. The ABA website states that there are currently 204 ABA-approved law schools. It bears mention that there are many American law schools that are not accredited by the ABA. The number of such unaccredited schools is elusive.

Externally, American legal education has been significantly affected by the ABA, the AALS, and the bar licensing authorities in each of the fifty states and the District of Columbia. Early in the development of American legal education, these external organizations had relatively little effect on the evolution of legal education. Today, we face a very different world in which each of these groups affects legal education in significant, though markedly different, ways. One aspect of regulation by the ABA and the AALS has been the tendency toward homogenization of...
the course of law study in the United States. This is an easily overstated point.

The ABA’s daunting task is to assess the effectiveness of the education at each of the 200 law schools it now accredits. The ABA accrediting process is remarkably transparent. A glance at the ABA’s website reveals the standards by which law schools are judged. The ABA specifies the form of report to which the volunteers who conduct the accreditation visit must comply; the form itself prescribes the inquiries to which the volunteer accreditors must respond in the course of making findings of fact.

Notwithstanding such detail and transparency, the ABA constantly tinkers with its process. Most recently, the ABA has undertaken to streamline the process by focusing more on law school results, in the form of bar passage rates and employment success, and less on the means by which law schools educate their students. Even so, the entire process is not without criticism with respect to the ABA’s role in accreditation. Although legal education is policed by those legal educators and lawyers who are most expert, there is concern that the legal educators and lawyers have too great a stake in the system to be truly impartial arbiters. This is not my view.

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63. Information about the process is publicly and easily available. Id.
64. See generally, e.g., AM. BAR ASS’N, SECTION OF LEGAL EDUC. & ADMISSION TO THE BAR, 2009–2010 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS (2009).
65. The accreditors who actually do the on-site visit on behalf of the ABA prepare a comprehensive report that covers a multitude of areas. These include the self-study (essentially the law school’s self-assessment) and strategic planning, program of legal education, faculty, students, law school administration, information resources (library), technology resources, facilities, finances, and university support. Site Report Checklist (Fall 2012), A.B.A., http://perma.cc/N9MV-ZEZ5 (last visited Sept. 4, 2014).
67. Rhode, supra note 18, at 24. Indeed, the ABA’s Consent Decree of 1996 indicated this concern might be well-founded, and upon an antitrust investigation instigated by the Department of Justice, the ABA issued the Decree containing accreditation standards and procedures meant to ensure
The AALS has also played a prominent part in shaping American law schools. Its focus on a small set of core values is intended to focus a law school’s attention on issues that matter to legal education in the larger sense. These core values include: having a faculty composed primarily of engaged full-time teachers and scholars; scholarship, academic freedom, and diversity of viewpoints; a rigorous academic program that maintains breadth and depth; diversity in hiring; the selection of capable students; and non-discrimination. The AALS Bylaws also address library, physical facilities and technology, and financial resources. In requiring its members to comply with the core values and related specific requirements, the AALS yields considerable influence over American law schools. This influence is implicitly, if not explicitly, recognized even by critics of the membership review process.
III. GLOBAL MODELS OF LEGAL EDUCATION

In the past few years, there has been increasing attention paid to the mechanism of legal education and the training of lawyers outside of the United States. In Japan, legal education has changed from an undergraduate to a graduate model.73 The European Union, through the Bologna Process, similarly desires to adopt a graduate model of legal education.74 In China, the recent development of a formal legal system and a means of legal education provide an opportunity to learn from the experience of other countries—both successes and failures.75 While the impetus to accomplish these changes appears to vary among countries, all seem united in the thought that the end result will be an improved legal profession.

A. European Legal Education

In Europe, the study of law has been primarily through an undergraduate model, although law degree requirements vary somewhat among countries.

1. Selected Countries

The United Kingdom has a relatively short duration of legal education—three years—as an undergraduate subject.76 In Spain, the basic degree required to become a lawyer is obtained through the completion of around 300 credits of undergraduate study (each credit being defined as units of accumulated class hours), covering courses such as civil law, constitutional law, and administrative law.77 Accumulation of these credits is split into


75. See Jerome A. Cohen, China's Legal Reform at the Crossroads, COUNCIL ON FOREIGN REL. (Mar. 2006), http://perma.cc/9B5P-P3BB.


77. Philip Leith & Fernando Galindo Ayuda, Legal Education in Spain:
two “cycles” of study, the first lasting three years and the second lasting two, with a degree in law only being awarded after completion of both cycles (unlike other disciplines in Spain, where degrees may be conferred after the completion of the first cycle). Upon earning the required number of credits, the students are awarded a “Licenciatura en Derecho” and can undertake their legal careers.

Law students may continue their legal education at the university in either a masters or doctoral program.

The current system in Germany requires about four years of study at the university level in order to sit for the “First State Exam.” However, there is no set schedule for completion of the law school curriculum, and a student may complete the curriculum within four or five years, the average completion time, or three-and-a-half years, the minimum completion time. Passing the First State Exam now grants law students an equivalent of the Juris Doctor called the “Diplom-Jurist,” whereas previously, passage of the first exam earned no formal degree. Upon successful completion of the exam, the aspiring lawyer enters two years of practical legal training by working in a private law office, a government agency, or with a judicial officer. Following this two-year apprenticeship, students take the “Second State Exam,” which qualifies them to seek appointment as a judge or to enter the practice of law as a licensed attorney after passage. There is a resistance in Germany against reducing university course work from four years to three, as the Bologna Declaration envisions, because of a


78. _Id._ at 173.
79. _Id._ at 175.
80. _Id._
82. Ger.-Am. Lawyers' Ass'n, _Legal Education in Germany_, DAJV (Mar. 2014) http://perma.cc/Q9EX-XZTX.
83. _Id._
84. Bücker & Woodruff, _supra_ note 81, at 576.
85. _Id._
belief that the reduction will leave students ill-prepared for the First State Exam.86

Despite the prevalence of law as an undergraduate discipline, several European nations extend legal education beyond the undergraduate level. In Italy, receiving a law degree requires three years of undergraduate study and two years of graduate law study.87 In Switzerland, obtaining a law degree consists of about eight semesters of study, with some students taking nine or ten semesters to complete the curriculum.88 This is followed by at least one year of practical training before the student may take the bar examination.89

In France the study of law is not exclusively aimed at training lawyers, instead providing a more general education that typically includes history, philosophy, and economics in addition to law.90 The academic year is divided into two semesters, with students given the option to seek a non-law degree after the first semester of study.91 Since the Bologna Declaration, a three-year diploma has been implemented in France, but a four-year degree, the “Master 1,” is a prerequisite to practicing as an attorney, judge, or civil servant.92 To receive a “Master 2,” a fifth year of study in an area of specialization is available.93 Professional instruction and training is an additional component of French legal education apart from university study and takes, on average, an additional two years to complete.94

86. Id.
89. Id. at 416.
91. Id.
93. Id.
94. Id.
2. The Bologna Process

Against this background, European higher education is moving through a period of reform under the Bologna Process. The Bologna Declaration, dated June 19, 1999, committed twenty-nine European nations to develop a system of higher education based on an undergraduate and graduate model in which access to the graduate level requires completion of the undergraduate level, lasting for a minimum of three years. As of 2008, the process has been adopted by forty-six European nations.

The reforms are directed at improving student mobility in higher education within Europe, as well as “promoting [a] European dimension in higher education.” The process aims to achieve transparency through creating a system of comparable academic degrees, a uniform organization of the university curriculum in every discipline, and a common scheme for course credit transfers.

The Bologna Process makes it possible to obtain a “bachelor” degree in law with three years of study, a system that already exists in the UK and France but that has not been adopted by the majority of European jurisdictions. This abbreviated degree alone, however, does not necessarily grant access to legal professions—lawyers, judges, etc. The bachelor degree would grant access to work in government or business, but an additional degree—a “master of law”—would be necessary to practice a legal profession. Implementation of a “bachelor-master” structure, as proposed, would require a two-tier legal education for access to legal professions, with the additional

95. Bücker & Woodruff, supra note 81, at 575.
96. Id.
97. Lonbay, supra note 87, at 891.
98. Bücker & Woodruff, supra note 81, at 615.
100. See Frans J. Vanistendael, Quality Control of Students and Barriers to Access in West-European Legal Education, 43 S. TEX. L. REV. 691, 695 (2002).
101. Id.
102. Id.
degree taking between one and two years to obtain.\textsuperscript{103} Thus, implementation of the Bologna Process would require future lawyers in Europe to study for about five years.\textsuperscript{104}

As noted above, the process of obtaining a law degree in any given European country varies.\textsuperscript{105} The Bologna Process creates pressure to introduce the basic three-year long program.\textsuperscript{106} All member states that subscribe to the Bologna Process have restructured or are considering restructuring their law degree programs.\textsuperscript{107} Some states, however, are resisting the implementation of the three-year program, as the legal sector is conservative and hesitant to adopt changes.\textsuperscript{108}

B. Japanese Legal Education

The Japanese experience is instructive for two reasons. First, the change to the Japanese system was a significant one. Second, the change took place relatively recently, and the information relevant to the change is widely available.\textsuperscript{109}

Japan did not have a graduate system of legal education until 2004.\textsuperscript{110} “[P]rior to this reform, legal education had been provided at the undergraduate level” under the civil law model prevalent in Europe.\textsuperscript{111} Under this approach, “law [was] an
undergraduate subject taught largely through lectures divided according to areas of the legal code (civil law, criminal law, commercial law, constitutional law, etc.).”112 “Because few law graduates actually became lawyers, law faculties aimed at a generalist education, leaving practical training for the Legal Training and Research Institute (LTRI),” which followed bar passage.113 Prior to the 2004 reforms, graduates, after passing the bar, spent two more years at the LTRI and then became qualified as professional lawyers.114

The undergraduate system continues to play a role in Japanese legal education.115 The undergraduate program possesses a high social value in that it trains graduates to assume diverse positions of responsibility other than those of professional lawyers.116 Some contend that it is inadvisable to eliminate the undergraduate program, which would have the practical effect of Japanese legal education more closely emulating the American model.117

1. Japan’s Move to the Graduate Model

The shift to a form of the graduate model of legal education, under which law students receive legal education from graduate school instead of undergraduate institutions, occurred in response to the collapse of Japan’s “bubble economy” in 1998.118 This economic event led to a heightened “demand for sophisticated legal services [in] Japan” as litigation rates rose dramatically.119 The Japanese government responded to this demand by forming the Judicial Reform Council (JRC), which was responsible for reforming the Japanese legal education system.120 These reforms were considered necessary in light of

112. Id. at 10.
113. Id.
114. See id.
115. See id. at 48.
116. See id. at 49.
117. See id.
119. Id.
120. Id.
the fact that the annual bar passage rate in Japan was historically between 2% and 4%. Moreover, according to the JRC, Japan’s pre-2004 system was ineffective at giving prospective lawyers practical training. Under the 2004 reforms, law students study a field of their choosing at the undergraduate level before attending a three-year graduate program, but students who choose to study law at the undergraduate level only attend a two-year graduate program. This is followed by one year of practical legal training at the LTRI (contingent with bar passage).

2. Early Returns

Immediate effects of the reforms were seen in 2006, with the administration of the new Japanese bar exam. The bar passage rate for that year was 48% (1,009 passed out of 2,091 graduates). This group of test-takers consisted of graduates who had studied law as an undergraduate subject, and thus had only participated in two years of the graduate program.

The immediate benefits seen under the reforms were short-lived, however. The results of the second national bar exam held under the new system saw an 8% decrease in its passage rate compared to the previous year, with only 40% of the test-takers passing the exam. Moreover, the first group of test-takers who had not majored in law related fields as undergraduates (and who had thus participated in the three-year graduate program) had a success ratio of only 32%. The declining pass rate for the 2007 exam does not tell the full story, as many of the new graduate-level legal institutions saw passage rates of their students at less than 10% (though there were some exceptional schools, like Chiba University, which saw its students pass the

121. Riles & Uchida, supra note 109, at 37.
122. Id. at 10.
123. Grondine, supra note 118, at 1.
124. Riles & Uchida, supra note 109, at 15–16.
125. Joy et al., supra note 110, at 434.
126. Id.
128. Matsui, supra note 73, at 20.
bar at a 65% success rate).129

The pass rate declined again in 2008.130 The pass rate for the
2008 exam was roughly 33%, a 7% decline from 2007.131 The pass
rate of students who had studied law as an undergraduate
subject saw a 2% decline from 46% passing the previous year.132
Students who had only studied law as a graduate-level subject
experienced a 22% pass rate, down from 32% the previous
year.133

Between 2007 and 2009, the overall bar passage rate in
Japan ranged between 40.2% and 27.6%.134 However, nine of the
seventy-four law schools in Japan saw pass rates of less than
10% in 2008.135 A few schools saw none of its students pass the
new bar exam.136 These mixed results following Japan's
substantial education reform highlight a limitation of focusing on
outcomes as a measure of success of a legal education system.
The mixed outcomes shed little light on the weaknesses of the
legal education system and how it can be improved.

The “Japan Federation of Bar Associations” (also known as
the Nichibenren) responded to these results by concluding “that
some law schools [were] giving graduate diplomas to unqualified
students.”137 In 2008, the Nichibenren made an emergency
proposal that the government should back away from its
ambitious goal to expand the number of successful applicants in
the annual bar examination to 3,000 by 2010.138 The Central
Council for Education proposed that schools with poor pass rates
should cut student quotas or merge with other schools as a

129. Id. at 21.
130. Id.
131. Id.
132. Id.
133. Id.
134. Bruce E. Aronson, The Brave New World of Lawyers in Japan
Revisited: Proceedings of a Panel Discussion on the Japanese Legal Profession
after the 2008 Financial Crisis and the 2011 Tohoku Earthquake, 21 PAC. RIM L.
& Pol'y J. 255, 290 (2012).
135. Matsui, supra note 73, at 21.
136. Id.
137. Editorial, More Good Lawyers Needed, THE JAPAN TIMES (July 29,
2008), http://perma.cc/YZH8-AUBR.
138. Id.
possible remedy.\textsuperscript{139}

Along with the mixed results of the reform, the actual structure of Japanese legal education under the reforms is not without its share of criticism. Under the 2004 model, "[g]raduate law students who have studied disciplines other than law at the undergraduate level . . . compete on curved examinations with students who have already received four years of legal education[,]" putting them at a disadvantage despite "crash courses" designed to make up for the lost ground.\textsuperscript{140} On the other hand, "students who have studied law as undergraduates . . . spend at least six years in the classroom before qualifying to take the new national bar examination . . . followed by one further year of practical legal training" at the LTRI, leading to some duplication in their education.\textsuperscript{141} One is left with a lingering impression of inefficiency in the process.

A continuing difficulty Japan faces with its legal education is the implementation of legal "clinics," which are prevalent in the United States; law students participating in these clinics receive practical experience by performing actual legal work under the guidance of professors or practicing attorneys.\textsuperscript{142} There are multiple reasons for this. First, there has been little guidance from the JRC on how to implement clinical programs.\textsuperscript{143} Second, because the ability to practice law still depends on entrance into the LTRI—and thus depends on bar passage—there is a heavier emphasis on studying for the purpose of passing the exam as opposed to gaining practical experience.\textsuperscript{144} Finally, many of the clinical programs in Japan limit students to attending counseling sessions, for reasons "grounded in part on the experiences of prosecutors, judges, and attorneys who were largely limited to 'learning by watching' during their time at the Legal Training and Research Institute."\textsuperscript{145} Many such professionals view clinical programs with skepticism, as they question how much

\begin{itemize}
\item \textsuperscript{139} Riles \& Uchida, \textit{supra} note 109, at 14 n.43.
\item \textsuperscript{140} \textit{Id.} at 15.
\item \textsuperscript{141} \textit{Id.} at 15–16.
\item \textsuperscript{142} \textit{See} Joy et al., \textit{supra} note 110, at 432.
\item \textsuperscript{143} \textit{See} \textit{id.} at 436.
\item \textsuperscript{144} \textit{Id.} at 435–36.
\item \textsuperscript{145} \textit{Id.} at 454.
\end{itemize}
meaningful participation a student who has not participated in the LTRI would be able to provide.\textsuperscript{146} Despite these challenges, the rise of clinics in the Japanese system of legal education is providing Japanese law students with the ability to analyze the legal issues presented by real clients, communicate with these clients, and solve their clients' problems.\textsuperscript{147}

C. South American Legal Education

Like Europe and Japan, before its reforms, South America has primarily employed an undergraduate model of legal education, although students may pursue a Masters or Ph.D from one of the many schools that offer graduate law programs.\textsuperscript{148} In Argentina, some schools have evolved from a five-year undergraduate law program to a four-year undergraduate program. Chile and the rest of South America are similar in this respect although many schools maintain graduate law programs that offer Masters and Ph.D level degrees.

Unlike the United States—where law is taught primarily by a faculty whose primary occupation is full-time engagement in teaching, scholarship, and service—in Chile, Argentina, and the rest of South America, practicing lawyers and jurists, whose status is similar to adjunct professors in the United States, teach law. As a result, instructors are less available to students and produce less scholarship. In highlighting this difference, it is also worth noting that for many in the profession in South America, it is viewed as part of one's professional obligations to teach classes in one's area of expertise. A law school might very well be viewed as less prestigious if its dean was not a member of a law firm. Moreover, it is not unusual for these instructors to be outstanding scholars in their areas of the law.

\textsuperscript{146} Id.
\textsuperscript{147} Id. at 458.
\textsuperscript{148} This section is based on my direct observations of law schools in Argentina and Chile.
D. Chinese Legal Education

As a general matter, an aspiring Chinese lawyer must complete four years of undergraduate law study, which resembles the European system. While there are three-year LL.M. programs extant in China, the LL.M. is not required in order to practice law. Still, China is at a stage where lawyers do not require a law degree in order to practice law and where a formal legal education does not always supplant the kind of experiential learning that the American apprentice system made possible.

China’s legal system, measured by the number of lawyers, has grown exponentially in the last decade. This growth is the result of the confluence of a number of factors. The development of a system of legal education presupposes an adherence to the rule of law and a certain ability to duplicate results given similar situations. For a long time in China’s history, none of this was fathomable given the absolute power of the Emperors and their ability to decide everything—often based on a whim. Indeed, the development of a system of legal education assumes a certain maturity of the legal system itself. As one scholar astutely observes, legal education and the rule of law can only thrive in a context in which there is a “culture of law.”


150. See Meiners & Chen, supra note 149, at 32.


152. See id. at 123; see also Xinyi, supra note 149, at 294–95.

153. See Phan, supra note 151, at 121.


155. Phan, supra note 151, at 125 (quoting John M. Burman, The Role of Clinical Legal Education in Developing the Rule of Law in Russia, 2 WYO. L. REV. 89, 100 (2002)); see also Hanson, supra note 154, at 245 (commenting on Chinese cultural aspects that might affect the adoption of an American-style legal system).
In China, the rise of the market economy may signal a trend away from the focus on the state and towards a focus on individual rights—a catalyst for the development of a culture of law.\footnote{156}{See Charles R. Irish, Reflections on the Evolution of Law and Legal Education in China and Vietnam, 25 Wis. Int'l L.J. 243, 245 (2007).} China's entry into the World Trade Organization may also have parallel effects.\footnote{157}{See id. at 250.} The early returns seem promising with the observation that respect for the legal profession is on the rise.\footnote{158}{See id. at 250–51; see also Xinyi, supra note 149, at 294–95.} A final, and crass, reason for the increase may well be the perception among aspiring lawyers of enhanced employment possibilities.\footnote{159}{See Xinyi, supra note 149, at 295.}

A concluding note on Chinese legal education is that, to date, the regulation of law schools in China is minimal.\footnote{160}{See id. at 297.} As a result, there is considerable variation in the quality of legal education.\footnote{161}{See id.}

IV. ATTORNEY LICENSING

A. Licensing in the United States

the importance of those subjects in practicing law in those states.\textsuperscript{164}

Licensing of attorneys in the United States revolves around the use of standardized testing instruments issued by the National Conference of Bar Examiners, which was founded in 1931.\textsuperscript{165} These instruments include the Multistate Bar Examination (MBE) and the Multistate Professional Responsibility Exam (MPRE).\textsuperscript{166}

Most jurisdictions in the United States require the completion of four years of undergraduate study in any subject, a Juris Doctor—received from law school after three years of study—and passage of the bar examination for that jurisdiction.\textsuperscript{167} In most of those jurisdictions, the law degree must be obtained from an institution accredited by the ABA in order to sit for the bar exam, or else the applicant may have to satisfy additional requirements.\textsuperscript{168} In a handful of jurisdictions, however, one may become a lawyer simply by passing the bar examination without first having received a law degree.\textsuperscript{169} In California, the ability to take the bar exam is not limited to graduates of ABA accredited institutions.\textsuperscript{170}

Finally, the MPRE and its wide adoption in the United States represent a significant step in the homogenization of licensing within the United States.\textsuperscript{171}


\textsuperscript{165} See \textit{id.} at 456; see also \textit{NAT’L CONF. OF B. EXAMINERS, http://perma.cc/HF8C-6PJS} (last visited Oct. 7, 2014).

\textsuperscript{166} See Shepard, \textit{supra} note 164, at 456.


\textsuperscript{168} \textit{Id.}; Rhode, \textit{supra} note 18, at 24–25. (“About four-fifths of the states admit only lawyers who have graduated from . . . ABA-accredited law school[s]. . . .”).


\textsuperscript{170} \textit{See NAT’L CONFERENCE OF BAR EXAM’RS & AM. BAR ASS’N, supra} note 167, at 8.

\textsuperscript{171} \textit{See Veryl Victoria Miles, The Uniform Bar Examination: A Benefit to
jurisdictions require passing the MPRE in order to be licensed as an attorney.\textsuperscript{172}

\section*{B. Licensing in Europe}

The various European jurisdictions have different requirements for attorney licensing. In Italy, an individual attempting to be licensed as an attorney must complete three years of undergraduate study, two years of graduate law study—the “three years plus two” system mentioned above—a two-year apprenticeship, and must successfully pass an exam.\textsuperscript{173} In France, candidates for attorney licensing must complete three years of undergraduate study, two years of graduate study, and pass an exam, which permits entrance into an eighteen-month practical training course, which must be satisfactorily completed.\textsuperscript{174} French nationality and “morality” are also necessary criteria.\textsuperscript{175} Spain, on the other hand, does not presently require any form of graduate law study, but instead requires only an undergraduate law degree (which takes five years to obtain), that the student is a national of a member state of the European Union, and payment of appropriate fees.\textsuperscript{176} As a final example, Germany requires an undergraduate law degree which takes about four-and-a-half years to obtain (including the first of two state exams necessary for licensing), a two-year apprenticeship, and the passage of the second state exam in order to gain admission to a local bar association.\textsuperscript{177}
C. Licensing in Japan

The Japanese equivalent to the NCBE is the Japanese Federation of Bar Associations (JFBA), or Nichibenren, which was founded in 1949.178 The JFBA consists of 52 local bar associations within Japan.179

Individuals attempting to be licensed as attorneys in Japan may study a field of their choosing at the undergraduate level before attending a three-year graduate program, or study law at the undergraduate level and attend a two-year graduate program.180 They must then pass either the new bar examination, which requires a law degree, or the continually utilized pre-reform examination, which can be taken without having first acquired a law degree.181 Successful passage of the exam is followed by one year of practical legal training at the LTRI prior to being licensed as an attorney.182

D. Licensing in South America

Professional law practice in Argentina is regulated by provincial or national laws that establish the requirements for professional practice.183 There are no bar admission examinations, credentialing examinations, or any other kind of eligibility examination required to obtain a license that enables lawyers to practice law in any province.184 Chile does not have an attorney licensing mechanism through any kind of national licensing authority, and it does not have any sort of licensing examination resembling a state bar examination.185 That said, a

179. Id.
180. Grondine, supra note 118, at 1.
182. Riles & Uchida, supra note 109, at 15–16.
184. Id.
student who has passed all of the required university credits receives an oral examination from three professors in the Law School. Upon successful completion of the oral examination, a student graduates as “Licenciado en Derecho.” The Supreme Court of Chile then confers the title of attorney if the individual has received the undergraduate degree, Licenciado en Derecho, and fulfilled a six-month period of professional practice with legal aid. The professional practice period is administered by the Ministry of Justice and not by the law schools.

E. Licensing in China

Since 2001, admission to practice law in China generally requires that the prospective lawyer pass the National Judicial Examination, which is followed by a kind of internship leading to the issuance of a practice certificate. The approach superficially resembles the German system in which a law graduate engages in practical training between two examinations. The National Judicial Examination is relatively recent, with the first administration occurring in 1986. The Chinese system differs from the German system in that it does not yet ensure the content or adequacy of this practical training.

V. ABA ACCREDITATION REFINEMENTS AND GLOBAL LESSONS LEARNED

In recent years, the ABA’s law school accrediting body has been working on a comprehensive overhaul of its law school accreditation standards. While the ABA’s accreditation

186. Id.
187. Id.
188. Id.
189. Id.
190. Meiners & Chen, supra note 149, at 29.
191. Id. at 32.
192. Id. The pass rate percentage on the national exam has been in the low teens. Id. at 34.
193. Id. at 32.
194. James Podgers, Sweeping Accreditation Review May Prompt ‘Sea

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standards—last reviewed in 2003 and implemented in 2006—are changed every five years, this upcoming wave of changes has been described as a “sea change,” which could have a dramatic effect on the law school landscape.195

Until recently, the ABA evaluated law schools based on standards that included primarily “input” measures such as applicant qualifications, faculty size, budget, and physical plant.196 Only two of the then-existing standards—bar exam passage rates and employment statistics at nine months post-graduation—are considered “outcome measures.”197 Under the adopted accreditation standards, emphasis will shift from “inputs” to “outcomes,” that is, what students know and understand when they graduate and how they fare in the practice of law.198

In deciding on this new direction for its accreditation standards, the ABA considered input from the legal profession in the U.S. and abroad, and it considered other professions. By casting such a wide net, the ABA clearly recognized that legal education can be improved by reference to what is done outside of the United States and what is done outside of the legal profession.199 In seeking this information, the ABA discovered a shift in the educational community to what students learn, not how or what they are taught, and it decided to follow this course with its own accreditation standards.200 In preparing for the revisions, the ABA offered as examples of “outcome” or “output” measures from the medical profession the values of “knowledge, skills, and [ethics],” which it says are common across professions and essential to the legal profession.201

At its meeting in August 2014, the ABA House of Delegates

195. Id.
196. Id.
198. See id. at 54.
199. Id. at 20.
200. Id. at 21.
201. Id. at 7.
adopted the proposed new Standards and Rules of Procedure for Approval of Law Schools.\textsuperscript{202} In particular Revised Standard 302 outlines the minimum learning outcomes that must be established by a law school.\textsuperscript{203} These include the attainment of substantive knowledge, the development of analytical skills, and the discharge of professional obligations.\textsuperscript{204}

In the course of developing the new standards, the ABA stressed that the standards would be flexible, and that it would not dictate “cookie-cutter” standards for all schools.\textsuperscript{205} Indeed, one of the interpretations to Revised Standard 302 notes that law schools “may also identify any additional learning outcomes pertinent to its program of legal education.”\textsuperscript{206}

South America has seen scant attention devoted to standardization of legal education. Neither Chile nor Argentina has a well-developed system of law school oversight, membership review, or accreditation in the style of the U.S. Department of Education, the AALS, or the ABA Section on Legal Education. Any accreditation function in these two countries pertains to

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{202} Standards Review Committee, A.B.A., http://perma.cc/98RJ-NDQ8 (last visited Sep. 11, 2014) (noting that Interpretation 305-2 was excluded from approval).
\item \textsuperscript{203} Section of Legal Education and Admissions to the Bar: Explanation of Changes, A.B.A. (Apr. 2014), http://perma.cc/FV7C-4YHY [hereinafter Explanation of Changes]. Standard 302, which addresses learning outcomes, now provides:
\begin{itemize}
\item A law school shall establish learning outcomes that shall, at a minimum, include competency in the following:
  \begin{itemize}
  \item (a) Knowledge and understanding of substantive and procedural law;
  \item (b) Legal analysis and reasoning, legal research, problem solving, and written and oral communication in the legal context;
  \item (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and
  \item (d) Other professional skills needed for competent and ethical participation as a member of the legal profession.
  \end{itemize}
\end{itemize}
\item \textsuperscript{204} Id.
\item \textsuperscript{205} CARPENTER ET AL., supra note 197, at 55.
\item \textsuperscript{206} Explanation of Changes, supra note 203, at 52.
\end{itemize}
\end{footnotesize}
colleges and universities and not to individual units. Thus, law schools are not otherwise independently accredited nor subject to a membership review.

With this background, several points can be made. As articulated in the Bologna Declaration, one desirable aspect of a graduate legal education is the production of a cadre of lawyers who are both able to practice law at a sophisticated level and speak a language, in the legal sense, that is readily understood by others.207 This whole effect is especially prominent where licensing is concerned. If the goal of legal education is merely the transmission of knowledge, as is the case in many other disciplines, licensing plays a very small role. Thus, the possibility of attainment of an undergraduate law degree makes sense. On the other hand, if the goal of legal education is to create professionals upon whom clients depend, then rigorous licensing and the requirement of an extended legal education also make sense.

With the existing model of legal education prevalent in the United States, the advent of the Bologna Process in Europe, and Japan’s move to a graduate model of legal education, there is a distinct trend to homogenization. This has both good and bad aspects.

The good is represented by the systematic and efficient assessment of the competency of the practicing bar. This, in turn, becomes a not so subtle mechanism by which the performance of law schools can be measured. The simple question that emerges is how well law schools are imparting to their graduates the tools necessary to serve the public.

Homogenization is a catalyst for mobility. If someone is admitted to practice in Spain, she should be reliably expected to discharge her legal duties to her clients in Germany as well. Most recently in the United States there has been a promotion of a “Uniform Bar Examination” by the National Conference of Bar

Examiners. In August 2010, the Conference of Chief Justices adopted a resolution supporting a uniform bar examination, and in September 2010, the ABA’s Council of the Section of Legal Education and Admissions to the Bar finalized a similar resolution. One of the primary motivations for such a move is the increased mobility of lawyers within the United States. Indeed, lawyer mobility is one of the motivations cited in the Bologna Process for a standardization of legal education. The advent of the European Union makes mobility a feasible factor for licensing authorities to consider. Whether this move to a uniform examination would be attractive on a broader global scale, though, is doubtful. The variation in legal regimes among countries makes consideration of uniformity a dubious proposition.

The bad associated with homogenization is that opportunities for improvement are diminished. This is not a new problem. As one early author cautioned “over-standardization” is not without its problems. Where countries are allowed and encouraged to experiment with legal education, it seems reasonable to assume that innovation would flourish to a greater extent. A system of legal education that has reached a static stage will not likely foster anything other than incremental change.

China is not unique in its expression of frustration as to the means by which legal education can create a competent cadre of lawyers. Just as sure is the assessment that legal education must play a significant part in the process of creating a competent bar. As noted above, in the United States, the legal system predated the formal system of legal education. So it is in China, where legal education was primarily obtained through the

208. Miles, supra note 171, at 6.
210. Miles, supra note 171, at 11.
211. BOLOGNA DECLARATION, supra note 207, at 3–4.
212. REED, PRESENT-DAY, supra note 50, at 109.
214. See id.
dynasties by sons from their fathers or through internship.215

In the end, each system has its positives and negatives. The Japanese are to be commended in the breadth of their reform. Still, the lack of means or the will to effectuate an effective system of clinical education may prove to be a hindrance. The German approach to sandwich two years of post-graduate training between the first and second examination has much to commend it. China is at a real crossroads in this sense—it has the luxury of having investigated the successes and failures of legal education and attorney licensing in a wide variety of contexts. South America can watch all of this unfold—perhaps there is an advantage in avoiding missteps by others.

VI. FIVE OBSERVATIONS

In charting the future of legal education around the world, several themes emerge. Each is likely to play a significant role in determining how legal education evolves.

A. Global Differentiation

Like politics, most law schools are local. As such, the question becomes not how legal education will change but rather how will individual law schools change. Still, as the world becomes smaller and trade continues its cross border expansion, law practice must adapt to allow competent practice across jurisdictions. Although law school as an undergraduate pursuit has been the European practice as well, the advent of the European Union in general and the Bologna Process signal a move to a graduate model of legal education in Europe.216 While no similar movement is apparent in South America, global pressures may lead in this direction.

Meanwhile, there are schools in the U.S. moving in the other direction. For example, the University of Arizona has recently started a program with an undergraduate major in law.217

215. Xinyi, supra note 149, at 293.
216. Terry, supra note 74, at 146.
B. University’s Roles

In the United States and much of Europe, federal and local governments subsidize education, including legal education. This is true in most of South America as well. In the United States, we have seen a steady erosion of this source of funding to the point that the five public law schools in California charge as much or more in tuition as private law schools.218 There are signs that this same phenomenon is happening in Europe also.219 In South America, it is not uncommon to see private law schools effectively serving as profit centers within their universities. If this changes, the relationship between universities and their law schools will change markedly.

C. Productivity and Costs

The cost of legal education has increased well beyond the rate of inflation.220 This increase has not occurred in a vacuum. Law schools have tended to mirror the increased cost of higher education. In their recent work, economists Robert Archibald and David Feldman note that the high cost of human capital, especially well-educated workers like university professors, has also been one of the primary drivers of cost in higher


These increases in higher education have been paralleled in all fields that depend heavily on a highly educated workforce. Thus, dentistry\textsuperscript{222} and investment banking\textsuperscript{223} have also seen similar price increases. Still, the cost structure of higher education remains a largely intractable concern.

Chile and South America’s practice of having practicing lawyers and jurists teach law might provide one option for reducing the cost of human capital. But while this model saves on the largest law school expenditure, it probably comes at the price of availability to students and the production of scholarship.

Finally, this model seems to have escaped the trend of escalating cost to the student of legal education that is so prevalent in the United States, even among public law schools. As a consequence, access to legal education is not limited by the students’ means to the extent it is in the United States. While the South American model is more cost-efficient than the U.S. model, it does not take much imagination to see that cost pressures will be seen at universities and law schools in South America as well.

D. Licensing and Accreditation

Licensing authorities greatly affect legal education. The obvious point is that licensing is the gateway to practice—the more subtle point is that licensing can affect our curricula. In California, conflict of laws was tested on the bar exam and most California law schools had multiple offerings of the course.\textsuperscript{224} The California Bar Examiners dropped the course from the list of

\textsuperscript{221} ROBERT B. ARCHIBALD & DAVID H. FELDMAN, WHY DOES COLLEGE COST SO MUCH? 108 (2011). Interestingly, they compare the costs of elite four-year research-oriented universities with two-year community colleges in which the focus is not on research but on teaching. They conclude that the costs of both have risen at effectively the same rate—a rate that has substantially outpaced inflation. \textit{Id.} At the least, their research suggests that a conversion away from research may not yield much in terms of cost-saving.


tested subjects many years ago. For the last several years, my school has had a total enrollment in the course of about a dozen students. This academic year the course is not being offered.225 This is unfortunate. A key course is not offered because it is not in the range of subjects tested—that the course is key to practice is not part of the calculus.

The ABA has moved in a direction that will have the effect of increasing differentiation. It remains to be seen whether law schools will push the expanded boundaries set by the ABA. Still, whatever is done by licensing authorities affects us, our costs, our curricula, and our students.

E. Access and Justice

The last piece of my taxonomy is access and justice. If, as a practical matter, only the wealthy have access to a university education or to law school, we deny a large segment of society access to the tools it takes to effectively advocate for justice in our constitutional democracy. Similarly, if those of modest means do not have access to the services of our graduates, a big piece of the puzzle of justice is missing. We have not done enough in the United States to address either of these two aspects. This is a universal issue.

VII. CONCLUSION

Your observations may vary, but these five should be part of any conversation regarding the direction legal education will take in what remains of this century. Many of these concerns overlap considerably, and each could easily be the subject of separate papers. Moreover, the interrelationship among them is complex. Legal education, wherever it is undertaken, has many moving parts.

An ideal global model of legal education might be one where different approaches develop, which depends on the context in which education is provided. This, also, is not a new idea. Some

thirty years ago, one study advocated this approach with law schools in the United States. The idea is that all law schools could not accomplish everything. What individual law schools can achieve is constrained and defined by resources, geographic location, and the relative number of nearby law school competitors. A still older study undertaken in 1928 expressed the same view. It observed, somewhat paradoxically, that the relatively beneficial effect of avoiding over standardization was the result of the inability of external organizations, like the ABA and the AALS (referred to as an ABA “offshoot”), to exercise a guiding hand rather than the result of a conscious effort to allow and encourage experimentation among law schools. This tension between diversity and uniformity seems destined not to be diminished.

It is in no small sense ironic that the United States, which long ago shed the apprenticeship model of legal education, has, through the ABA accreditation process, lessened the emphasis on the mechanism by which legal education is provided and has, instead, returned to a system under which only the ultimate result is the measure of success. This is a trend to greater flexibility in a world that is, otherwise, trending to homogenization. As I began, my large observation was that the benefits of standardization must be carefully balanced with the problems of homogenization. Striking this balance will not be easy, but it is certain that the response of legal education to changing times must reflect the kind of adaptation Darwin and Justice Kirby contemplated.

227. Id.
228. Id.
229. REED, REVIEW OF LEGAL EDUCATION, supra note 53, at 5.
230. Id.