

## Law Schools at Founding and Today

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After several false starts beginning in 1857,<sup>1</sup> the Law Department of the then fairly young (1853) Washington University in St. Louis<sup>2</sup> was established in 1867 during the latter part of a period (1850 to 1875) of tremendous social, political, military, and legal instability in St. Louis and Missouri. Like the University into which it was born, the Law Department was nonsectarian and was premised on a general sense of civic betterment as well as being part of an effort to build the parent institution.<sup>3</sup>

This Essay will begin with two modest descriptive sections: (1) the social, institutional, civic, and military context of St. Louis and Missouri, and in particular the constitutional and legal instability of the period from 1860 until the replacement of the first Missouri Constitution (1820) with the anti-slavery and punitive (to Confederates and their sympathizers) Constitution of 1866, and the resurgence of Jacksonianism in the Missouri Constitution of 1875, and (2) the history of common law legal education including the more specific history of the founding of the Washington University Law Department.

It is the thesis as set out in the final section of this Essay (and in this regard, it is a commentary on the various arguments made about what law schools should do in 2017 in view of the various stresses

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1. Cartus Rhey Williams, History of the Law Department of Washington University (The St. Louis Law School) 1867–1900 (June 1942) (unpublished Master's dissertation, Washington University) [hereinafter Williams Dissertation].

2. The most complete history of the University is RALPH E. MORROW, WASHINGTON UNIVERSITY IN ST. LOUIS I (1996).

3. Williams Dissertation, *supra* note 1, 1–25.

they are experiencing) that law schools are generally agnostic at the time of founding about a philosophy or direction or emphasis and this is good. Legal education in the common-law world is not (and never has been) so much an inculcation of particular knowledge or skills, but rather a sustained exposure to legal phenomena and ideas in a context of argumentation. The premise of this format and approach has always been that law changes significantly (as do the skills required to practice it), therefore, the best preparation is a sustained (multi-year), general, even eclectic, exposure to legal ideas and thinking.

#### I. ST. LOUIS AND MISSOURI 1850–1875 AND CONSTITUTIONAL AND LEGAL INSTABILITY<sup>4</sup>

##### *A. Origins of Missouri and St. Louis*

Missouri was admitted to the Union in 1820 as part of the Missouri Compromise, federal legislation which admitted Missouri as a slave state and Maine (out of Massachusetts) as a free state.<sup>5</sup> The legislation provided a fixed, geographic demarcation of future slave and free states within the then Western territories of the United States which stood until the Supreme Court struck the Compromise down in the infamous *Dred Scott* decision.<sup>6</sup>

Missouri was in the middle of the Louisiana Territory, purchased in 1803<sup>7</sup> from France (and Spain). St. Louis was the capital of the northern portion of this territory (the Missouri Territory). Slavery was never a significant economic reality in what came to be the State of Missouri, but because of its status as the major crossroads to the west (on the biggest river in the United States), the presence of slaves was

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4. The history of St. Louis and Missouri can be found in FLOYD C. SHOEMAKER, *A HISTORY OF MISSOURI AND MISSOURIANS* (reprint 2005) (1922).

5. See ROBERT F. FORBES, *THE MISSOURI COMPROMISE AND ITS AFTERMATH: SLAVERY AND THE MEANING OF AMERICA* (2007).

6. See *infra* notes 10–12 and accompanying text.

7. The purchase effectuated by President Thomas Jefferson through a treaty with France and a separate one with Spain who had residual claims to the territory. Treaty Between the United States of America and the French Republic, Apr. 30, 1803, 8 Stat. 200.

important to slave owners and had psychic importance to those who identified with the Southern interests in the Union.

St. Louis was a transit point of huge significance, and also became a focal point of German settlement that extended to the West. Germans tended to be Catholic, anti-slavery, wet<sup>8</sup> and not stably allied with either major party. Their dominance in St. Louis was a counterpoint to the largely Protestant, slavery sympathetic population—thinly scattered in the rest of the state, except for major way stations like Kansas City and St. Joseph.

In the period from 1830 to 1850, a ferment began against the largely Eastern-determined Constitution of 1820 which allowed slavery, provided for lifetime judges, and also did not regulate or control railroads, corporations, or banks. This led, in this period of Jacksonian ascendancy, to agitation for election of judges which was approved as a ballot amendment in 1845.<sup>9</sup>

During the prewar period, there was significant but not plentiful litigation in the Missouri courts over the status of slaves or former slaves particularly if they had sojourned in free areas (mostly in the areas of the Northwest Ordinance, a pre-constitutional and federal statute which flatly prohibited slavery within its bounds). In a landmark decision, *Winy v. Whiteside*,<sup>10</sup> the Missouri Supreme Court, including a judge who later became an anti-secession leader, held that a prolonged stay in a territory or state within the area of the Northwest Ordinance (even if followed by a removal to Missouri) freed the slave forever under Missouri law.<sup>11</sup>

To put it mildly, the *Winy* decision rankled the pro-slavery forces in Missouri and elsewhere and was a focal point of the prolonged multi-jurisdictional consideration of the legal status of Dred Scott. The Missouri Supreme Court overruled *Winy* and held that Dred Scott was still a slave even though he stayed for an indefinite period

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8. “Wet” describes the German immigrants’ permissive position on alcohol consumption. This was in stark contrast to “dry” Protestant attitudes common across the nation which led to Prohibition. See SHOEMAKER, *supra* note 4, at 27–28.

9. William F. Swindler, *Missouri Constitutions: History, Theory and Practice*, 23 MO. L. REV. 158, 162 (1958).

10. *Winy v. Whitesides*, 1 Mo. 472 (1824).

11. Northwest Ordinance of 1787, 1 Stat. 50 (1787).

in the Minnesota territory (within the Northwest Ordinance).<sup>12</sup> The United States Supreme Court later heard a version of the Dred Scott case and it held (shockingly) that since Dred Scott was a slave or a descendent of a slave he could never be a citizen under the Constitution and did not have standing to sue, a *volte-face* in American jurisprudence and a major contributor to the rancor which led to the Civil War.<sup>13</sup>

In 1860, Missouri elected Claiborne F. Jackson as Governor. He was a Southern sympathizer who sought peace-at-any-price.<sup>14</sup> The Union did not want Missouri to secede and through a combination of Missouri ambivalence about secession, and Union aggressiveness towards the large stores of weapons and ammunition in Missouri the Union eventually chased the Governor Jackson out of Jefferson City, and the state entered a six-year period of constitutional and legal limbo in which there was no valid state government and the Constitution of 1820 was, at best, in abeyance.<sup>15</sup>

A Union-sympathizing interim Governor, former Missouri Supreme Court Chief Justice Hamilton Gamble who was appointed in 1860, and others held the state together for the Union (with a heavy federal military presence), but there was a Confederate phalanx in the southern part of the state. This de facto government eventually led to the calling of a constitutional convention at the close of the Civil War and the adoption of the Constitution of 1866 which severely, civilly disabled Southern sympathizers and Confederate veterans and followed the major lines of the Constitution of 1820 as amended. This led, of course, to a period of Republican ascendancy in Missouri which was the state of affairs at the time of the establishment of the Law Department of Washington University.<sup>16</sup>

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12. *Scott v. Emerson*, 15 Mo. 576 (1852).

13. *Dred Scott v. Sandford*, 60 U.S. 393 (1857).

14. An excellent recital of the strains in Missouri (and Kentucky) just before and during the war can be found in AARON ASTOR, *REBELS ON THE BORDER: CIVIL WAR, EMANCIPATION, AND THE RECONSTRUCTION OF KENTUCKY & MISSOURI* (2012).

15. CHRISTOPHER PHILLIPS, *MISSOURI'S CONFEDERATE: CLAIBORNE FOX JACKSON AND THE CREATION OF SOUTHERN IDENTITY IN THE BORDER WEST* (2000).

16. DENNIS K. BOMAN, *LINCOLN'S RESOLUTE UNIONIST: HAMILTON GAMBLE, DRED SCOTT DISSENTER AND MISSOURI'S CIVIL WAR GOVERNOR* (2006). Judge Gamble had dissented from the Missouri's decision in *Dred Scott* holding Scott still to be a slave and

During the following decade, the opposing forces of Unionism and Jacksonian/Confederate forces arrayed against each other, and eventually the 1866 Constitution was replaced by the extremely long and Jacksonian Constitution of 1875 which was a model for proto-populist constitutions in the West for 100 years. It controlled banks, railroads, localities minutely and specifically, and rehabilitated Southern sympathizers as far as was allowed under Reconstruction legislation.

This period of conflict was the milieu for the Law Department's founding along with severe stresses in the social, legal, and political order. In the meantime, the state continued to grow significantly and Western settlement continued apace largely through Missouri.<sup>17</sup>

## II. LEGAL EDUCATION/LAWYER TRAINING

### *A. England*

The training of lawyers (legal education) has, for American purposes, four major epochs. The first occurred in England from 1300 until the eighteenth century when, it is thought, lawyers were trained in the Inns of Court, institutions outside of universities seemingly guided by the common law courts including the chancery.<sup>18</sup> Education in the Inns was largely in the form of lectures and also moots in which legal issues were discussed, pro and con, without, it seems, a fixed substantive curriculum. The attendees lived together, attended the courts and moved through a system of lower level appointments with some but not all becoming what we now know as barristers (in the core common law courts the right to argue was limited to serjeants-at-law). Others went off into other or lower

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overruling *Winn v. Whitesides*. *Scott v. Emerson*, 15 Mo. 576, 587 (1852) (Gamble, J., dissenting).

17. See generally Williams Dissertation, *supra* note 1; ASTOR, *supra* note 14, at 94–121.

18. The history of the Inns is complex and not fully understood, but there is a lot written on their development and eventual demise as purveyors of legal training. See generally the old, but still useful, R.R. PEARCE, A HISTORY OF THE INNS OF COURT AND CHANCERY LONDON (1848). See generally John H. Baker, The Third University of England, Selden Society Lecture (July 4, 1990) (Occasional Pamphlet of the Selden Society) [hereinafter Baker I]; John H. Baker, Legal Education in London 1250–1850, Selden Society Lecture (July 4, 2005) (Occasional Pamphlet of the Selden Society) [hereinafter Baker II].

branches of the legal professions. Specific skills training was limited and episodic. The length of time required (or experienced) was thought to ensure both a sifting and training of those who ultimately succeeded. The training period ended with some kind of test and a vote of admission—or not—to the bar. During this period, the English universities taught or provided lectures in the continental and Roman civil law systems but there was no requirement that lawyers before entering the Inns have any special undergraduate or university training or, indeed, any such training.<sup>19</sup>

In the eighteenth century, the English and eventually the American system of legal education began to move into a university setting with the creation of the Vinerian professorship in English law at Oxford—particularly due to the successful lectures (and eventual treatise) of Sir William Blackstone, its first holder.<sup>20</sup> This training was followed by narrower professional training outside of the universities, now provided by the English Law Society, in preparation for some kind of entrance examination.<sup>21</sup>

The English system of an undergraduate degree generally in law still survives and after graduation a candidate goes on for a year's training with the Law Society. The reality in England, Scotland, and Ireland is that many of those with an undergraduate law degree do not seek professional bar admission. In addition, an undergraduate law degree has not always been a prerequisite for Law Society training.<sup>22</sup>

### *B. Early American Practice*

Training and qualification for the bar was handled in every state separately and was controlled by the bar entirely through a system of oppressive and narrow apprenticeship training in which an intended advocate was “articled” to a practicing lawyer or, in the case of

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19. Baker I, *supra* note 18; Baker II, *supra* note 18.

20. *Sir William Blackstone*, in BIOGRAPHICAL DICTIONARY OF THE COMMON LAW 57–61 (A.W.B. Simpson ed., 1984) [hereinafter BDCL].

21. The Law Society was founded in 1825 and actually regulates admission as solicitors and further qualification is required to become a barrister. Sandra R. Klein, *Legal Education in the United States and England: A Comparative Analysis*, 2 LOY. L.A. INT'L & COMP. L. REV. 601, 601–41 (1991).

22. *Id.*

Abraham Lincoln, by hanging around the courts and other legal offices for several years.<sup>23</sup> The education was, in the hands of different practitioners, awful, second rate, or enlightening. Generally, university training was not required (John Marshall and Abraham Lincoln), but Eastern lawyers generally had some university training (John Adams), but not generally in law.<sup>24</sup>

### *C. Rise of University Training and its Eventual Dominance*

Harvard was the first university to add a professorship of law.<sup>25</sup> There were also some freestanding legal training schools including Tapping Reeves' Academy in Litchfield, Connecticut which eventually became the Yale Law School.<sup>26</sup>

University training in America coexisted for a long time with articling, but eventually, largely due to Harvard and its famous dean, Christopher Columbus Langdell, it became in the mid-nineteenth century more formalized (with an initially set curriculum that varied considerably from school to school) taught by a cadre of full-time law professors in both lecture and Socratic formats.<sup>27</sup> This system eventually replaced articling but there was no national or even statewide agreement on curriculum or skills instruction.

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23. B. DIRCK, *LINCOLN THE LAWYER* 17–19 (2009).

24. *See, e.g.*, DAVID MCCULLOUGH, *JOHN ADAMS* 1–78 (2001). *See also* JAMES GRANT, *JOHN ADAMS: PARTY OF ONE* 28–30 (2005).

25. *Joseph Story*, in *BDCL*, *supra* note 20, at 491–93. Nathan Dane's endowment was funded from the profits of Dane's treatise, the first, on American law. Dane was a noted antislavery Federalist from Massachusetts. *Nathan Dane*, in *BDCL*, *supra* note 20, at 142. Joseph Story held the Dane professorship while he served on the Supreme Court.

26. JOHN H. LANGBEIN, *BLACKSTONE, LITCHFIELD, AND YALE: THE FOUNDING OF THE YALE LAW SCHOOL* 17 in *HISTORY OF THE YALE LAW SCHOOL. THE TERECENTENNIAL LECTURES* (Anthony Kronman ed., 2004).

27. *Christopher Columbus Langdell*, in *BDCL*, *supra* note 20, at 302. Langdell was Dean from 1870 to 1895.

*D. The Law Department of Washington University*

William Greenleaf Eliot, Washington University's founder, tried, beginning in 1857 to move to add a law department but the tumult of that time ending when the Civil War ended made that infeasible.<sup>28</sup> The founding of the Law Department in 1867 was under the aegis of a group of local attorneys and grandees joined by Justice Samuel Miller<sup>29</sup> from Iowa of the U.S. Supreme Court. The founders were drawn broadly from the leadership in St. Louis at the time with some obvious leaning to the pro-Union faction in St. Louis and Missouri and the Law Department (like all of Washington University) was located in a building in what is now considered the downtown of St. Louis. Washington University did not migrate west until after the World's Fair of 1904 when it was sited at the western end of what is now known as Forest Park.<sup>30</sup>

The presence of Justice Miller on the initial board of the Law Department is noteworthy. Justice Miller was originally from Kentucky before moving to Iowa, and was an active Republican, abolitionist, and also a physician. He wrote more opinions than any other Supreme Court justice (he served from 1862 to 1890) including the very important (as to the scope of the privileges and immunities clause of the Fourteenth Amendment) majority opinion in the *Slaughterhouse Cases*.<sup>31</sup> He was an active Unitarian like William Greenleaf Eliot,<sup>32</sup> the de facto founder of Washington University (originally named Eliot Seminary). Eliot was the University Chancellor from 1870 until 1887 and it is obvious that Miller was on the Board of the Law Department due to a connection with Eliot.

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28. Williams Dissertation, *supra* note 1, at 13–15.

29. *Id.*

30. *Id.* at 1–20.

31. *Slaughter-House Cases*, 82 U.S. 76 (1872). This case restricted the scope of the words in the Fourteenth Amendment, "privileges and immunities[.]" to those such rights conferred by reason of federal citizenship. Miller also joined the majority in limiting the Fourteenth Amendment to state actions not private activities. *Id.* But later, in *Ex parte Yarbrough*, 110 U.S. 651 (1884), he held in an opinion for the Court that the Fourteenth Amendment gave the federal government power to control the Ku Klux Klan. Justice Miller served on the Supreme Court from 1862 to 1890.

32. Eliot was the grandfather of T.S. Eliot the twentieth century American/British poet.

Eliot was the pastor of the First Unitarian Church in St. Louis from 1834 until 1870 and many of the founding members of the University were members of his congregation. Eliot had been a significant force in the effort to keep Missouri in the Union.<sup>33</sup>

The limited materials about the Law Department which was also known as the St. Louis Law School<sup>34</sup> included a curriculum which was fixed, eclectic and more narrowly legal than the curricula of most law schools today but typical for the 1870s.<sup>35</sup> There was more focus on the law of Missouri than today and the faculty appears initially to have been comprised of distinguished senior figures of the St. Louis bar.<sup>36</sup> There is nothing in these materials which suggests a partisan or political slant to the Law Department. However, the two most prominent members of the entirely part time faculty, Samuel Treat (constitutional and international law) and Henry Hitchcock (contracts and maritime law) both were, in Missouri political parlance, *unconditional Union* men, i.e., radical Republicans. Both had played major legal roles during the Civil War, one as a judge and one as the legal adviser to General Sherman.<sup>37</sup> Samuel Treat was a federal judge and Hitchcock was later the President of the American Bar Association.<sup>38</sup> The Department's Advisory Board included two Missouri chief justices, one federal district court judge, and several state court judges—some of whom had refused to take the oath required by the occupying Union forces during the Civil War and had had to resign their posts.<sup>39</sup>

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33. See MORROW, *supra* note 2, *passim*.

34. Williams Dissertation, *supra* note 1, at 57.

35. *Id.* at 24. The original curriculum included constitutional law, international law, equity, real property, criminal law, civil practice, and contracts.

36. *Id.* at 27.

37. *Id.* at 25–42.

38. Wash. Univ. in St. Louis, The Seventy-Fifth Anniversary of the School of Law of Washington University Saint Louis: 1867–1942, at 5 (on file with author). Treat was one of the speakers at the Inauguration Ceremony for the University on April 23, 1857. *Id.*

39. Williams Dissertation, *supra* note 1, at 47–53.

*E. The Twentieth Century and Beyond*

After the creation and institutionalization of the American Bar Association in the first two decades of the twentieth century, there was some centralization of the regulation of lawyer training, led, in part, by Roscoe Pound, eventually the Dean<sup>40</sup> at Harvard, which specified types of substantive or skills training. This change was abetted by lawyer critiques of law student readiness to practice, the vast expansion of coverage in law school subject matter, and also demands for better and more skills instruction. ABA accreditation exists alongside state and federal judicial regulation and generally the two moved in lock step.<sup>41</sup>

## III. LEGAL EDUCATION TODAY

It seems a far distance from the history described above to today and the stresses on and in legal education and the bar. These stresses and “crises” have been widely discussed in books<sup>42</sup> and articles as well as the popular press. In short compass, they include: (1) a significant downturn and change in legal employment from 1990 to the present; (2) hyperinflation in the cost of legal education fueled no doubt by the wide availability of federally-guaranteed loans; (3) enduring criticism of the aloftness or irrelevance of legal education as being insufficiently focused on skills inculcation and overly focused on abstruse and temporal concerns of a broad social or political character; (4) a market “conspiracy” among professors and deans (with the ABA and the state courts standing idly by approving or continuing the status quo); and (5) criticism of the length of legal education (three years) when laid on top of an expensive four-year undergraduate education. These phenomena have produced a major downturn in interest in law school and legal education leading to

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40. *Roscoe Pound*, in *BDCL*, *supra* note 20, at 427–31. Pound was dean from 1916 to 1936.

41. See Am. Bar Ass’n, *Accreditation Overview*, [http://www.americanbar.org/groups/legal\\_education/accreditation.html](http://www.americanbar.org/groups/legal_education/accreditation.html) (last visited Dec. 30, 2016).

42. BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* (John M. Conley & Lynn Mather eds., 2012).

reductions in the size, and now even the number, potentially, of law schools.<sup>43</sup>

The sense and reality of a response to these crises, apart from size reductions, has largely focused on the relative lack of skills training in law schools. Concretely, the ABA has moved to require more skills training and to improve the status of skills instructors who typically are not as productive in terms of traditional published scholarship as non-skills faculty. California has moved more aggressively than the ABA to require a heavier dose of skills courses and has also added a quasi-skills component to its bar examination and for admission to the bar.<sup>44</sup> A few schools have moved in a tentative direction of compressing the legal education experience into a two and a half or a super two-year period as opposed to three.<sup>45</sup>

At the same time as these modest responses to the “crises,” law schools have come under increasing revenue pressure due to the combination of fewer students (generally) and the need for schools to discount tuition heavily to enroll a plausible class. The need for more revenue (and exogenous changes in the world related to technology) have produced from both the ABA and some schools tentative interest in internet, or electronic offerings and programs. These changes have produced at best modest amounts of revenue.

There have been a few spirited defenses<sup>46</sup> of the existing system of legal education in the United States along with a general wringing of hands about the costs of legal education and the concomitant high indebtedness it engenders for many graduates facing a depressed and unstable employment market. The core of these defenses (if one puts aside the obvious self-interest of the proponents) has been that law is vast, complex, changing, and that legal jobs vary considerably as to skills and content. Therefore, I believe a longer, but non-rigid,

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43. *Id.*

44. *Task Force on Admissions Regulation Reform (TFARR)*, ST. B. CAL., <http://www.calbar.ca.gov/AboutUs/BoardofTrustees/TaskForceonAdmissionsRegulationReform.aspx> (last visited Oct. 27, 2016).

45. Northwestern University launched, with a lot of publicity, a two-year program which failed to attract students and then was terminated. TAMANAHA, *supra* note 42, at 20.

46. *See, e.g.*, Thomas D. Morgan, *A Defense of Legal Education in the 1990s*, 48 WASH & LEE L. REV. 1 (1991).

curriculum may be the only feasible way to structure legal education.<sup>47</sup>

It is my belief, viewed through the lens of the past, that three conclusions should emerge. First, the law is vast, changeable, and highly technical. No single set of skills encompasses the diversity of the areas of legal practice and knowledge.

Second, legal analysis and understanding (and ultimately sophistication) is best produced (as it has been for hundreds of years) by placing students for a period of years in a residential (or perhaps a virtual) community context in which they encounter divergent legal topics and subjects in a partially set and partially free curriculum. This curriculum should include (but not heavily mandate) skills instruction that focuses on legal research, writing, oral argumentation, and dispute resolution frequently in specific subject matter contexts (criminal justice, mental health law, etc.).

Third, a review of the past suggests that our current three-year period of legal education exposure (if it follows a four or frequently five-year undergraduate experience) is too long. One initial thought would be to simply reduce it to two years. I am not sure this is a good solution and believe that a contraction of the period of legal education should include the following: (1) perhaps an alternative or concomitant reduction in the undergraduate experience to two or three years; (2) some requirement of a mandatory internship or articling-type experience as part of legal education;<sup>48</sup> and (3) more explicit and elaborate preparation for the bar examination either in the context of the formal legal education or as part of the bar preparation period right after law school.<sup>49</sup> It is interesting to note that at the time of its formal establishment, the Washington University Law Department required only two and a half years of law

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47. ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FOR THE 1850'S TO THE 1980S* 205-31 (1983).

48. Such an experience should be supervised by law schools to ensure substantiality and quality not obviously at full tuition. Disinterested professional supervision was entirely missing from articling in early United States, as vividly and bitterly recounted by John Adams and others. *See supra* note 23 and accompanying text.

49. The ABA, and derivatively the states, have generally prohibited law schools from providing explicit bar exam preparation courses perhaps protecting the private bar review preparation companies. It is hard to understand this prohibition.

school training and admitted students with only two years of undergraduate training.<sup>50</sup>

In addition to the foregoing thoughts about a change from three to two years for formal legal education—while I do not favor a hard and fast prescribed curriculum—I believe that the two years should be filled with reading, digesting, and analyzing overtly legal materials like cases, statutes, treatise writings, administrative decisions, and treaties. Why? While historically legal education and lawyer training have not been based on a unitary curriculum, I think that this more limited period must be focused on legal materials to provide the necessary training that will make the future lawyers capable of applying themselves to new and evolving cases and statutes or whatever else they may encounter. Some might see this as a small-minded narrowing of the currently far-flung array of law school courses, and, in honesty, I think this may be necessary in order to readapt legal education to the situation at hand.<sup>51</sup>

To defend what I am proposing, it is prudent to talk about what I am *not* advocating, despite being widely discussed. I am not proposing, except as discussed in the foregoing paragraph, a highly skills laden or an otherwise more rigid curriculum. Such moves would be inconsistent with the long history of legal training and also with the huge divergence in and changeability of law. Some view this reluctance to change as the product of intellectual laziness which allows generally unknowledgeable students to sample among a vast buffet of more traditionally-taught courses and skills inculcation. But the buffet reflects the reality of law and law practice. In addition, leaving the core of law school as generally non-prescribed, on a system-wide basis, allows individual schools to experiment with a more fixed or directed curriculum, and if one works well, to then use that success to argue either for system-wide change or to attract students and legal employers to their differentially-trained students.

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50. Williams Dissertation, *supra* note 1, at 60.

51. The current tolerance for variation among schools as to curriculum should remain, and this will allow schools to experiment with methodologies, formats, and curricula to ensure basic preparation for practicing law.

You will note that I added without any introduction the idea that more explicit bar preparation should be mandated. Law schools take in, for good reasons, a wide array of students with differing backgrounds, English skills, and economic situations—and this is *good*. But it is not good to then send those students out to the Wild West of short bar preparation courses in which those with the thinnest backgrounds are bound to fail at much higher rates. Some divergence in passage rates is inevitable, but the bar preparation period and substantive coverage should be expanded and help should be provided to those who do have thin backgrounds. This would be consistent with the old Inns of Court model in which students could advance or did advance at variable rates giving the weakest an augmented time to solidify their understanding and improve their chances of admission.

In a heterogeneous and large society, law is a major component and guarantor of social cohesion. Legal education cannot and should not be derided or denigrated, even with its substantial defects, but it should be a significant subject of social discussion to ensure that it is both successful and that in the long run law itself is esteemed and even revered. The foregoing suggestions are offered with these goals in mind.

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This Essay has ranged over a large landscape of history, law, and policy in short compass unlike most law review articles. My belief is that due to the significance of the topic (what to do with legal education, if anything) people should be ruminative and not focus on detail. If detail was to be successful, then the ABA Standards and Rules of Procedure for Approval of Law Schools<sup>52</sup> would either be working or would be worth further effort. But this regulatory system has ended up being captured by various interests within legal academia (not including students) with occasional howls from the legal profession. I am not certain that what I suggest is exhaustively or unarguably correct, but I am certain that a deep look over the

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52. AM. BAR ASS'N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS: 2015–2016, [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2015\\_2016\\_aba\\_standards\\_for\\_approval\\_of\\_law\\_schools\\_final.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2015_2016_aba_standards_for_approval_of_law_schools_final.authcheckdam.pdf).

history of common law legal education and a close look at one example—the Law Department at Washington University—might be fruitful at this point in time for those thinking about what to do.