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## Three Views of the Academy: Legal Education and the Legal Profession in Transition

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## THREE VIEWS OF THE ACADEMY: LEGAL EDUCATION AND THE LEGAL PROFESSION IN TRANSITION

Barbara Glesner Fines\*

JAMES E. MOLITERNO, *THE AMERICAN LEGAL PROFESSION IN CRISIS: RESISTANCE AND RESPONSES TO CHANGE* (OXFORD UNIVERSITY PRESS 2013). PP. 272. HARDCOVER \$95.00.

DEBORAH L. RHODE, *LAWYERS AS LEADERS* (OXFORD UNIVERSITY PRESS 2013). PP. 320. HARDCOVER \$31.95.

ROBIN L. WEST, *TEACHING LAW: JUSTICE, POLITICS, AND THE DEMANDS OF PROFESSIONALISM* (CAMBRIDGE UNIVERSITY PRESS 2013). PP. 258. HARDCOVER \$90.00.

This review examines three recent additions to the conversation about the future of the legal profession and legal education: James Moliterno's *The American Legal Profession in Crisis: Resistance and Responses to Change*, Deborah Rhode's *Lawyers as Leaders*, and Robin West's *Teaching Law: Justice, Politics, and the Demands of Professionalism*.<sup>1</sup> These books are indicative of the increased interest shown in these topics by legal scholars and other commentators over the past five years.<sup>2</sup> All three authors have much to criticize regarding the profession in general and legal education specifically. All three raise fascinating questions, with slightly different responses, about the future. Who is "the legal

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1. JAMES E. MOLITERNO, *THE AMERICAN LEGAL PROFESSION IN CRISIS: RESISTANCE AND RESPONSES TO CHANGE* (2013); DEBORAH L. RHODE, *LAWYERS AS LEADERS* (2013); ROBIN L. WEST, *TEACHING LAW: JUSTICE, POLITICS, AND THE DEMANDS OF PROFESSIONALISM* (2013).

2. BENJAMIN H. BARTON, *GLASS HALF FULL: THE DECLINE AND REBIRTH OF THE LEGAL PROFESSION* (2015); STEVEN J. HARPER, *THE LAWYER BUBBLE: A PROFESSION IN CRISIS* (2013); DOUGLAS O. LINDER & NANCY LEVIT, *THE GOOD LAWYER: SEEKING QUALITY IN THE PRACTICE OF LAW* (2014); DEBORAH MARANVILLE, LISA RADTKE BLISS, CAROLYN WILKES KAAS & ANTOINETTE SEDILLO LOPEZ, *BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD* (2015); THOMAS D. MORGAN, *THE VANISHING AMERICAN LAWYER* (2010); DEBORAH L. RHODE, *THE TROUBLE WITH LAWYERS* (2015); RICHARD SUSSKIND, *TOMORROW'S LAWYERS: AN INTRODUCTION TO YOUR FUTURE* (2013); BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* (2012).

profession” and what is “legal education”? What are the central problems these institutions face today? How do we know? What needs to happen to address these problems? After a brief review of each book individually, this review will examine the conversation among these books on the issues facing legal education in particular.

I. JAMES E. MOLITERNO, *THE AMERICAN LEGAL PROFESSION IN CRISIS: RESISTANCE AND RESPONSES TO CHANGE*

In one sense, the broadest perspective on the profession is that provided by Professor James Moliterno in *The American Legal Profession in Crisis: Resistance and Responses to Change*. The book examines several challenges faced by the American legal profession over time to examine the responses of those who regulate the profession. Beginning with the “crisis” of immigration in the early twentieth century, the book advances a thesis that, regardless of the type of response to challenges to the professional cohesion and market position of attorneys, those responses have “always served maintenance of the professional status quo,”<sup>3</sup> resisting change and acting only in response to changes external to the profession.<sup>4</sup> It argues that “[m]ostly, change that has come has been forced by influences of society, culture, technology, economics, and globalization, and not by the profession itself.”<sup>5</sup> As an overview of the historical tensions and developments in the regulation of lawyers, particularly by the American Bar Association (ABA), the book is an excellent addition to the literature.

As examples of challenges to the legal profession, the book examines the entrance of immigrants into the profession in the early twentieth century, the anticommunism scare of the 1930s to 1950s, the civil rights movement of the 1960s, the litigation boom and loss of civility in the 1980s, the emergence of multi-disciplinary practice forms in the 1990s, and the combination of globalization, technology, and changes in the economic structure of lawyering at the turn of the twenty-first century. In a post-script, the book examines challenges to legal education.

There are many important insights in this historical examination. For example, the discussion of the established bar’s resistance to the influx of immigrants—particularly Catholic and Jewish immigrants—seeking admission to the practice of law explores how both educational requirements and regulation of practice forms operated to exclude these new entrants. For example, Moliterno notes that the increased demand that applicants for law licensure have a university education operated as a tool to either restrict access to the profession or impose conformity of culture.<sup>6</sup> Today we find critiques of the “stultifying sameness”<sup>7</sup> of law schools that one could argue are as much a product of these pressures toward conformity as any other cause. Likewise, this chapter notes that “class and ethnic

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3. MOLITERNO, *supra* note 1, at 3

4. *Id.* at 216-17.

5. *Id.* at 215.

6. *Id.* at 34-35.

7. David R. Barnhizer, *The Purposes and Methods of American Legal Education*, 36 J. LEGAL PROF. 1, 40 (2011).

hostility<sup>8</sup> lay beneath pressures toward integrated bars, restrictions on advertising and contingent fees, and other regulations.<sup>9</sup> At the very least, the chapter's examination of these early regulations illuminates two worlds of legal practice that endure today: elite attorneys in larger firms representing large organizations, on one hand, and solo and small firm attorneys representing individuals and small businesses, on the other.<sup>10</sup>

In examining the 1950s era of McCarthyism, and then the civil rights movements of the 1960s, Moliterno builds on the theme of a "calm, conservative power,"<sup>11</sup> in the ABA. This power worked against attorneys on the left in order to preserve a homogeneity in the bar and a preservation of control by elites. The ABA used oppressive tactics to discipline these attorneys, such as ABA recommendations of loyalty oaths,<sup>12</sup> the ABA criticism of civil rights activism and "cause lawyering," and the use of traditional restrictions on solicitation.<sup>13</sup> These chapters provide a detailed examination of bar opposition to these attorneys, generally and with specific examples.

Throughout these chapters and those that follow, Moliterno focuses his discussion on the reaction of the ABA as synonymous with "the profession." The argument advanced goes beyond characterizing the ABA as reactive and conservative and, at times, suggests an orchestrated plan to reinforce entrenched power within the bar, no matter the issue. Thus, while acknowledging that the ABA did move to institute reforms of legal education and professional regulation in light of Watergate, he characterizes these as mere window dressing designed as "public relations measures, pure and simple."<sup>14</sup>

Courts, in Moliterno's history, are occasionally characterized as part of the profession's overall conservative efforts to maintain the status quo, as in court contempt judgments against attorneys representing individuals accused of communism,<sup>15</sup> and at other times as instruments of reform forcing change on the profession, as with the Supreme Court's First Amendment decisions restricting states' regulation of advertising.<sup>16</sup>

The central portion of the book examines internal struggles over the public's perception of a "litigation boom" and the view of some courts and attorneys that there exists a "civility crisis."<sup>17</sup> Whether there was too much litigation or attorneys were suddenly less professional and civil are empirical questions the book does not attempt to answer, but it takes the position that these were crises that lawyers were called to address.

The single greatest challenge to the author in proving his thesis is the idea that there is an "American Legal Profession."<sup>18</sup> The book notes this difficulty in the beginning, asking: "[W]ho speaks for the legal profession?" However, despite recognizing the diversity

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8. MOLITERNO, *supra* note 1, at 37.

9. *Id.* at 35-45.

10. JOHN P. HEINZ, ROBERT L. NELSON, REBECCA L. SANDEFUR & EDWARD O. LAUMANN, *URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR* 7 (2005).

11. MOLITERNO, *supra* note 1, at 52.

12. *Id.* at 54.

13. *Id.* at 69-71.

14. *Id.* at 107.

15. *Id.* at 56.

16. MOLITERNO, *supra* note 1, at 63.

17. *Id.* at 108-30 (litigation boom); *id.* at 131-61 (civility crisis).

18. *Cf.* MORGAN, *supra* note 2, at 6 ("the idea of an identity that lawyers have in common can be said to be

of the profession and the disconnect between the American Bar Association and the practicing bar as a whole,<sup>19</sup> its thesis relies on the theory that the “American Legal Profession” has a single voice and direction. Admittedly, of the “two hemispheres” of practice—those lawyers who primarily represent business corporations and those who primarily represent moderate-income individuals—the percentage of attorneys whose practice is devoted to serving corporate interests and wealth has increased over time.<sup>20</sup> The book provides excellent examples and details of how tensions in society and in legal practice were resolved by political and legal maneuvers. However, its conclusion that “the profession” always reacts too late to crisis and chooses to protect itself and the status quo excludes from the very definition of the profession the diverse lawyers and judges that engage with these issues.

Selected prominent voices are sometimes taken as the voice of the profession as a whole and singular motives are ascribed to the group. Thus, in discussing both the “litigation explosion” and the “civility crisis,” Chief Justice Warren Burger’s warning that attorneys must “keep the jungle from closing in on us” appears on more than one occasion.<sup>21</sup> The book recognizes that the civility crisis is one that has been a recurring theme in debates among lawyers and judges,<sup>22</sup> and likely reflected society’s increased competitiveness and decline in social connection.<sup>23</sup> Yet, at other points, one finds the charge that the movement to adopt civility codes by some organized bars and courts was motivated by “the targeting of civil rights and other ‘cause lawyers’ who turned their attention to affecting social causes with unacceptable zeal.”<sup>24</sup> Certainly, vague rules and aspirational creeds can be used to silence dissident voices. However, the book is on firmer ground in suggesting more complex motivations and broader cultural trends, rather than targeted efforts at specific groups.

The remaining chapters in the book address ongoing challenges to the structure and function of attorneys: changes in the delivery of legal services and the specter of multidisciplinary practice breaching attorneys’ monopoly barriers; changes in technology and travel dissolving national and international jurisdictional boundaries of practice; and the global economic crisis adding fuel to the fires of change. The response of the American Bar Association to these challenges provides the best evidence of the book’s overall theme. Addressing the 2009 Ethics 20/20 Commission’s efforts, the book concludes that the efforts “succeeded in making as little change as possible”<sup>25</sup> and is not optimistic that any effort could succeed when undertaken by lawyers alone.

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vanishing rapidly”).

19. MOLITERNO, *supra* note 1, at 13 (noting that in 1960, 68% of attorneys practiced in solo and small firms while the ABA leadership was composed of only 8.7% solo practitioners).

20. MORGAN, *supra* note 2, at 110-11 (“almost two-thirds of the legal talent in this country is now focused largely on meeting the needs of corporate clients”) (citing JOHN P. HEINZ ET AL., *supra* note 10).

21. This single quotation is repeated several times in chapters 6 and 7. MOLITERNO, *supra* note 1, at 63, 81, 113, 133.

22. *Id.* at 132. See also ROBERT L. NELSON, DAVID TRUBEK, AND RAYMAN L. SOLOMON, *LAWYERS’ IDEALS/LAWYERS’ PRACTICES: TRANSFORMATIONS IN THE AMERICAN LEGAL PROFESSION* 178 (1992) (“laments about declining professionalism have been a staple of bar association rhetoric over a long period”).

23. MOLITERNO, *supra* note 1, at 142.

24. *Id.* at 132.

25. *Id.* at 206.

The prescription for change advanced by the author is to look to non-lawyers such as technologists, global strategists, and business entrepreneurs, on the grounds that the conservative, risk-averse, backward-looking nature of legal thinking will not permit lawyers to be nimble enough in the fast changing economy to meet the “real crisis” it now faces. Thus, the author calls upon lawyers to cede more authority to non-lawyers to shape their future:

I recommend a more forward-looking approach, one that welcomes the views and even control of non-lawyers, innovators in business, and other enterprises. My hope is that the legal profession going forward can be more like Apple and IBM and Western Union, and less like Kodak.<sup>26</sup>

Lawyers are urged to be more like Western Union, remaking business practices to deliver the essential mission.<sup>27</sup> Unfortunately, the book does not suggest exactly what the legal profession’s essential mission is but it does suggest that non-lawyers are necessary to help find it. The book provides the examples of law firms using non-lawyers to manage their firms, but it does not fully address the extent to which lawyers are competing more freely than ever with non-lawyers for the delivery of legal services. The book suggests that the expansion of accounting firms in providing corporate legal services was stopped only by the Enron scandal and legislative regulation, and that the legal profession “changed nothing.”<sup>28</sup> However, it is unclear what change the author believes would be necessary or appropriate. Moreover, by focusing on corporate legal services, the author overlooks the still-growing exodus of clients away from lawyers for many other legal services: state li-

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26. *Id.* at 215.

27. Similar sentiments are expressed in MORGAN, *supra* note 2, at 127-28:

The A.B.A. Committee on Research About the Future of the Legal Profession offered a similar insight when it cited management expert Peter Drucker as blaming the Penn Central bankruptcy on the railroad’s acting as if it had said, “We have a train. Would you like to get on?” instead of “We are in the transportation business. Where would you like to go?” The Committee continued, “And so it is for the legal profession and the organized bar. We must first get the question right. . . . Do we have a train that can only go where the tracks go, or do we provide a form of transportation with the destination to be determined by our passengers?”

28. MOLITERNO, *supra* note 1, at 174-75.

censure of non-lawyers to provide routine services and the proliferation of *pro se* litigation<sup>29</sup> and non-lawyer representation in administrative proceedings<sup>30</sup> or alternative dispute resolution.<sup>31</sup>

The prescription for reform suggested by the book is to involve non-lawyers in the regulation of legal services. The author argues that “sharing power is the greatest need of the legal profession going forward: creative non-lawyers are needed to help manage the regulation of the legal profession and the justice system.”<sup>32</sup> Moreover, Moliterno suggests that non-lawyers should be intimately involved in the development of new forms of law practice and their regulation. He argues that these non-lawyers are better equipped with “abilities and temperaments conducive to forward-looking planning”<sup>33</sup> than are lawyers:

The unwelcome cure is to enlist non-lawyers in the regulation of the legal profession: planners and evaluators of cultural trends. The profession needs people who can participate in lawyer regulation without the self-interest of the established members of the bar, people who have a wider view, people who can see the path ahead and not merely the ground already trod.<sup>34</sup>

There is little in these recommendations that urges caution on this road. That non-lawyers have much to contribute to remaking and regulating the market for the delivery legal services is undoubtedly true. But it is equally likely that these non-lawyers are not immune to self-interest. There is nothing to suggest that these non-lawyers would fare any better

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29. In litigation, self-representation is increasingly common especially in fields such as family law, where some studies have indicated that “eighty percent or more of family law cases involve at least one *pro se* litigant.” Russell Engler, *And Justice for All—Including the Unrepresented Poor: Revisiting the Roles of the Judges, Mediators, and Clerks*, 67 FORDHAM L. REV. 1987, 2047 (1999). According to an ABA white paper on *pro se* representation, self representation in the United States has grown exponentially.

When going to state court, most people proceed *pro se* most of the time. High volume state courts, including traffic, housing and small claims, are dominated by *pro se* litigants. Over the course of the past 20 years, domestic relations courts in many jurisdictions have shifted from those where litigants were predominately represented by lawyers to those where *pro se*'s are most common. In these areas of the courts, *pro se* is no longer a matter of growth, but rather a status at a saturated level. Anecdotal evidence suggests that *pro se* representation is increasing in other personal civil matters, as well. In California, Arizona and Florida, independent paralegals (also called Legal Document Assistants) are authorized to help people prepare a range of forms needed to handle certain legal matters *pro se*.

ABA STANDING COMM. ON THE DELIVERY OF LEGAL SERVS., AN ANALYSIS OF RULES THAT ENABLE LAWYERS TO SERVE PRO SE LITIGANTS 4 (2005) [http://www.americanbar.org/content/dam/aba/migrated/legalservices/delivery/downloads/prose\\_white\\_paper.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/legalservices/delivery/downloads/prose_white_paper.authcheckdam.pdf).

30. Barbara Allison Clayton, Comment, *Are We Our Brother's Keepers? A Discussion of Nonlawyer Representation Before Texas Administrative Agencies and Recommendations for the Future*, 8 TEX. TECH ADMIN. L.J. 115, 122 (2007).

31. “Despite much discussion on the subject, there is still some controversy within the legal community over whether the practice of mediation constitutes the practice of law.” Fiona Furlan et al., *Ethical Guidelines for Attorney-Mediators: Are Attorneys Bound by Ethical Codes for Lawyers When Acting As Mediators?*, 14 J. AM. ACAD. MATRIM. LAW. 267, 273 (1997).

32. MOLITERNO, *supra* note 1, at 177.

33. *Id.* at 222.

34. *Id.* at 224.

than “the profession” has in valuing diversity, access to justice, and rule of law.<sup>35</sup> These are not reasons to exclude, but they are reasons to proceed with some of the caution that the author criticizes as too representative of the legal profession. And perhaps these are reasons to reconsider the vision of the attorney and capture some of the leadership abilities that Moliterno’s book finds so lacking in the profession.

## II. DEBORAH L. RHODE, LAWYERS AS LEADERS

In Deborah L. Rhode’s book, *Lawyers as Leaders*, we again find the profession falling short. Lawyers frequently find themselves in positions of leadership, but the book questions their capabilities in that role, suggesting that a “mismatch between the traits associated with leaders and those associated with lawyers” could be the root of the problem.<sup>36</sup> While she notes that “the legal profession attracts a large number of individuals with the ambition and analytic capabilities to be leaders[,]” she finds that that same profession “frequently fails to develop other qualities that are essential to effectiveness.”<sup>37</sup> In particular, she relies on the research into general lawyer traits compared to the skills required of leaders. So, for example, while leaders must provide vision, lawyers have a tendency to be “cynical and judgmental;” lawyers must have well developed interpersonal skills, yet the tendency of attorneys to “[u]rgency . . . can lead to impatience, intolerance, and a failure to listen.”<sup>38</sup> Likewise, leaders must have strong skills in “self awareness, self-control, and self-direction;” yet, “[c]ompetitiveness and desires for autonomy and achievement can make lawyers self-absorbed, controlling, combative, and difficult to manage.”<sup>39</sup>

Rather than simply noting the difficulties, this book offers help: first, by providing an overview of leadership traits, styles, and development, especially with regard to ethical leadership; and then by focusing on leadership as it addresses specific topics such as diversity and social reform. Like all of Professor Rhode’s scholarship, the book represents a comprehensive review of the applicable literature<sup>40</sup> and also includes engaging anecdotes that help to illustrate her points, including some personal stories that illuminate her passion for her thesis.<sup>41</sup> This combination makes the book engaging and informative for a broad range of readers.

The first five chapters of the book summarize leadership theory. This effort alone is an impressive task. As the book itself notes, “leadership development is now a forty-five billion dollar industry” with “close to 88,000 leadership books in print”<sup>42</sup> and “over 1,500

35. Cf. David Luban, *Taking Out the Adversary: The Assault on Progressive Public-Interest Lawyers*, 91 CAL. L. REV. 209, 209 (2003) (“Political partisans do not care about impartial justice. They care about rewarding their friends and defeating their enemies, and that means ensuring that their enemies receive as little money as possible, including money to pay for legal advocacy.”).

36. RHODE, *supra* note 1, at 4.

37. *Id.* at 1.

38. *Id.* at 4.

39. *Id.*

40. The text includes seventy-eight pages of endnotes. *Id.* at 209-87.

41. See, e.g., RHODE, *supra* note 1, at 22-23 (talking about mentoring experience in a law firm during her second year of law school); *id.* at 23 (relating a story about Thurgood Marshall from her clerkship).

42. RHODE, *supra* note 1, at 1.

definitions and forty distinctive theories.<sup>43</sup> In the opening chapters of the book, Rhode distills this literature to provide a basic primer for leadership, noting the challenges of applying these principles to the practice of law. The book begins by noting the importance of context. Several features of today's practice of law create challenges for effective leadership, including the increased competition in the delivery of legal services; the complexity, scale, pace, and diversity of the practice; and the culture of a profession which "fail[s] to value or to institutionalize shared leadership."<sup>44</sup>

Drawing on Harvard professor Daniel Goldman's research, the book then summarizes six forms of leadership styles or abilities that are most required of leaders. These leadership styles are the ability to coerce compliance, mobilize people toward a vision, create community, build consensus, set high expectations, and develop competency and leadership in others.<sup>45</sup> Of these, the last, called the coaching style, is "the least common leadership approach" among lawyers because they "don't have the time in this high-pressure economy for the slow and tedious work of teaching people and helping them grow."<sup>46</sup>

A point made repeatedly throughout *Lawyers as Leaders* is the need for self-knowledge and openness to growth. Here again, we find the nature of a lawyer's skills and training painted as a detriment to leadership.<sup>47</sup> Just as Moliterno suggests that the profession as an entity responds to challenge with defensiveness, Rhode suggests that individually attorneys are not open to criticism and feedback, which are essential characteristics for growth in leadership skills. The high need for approval that is characteristic of many attorneys can skew leadership toward only those skills that provide immediate external validation. Finally, the book notes that attorneys "tend toward skepticism and emphasis on analytic rather than interpersonal skills[.]" which once again can cause attorneys to overlook the value of reflective practice and self-knowledge.<sup>48</sup>

The book's chapter on specific leadership capabilities (decision-making, influence, fostering innovation and managing change, conflict management, and communication)<sup>49</sup> would itself make an effective tool for law school leadership education. Many of these skills are familiar to any lawyer, whether acting as a "leader," or simply as an advocate or decision-maker. For example, the discussion of decision-making processes, including the current research on cognitive bias,<sup>50</sup> has become an increasingly important tool for analyzing law and teaching law students.<sup>51</sup> Likewise, the discussion of "influence" as a lead-

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43. *Id.* at 7.

44. *Id.* at 11.

45. *Id.* at 12-13 (referred to as Coercive, Authoritative, Affiliative, Democratic, Pacesetter, and Coaching styles).

46. *Id.* at 21 (quoting Daniel Goleman, *Leadership That Gets Results*, HARV. BUS. REV. 78, 87 (Mar.-Apr. 2000)).

47. See, e.g., *id.* at 5-6, 11-12, 27-28. See also Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1348, 1390-91, 1421 (1997) (stating that competitiveness and achievement orientation of lawyers undermines professionalism).

48. RHODE, *supra* note 1, at 28-30 (discussing the importance of self-reflection).

49. *Id.* at 40-81.

50. *Id.* at 41-45.

51. A Westlaw search of "cognitive bias" provides citations to over 1000 law review articles in the past three years alone.

ership skill fits with traditional conceptions of core lawyer skills in advocacy and negotiation. Here again, the book turns to cognitive science to unpack these skills into more discrete components such as position, reciprocity, social influence, and association.<sup>52</sup> Likewise, conflict management and approaches to conflict resolution,<sup>53</sup> which the book discusses, have been required reading in alternative dispute resolution curriculum of law schools.<sup>54</sup> Finally, the skill given the most attention in this portion of the book is public speaking.<sup>55</sup> This is an interesting selection of communication skill and one which reflects some of the book's bias toward examining high-profile leadership of large groups, rather than leadership within smaller institutions, where a primer on listening and interpersonal communication would likely be more critical.<sup>56</sup>

Other leadership skills are less familiar to the standard repertoire of lawyer skills. For example, the ability to foster innovation and change only recently became common fare in the menu of legal education. Law schools with courses in entrepreneurship<sup>57</sup> are as unlikely as courses in leadership.<sup>58</sup> Here again the book relies on studies of lawyer personalities to explain this deficiency in training, noting that "lawyers as a group tend to be particularly resistant to change."<sup>59</sup> Here, Rhode cites Moliterno's work in criticizing the reluctance of the ABA to embrace change in regulatory structures and involvement of non-lawyers in that process.<sup>60</sup>

The final portion of the book's "how to" section on leadership addresses ethics and leadership. Here of course Rhode is on her most familiar territory, having led the charge for decades to improve professional responsibility education in law schools<sup>61</sup> and pro bono service<sup>62</sup> in the profession. In working through the four characteristics of personal ethics

52. RHODE, *supra* note 1, at 50-56.

53. *Id.* at 61-66.

54. Since 2000, the number of alternative dispute resolution courses and faculty devoted to this field has dramatically increased in law school. *See, e.g.*, Michael Moffitt, *Islands, Vitamins, Salt, Germs: Four Visions of the Future of ADR in Law Schools (and a Data-Driven Snapshot of the Field Today)*, 25 OHIO ST. J. ON DISP. RESOL. 25, 42 (2010) (noting that 342 faculty self-identified as teaching dispute resolution courses in the 2007-2008 AALS Directory of Law Teachers); John Lande, *Reforming Legal Education to Prepare Law Students Optimally for Real-World Practice*, 2013 J. DISP. RESOL. 1, 3 (2013) (noting that at least seventeen law schools require all students to have some instruction in dispute resolution).

55. RHODE, *supra* note 1, at 67-80.

56. The section would be helpful reading for classroom law teachers, however, whose effectiveness depends on the ability to communicate ideas that "stick." From this perspective, the book's observation that the audience's perception of the effectiveness of a speaker is not necessarily correlated to the extent to which the speaker's message is actually retained by the listeners. *Id.* at 67-68.

57. Jaja Thomas, *Why Every Law School Should Teach Entrepreneurship*, ENTREPRENEURSHIP, Apr. 15, 2015, <http://www.entrepreneur.com/article/244925>. *See also* Law School Curriculum Introduction, EWING MARION KAUFFMAN FOUND., <http://www.entrepreneurship.org/Entrepreneurship-Law/Topic-Introductions/Law-School-Curriculum-Introduction.aspx> (last visited Oct. 30, 2015) (providing examples of law school entrepreneurship curriculum).

58. Deborah L. Rhode, *Legal Education: Rethinking the Problem, Reimagining the Reforms*, 40 PEPP. L. REV. 449 (2013) ("Many law schools' mission statements include fostering leadership, but only two of these schools actually offer a leadership course.") (citing Neil W. Hamilton, *Ethical Leadership in Professional Life*, 6 ST. THOMAS L.J. 358, 370 (2009)).

59. RHODE, *supra* note 1, at 56.

60. *Id.* at 60.

61. *See generally* DEBORAH RHODE, PROFESSIONAL RESPONSIBILITY: ETHICS BY THE PERVASIVE METHOD (1998).

62. *See generally* DEBORAH RHODE, PRO BONO IN PRINCIPLE AND IN PRACTICE: PUBLIC SERVICE AND THE

identified by psychologist James Rest,<sup>63</sup> the book emphasizes the moral failures of lawyer-leaders to illuminate situations in which “individual self-interests, cognitive biases, and organizational dynamics can often trump moral concerns.”<sup>64</sup> A series of illustrations of lawyers and leaders undertaking unethical behavior follows, with a focused case study on Watergate.

The remaining chapters in the book tie together these general overviews of leadership principles by examining leadership in particular contexts. Each of these include stories and interviews with attorneys who exemplified success or failure. This is one of the most impressive parts of the book, with well over one hundred different attorneys provided as examples of some aspect of leadership. In most chapters, the attorneys selected tend to be national governmental leaders (presidents, attorneys general, and Supreme Court justices). Bill and Hillary Clinton, John and Robert Kennedy, Barack Obama, Thurgood Marshall, Sandra Day O’Conner, and Mitt Romney are the most often cited contemporary examples. Among private attorneys, civil rights leaders, such as William Kunstler or Ralph Nader, are given special attention. Nonetheless, examples of lesser-known historical and contemporary attorneys in leadership positions in law firms, bar associations, or pro bono efforts also appear, especially in the chapters on diversity and leadership in law firms.

At times, the book tends to overemphasize leadership failure rather than success. This focus on failure sometimes leaves the reader hungry for the contrast of effective leadership stories. This focus on failures is most pronounced in the chapters on scandals and, to a lesser extent, in the chapter on law firm leadership. While one can imagine the allure of cautionary tales in a book focused on leaders, the effectiveness of negative examples is questionable. The tendency of leaders, as noted by the book, “to see themselves as unique and invulnerable” might make it unlikely that they would recognize themselves in the mistakes of others.<sup>65</sup> Details of public scandal or law firm collapse and the psychological and organizations conditions that led to these failures are presumably meant to help leaders avoid similar circumstances. Especially in the chapter on scandals, advice for leaders amounts to general cautions or aphorisms with few details or examples.<sup>66</sup> Law firm leaders are provided more elaboration on structures of accountability, mentoring, strategic planning, and support for pro bono practice.

The strongest chapters are those on diversity<sup>67</sup> and leadership for social change.<sup>68</sup> Both are replete with examples of lawyers who have been successful, despite the challenges of bias and discrimination they or their clients faced. Here, one finds examples of successful attorneys in leadership positions in firms along with concrete suggestions and

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PROFESSION (2005); DEBORAH RHODE, ACCESS TO JUSTICE (2004).

63. These are: “moral awareness” (recognizing an ethical issue), “moral reasoning” (determining how to respond), “moral intent” (prioritizing values), and “moral behavior” (acting on these decisions). RHODE, *supra* note 1, at 84-85 (citing JAMES R. REST, MORAL DEVELOPMENT: ADVANCES IN RESEARCH AND THEORY 36-49 (1994)).

64. *Id.* at 84.

65. *Id.* at 116.

66. For example, the suggestions for avoiding distortions of money that are the source of much scandal, the advice provided is to “keep your life simple, guard against greed, and remember what really matters . . . sweat the small stuff.” *Id.* at 120.

67. *Id.* at 129-54.

68. RHODE, *supra* note 1, at 176-202.

examples for how women and minorities (and leaders who seek to promote diversity) can achieve work/life balance, resist oppressive structures and stereotypes, and develop resilience where these efforts are unsuccessful.

In the chapter on leadership for social change, the book recognizes that leaders are only one factor in the conditions that influence social change. Accordingly, the book suggests that leaders must be able to capitalize on conditions for progress, whether those conditions are evolutionary changes in society and the economy or one-time events and crises that create forces favoring change. Of particular challenge to leaders of social movements is the diffuse authority of these groups. A leader rarely has the position and authority to direct, but must have the ability to “inspire followers, enlist allies, attract public support, and reinforce shared identities” in order to build an infrastructure through which to exercise their leadership.<sup>69</sup>

As with the chapter on diversity, the chapter on leadership provides many positive role models for effective leadership. Three case studies—the civil rights movement, the implementation of *Brown v. Board of Education*, and the gay marriage movement—provide concrete examples of many of the principles developed throughout the first half of the book. As with the chapter on diversity, many of these suggestions are generalizable to any attorney seeking leadership roles.<sup>70</sup>

This final chapter on leadership for social change is also a fascinating contrast with Moliterno’s book. Where Moliterno views attorneys who work for social change as “outside” a profession that has resisted and even actively opposed their efforts, Rhode paints a picture from inside the world of these lawyer-leaders. Moliterno characterizes the profession as acting in “service of the status quo,”<sup>71</sup> while Rhode suggests that “lawyers play a critical role in cultural transformation.”<sup>72</sup>

### III. ROBIN L. WEST, *TEACHING LAW: JUSTICE, POLITICS, AND THE DEMANDS OF PROFESSIONALISM*

Robin West’s book, *Teaching Law: Justice, Politics, and the Demands of Professionalism*, focuses exclusively on this issue of legal education’s response to its current challenges. The book is tightly woven and researched, written for a narrower audience of those with the particular interest in reforming legal education, with a clear prescription for that reform. The book argues that the mission of legal education should be to serve ideals of justice—a mission lost in the discussion of the problems and solutions for the current crisis.

The book begins with a summary of the crises facing legal education: an economic crisis with rising costs and declining applications and support; a professionalism crisis in which the value of a law degree and legal scholarship are increasingly questioned; and an existential crisis in which law schools are uncertain of their very identity and mission.

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69. *Id.* at 206.

70. *Id.* at 176-202.

71. MOLITERNO, *supra* note 1, at 5, 17, 35, 216.

72. RHODE, *supra* note 1, at 176.

West argues that “law schools offer an education designed for a dysfunctional and professionally stunted conception of what it means to be a lawyer.”<sup>73</sup>

In addressing the question of legal education’s identity, the book begins by noting the split personality of law schools as colleges in a university and as members of a profession. The book’s three major chapters examine three manifestations of this confusion. First, the values or ideals of legal education are unclear. The book suggests that law schools should place not only the search for truth but also the construction of a just society as central to teaching and scholarship.<sup>74</sup> Second, law schools should include more fully in their research and teaching the study of “the cause of law’s existence—in a word, politics.”<sup>75</sup> Third, law schools should study the profession itself.<sup>76</sup> The historical roots of these three manifestations are developed clearly and persuasively.

In exploring the values of legal education, the first chapter begins by disclaiming the argument that law schools produce “amoral technicians.” Rather, the book notes that law schools, through the process of case analysis and reasoning from precedent, engage in a powerful acculturation into a set of values that may be summarized by the term “legalism.”<sup>77</sup> The precepts of that value system are procedural fairness and formal equality. Moreover, law schools do not teach students to accept law without critique, but restrict the terms of that critique through the lens of either fairness (measured by formal equality) or efficiency. What is missing, the book argues, is the critique of the social, corrective, or distributive justice of the legal principles being applied.<sup>78</sup> Quite simply, laws can be applied evenly and efficiently, but can still be unjust.

Part of the reason for this decline in examination of the basic justice of laws can be found in the law itself—the decline in equity as a source of law; the transformation of torts from fault to efficiency; and the shift in procedural processes to private rather than public process. However, the chapter argues that the structure of legalism itself leaves little room for discussions of justice, crowded out by the “purported autonomy and completeness of law.”<sup>79</sup> The dominance of formalist and realist legal philosophies further explains the firm place of legalism in law schools. While noting that the differences between these two jurisprudential schools were significant, the chapter explains that it was their shared understandings that cemented a legalist value structure that left little room for discussion of justice. Langdellian formalism created law schools that were within universities but apart from them—where the study of the law itself in judicial opinions was the road to a learned profession without detours through philosophy or science or art. Realists, while rejecting a vision of law as a source for direction, equally rejected the humanities, creating instead critiques from social sciences (statistics, anthropology, sociology, and economics). Both focused almost exclusively on the courts as a source of law.<sup>80</sup>

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73. WEST, *supra* note 1, at 24.

74. *Id.* at 25.

75. *Id.* at 27.

76. *See id.* at 55.

77. *Id.*

78. WEST, *supra* note 1, at 57-58.

79. *Id.* at 67.

80. *Id.* at 70-82.

The absence of theories or discussion of justice in law school scholarship and teaching, West contends, impoverishes both. Students and scholars are left with only internal measures that permit critique of a law through reference to its congruence with other law or external measures that provide only a cost/benefit analysis of law. Chapter one concludes by suggesting two simple steps to incorporate justice into the classroom—first, faculty simply welcome discussions of students’ intuitions of justice and second, require a formal course on the subject of justice.<sup>81</sup>

In chapter two, the book examines legal education’s second identity challenge: the creation of law through political rather than judicial processes. The chapter begins with a description of the first year of law school, in which a common law process predominates. Unfortunately, the description provides no empirical base to support its accuracy. The chapter describes the standard first year curriculum as torts, property, and contracts law, which is indeed a part of the picture surveys of curriculum paint.<sup>82</sup> But the chapter goes on to describe how these courses are taught without any explanation of how the author knows this to be true. It may very well be that the first year of law school “contains almost no statutory law,” and that even in Contracts classes, the Uniform Commercial Code is referenced only “in a glancing way.”<sup>83</sup> However, these statements do not reflect my own experience in the first year, over thirty years ago,<sup>84</sup> and it has not been the experience of most of the first-year students in the law school where I teach today.<sup>85</sup> Moreover, the description entirely omits mention of the first-year legal research and writing classes, which are now part of the “standard law school curriculum” in the first year, in part because of ABA mandates.<sup>86</sup> In these research and writing classes, in about half of the law schools, legislative history and administrative regulations are the subject of instruction.<sup>87</sup> The chapter goes on to explain the even greater absence of the study of legislative process in the first year, comparing this to the training in civil court procedure.<sup>88</sup>

In explaining the reasons for this “juriscentric” approach to legal education, the chapter posits three reasons: the influence of jurisprudence, constitutionalism, and popular culture. The chapter first returns to an examination of the debates of the formalists and realists in shaping today’s curriculum, noting that both focus on case law to the exclusion of legislation, though for quite different reasons. The chapter then turns to constitutional

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81. *Id.* at 91.

82. CATHERINE CARPENTER, *SURVEY OF LAW SCHOOL CURRICULA: 2002-2010* (2012).

83. WEST, *supra* note 1, at 96.

84. See generally Symposium, *Law, Private Governance and Continuing Relationships*, 1985 WIS. L. REV. 461, 461 (1985). I was taught Contracts at the University of Wisconsin-Madison with materials developed by “the Gang of Eight” led by Stuart MacCauley. In addition to a sociological introduction to law, the course proceeded through a disciplined and thorough study of the Uniform Commercial Code’s remedies provisions. Admittedly, the Wisconsin experience was meant to be different, but the lack of any systematic study of teaching in the first year of law school makes these claims difficult to establish.

85. At the University of Missouri-Kansas City, Contracts is a six-hour, two-semester course precisely because it provides instruction in statutory reading and interpretation. Federal Income Tax was, for many years, also part of the required first-year curriculum but was moved to the third semester.

86. ABA STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF L. SCH., 303(a)(2) (2015-16), [http://www.americanbar.org/groups/legal\\_education/resources/standards.html](http://www.americanbar.org/groups/legal_education/resources/standards.html).

87. Ass’n of Legal Writing Directors Legal Writing Inst., *Report of the Annual Legal Writing Survey* (2014), at 13, <http://www.alwd.org/wp-content/uploads/2014/07/2014-Survey-Report-Final.pdf>.

88. WEST, *supra* note 1, at 96-97.

law theory as central to our focus on judicial opinions. The primacy of the Supreme Court in interpreting the Constitution creates “a form of authority not only divorced from politics, and higher than politics, but also as fundamentally opposed to politics, and to politics’ product, and with a *raison d’être* entirely devoted to imposing limits upon, rather than facilitating, political will.”<sup>89</sup> This constitutionalism translates into the required curriculum, the chapter argues, by further elevating case law as *the* law. One might extend the argument further by noting the higher status of constitutional law scholarship in the academy than, say, estates and trusts or family law.<sup>90</sup> A final reason proffered for the primary focus on case law in the curriculum is the public view of political and processes in popular culture, where, *Mr. Smith Goes to Washington*<sup>91</sup> notwithstanding, individuals who use political processes are painted in a much less admirable light than those who seek to reform society through the use of courts.

The chapter suggests that as a consequence of the academy’s eschewing legislation and legislative process, legal education:

truncates our own and our students critical capacities; it wrongly limits our understanding of our own constitutional tradition and even stunts our reading of its plain text; it muddles our understanding of and our pedagogy regarding the origin of law in politics; it limits our students’ educational attainment and perhaps even their professional careers; and perhaps most important, it alienates us from the possibility of systematically viewing law as an agent of change, rather than an agent of preservation.<sup>92</sup>

This is a powerful critique and the author advances each of these arguments with a carefully constructed logic. The effect on student and scholarly criticism of the law, the chapter suggests, is to confine criticism to the law that is, rather than to suggest that the absence of law is a problem and to confine the strongest criticism to that which can be grounded in the Constitution.<sup>93</sup> This type of constitutional interpretation creates a set of “negative rights”—restraints on legislation—that limits the ability to conceive and advance positive rights. Finally, by ignoring legislation and the political process that produces it, our scholarship and teaching disempower our students, our scholarship, and our ability to seek justice through the law as a whole.

The “bifurcated faculty” of the academy is the focus of the third chapter, which divides the faculty into two competing groups: those whose work closely aligns with the

89. *Id.* at 110.

90. *See, e.g.*, CYNTHIA FUCHS EPSTEIN, *WOMEN IN LAW* 232 (1981) (family law suffers “prestige deprivation”). And now, I will commit the sin of which I accuse the author, forwarding a proposition about the nature of the academy without empirical support. I would offer as some evidence the fact that these areas of law are not ranked by any organization or blogger; that there are fewer chaired professorships devoted to these topics; and that the same observation has been made by others in the legal academy.

91. *MR. SMITH GOES TO WASHINGTON* (Columbia Pictures 1936) (depicts the experience of a novice legislator (Jimmy Stewart) whose naïve belief in the democratic process upsets the routine of the Congress to achieve noble goals). On reflection, perhaps the movie is yet another example of the author’s point.

92. WEST, *supra* note 1, at 114.

93. *Id.* at 116-17.

profession (designated “clinical faculty” in this chapter) and those whose scholarship and teaching is distanced from the profession (interdisciplinary and doctrinal faculty).<sup>94</sup> Here again, the empirical basis for the observations about the makeup of faculty in law schools is not evident.

For example, when discussing hiring practices, the chapter posits that “the faculty member with no experience at all in the practice of law is increasingly the norm.”<sup>95</sup> It suggests that the classroom teacher/scholar is increasingly an individual with a Ph.D. whose primary identification is with a discipline other than law. It then argues that the increased number of clinical and experiential courses (and thus teachers) leaves the academy with a bifurcation—on the one side, interdisciplinary classroom faculty/scholars, and on the other, a professionally oriented clinical faculty—with traditional doctrinal scholars and teachers being squeezed out. It would be interesting to see the degree to which this intuition about the makeup of law faculties is born out by the numbers.<sup>96</sup>

The chapter seems to imply that clinical faculty stand on one side of a divide with scholarship on the other. Certainly, we know that across the country the number of adjunct faculty—drawn primarily from the practicing bar—is substantial,<sup>97</sup> and these faculty do not ordinarily produce scholarship. In the classroom, however, these faculty are very likely to retain the “traditional doctrinal” approach to teaching that the chapter suggests is being squeezed out by experiential learning on the one hand and interdisciplinary teaching on the other. Moreover, a significant percentage of full-time clinical faculty do produce scholarship, much of it connecting legal education to the practice of law and visions of law and lawyering that the chapter asserts is missing from current scholarship.<sup>98</sup> The book argues

94. *Id.* at 148-49.

95. *Id.* at 151.

96. Evidence is not readily available. What percentage of faculty have Ph.D.s? Are these Ph.D.s in fact advanced law degrees (Ph.D.s in law or JSDs)? A number of law schools now offer Ph.D.s in law. Yale Law School, which produces as much as ten percent of the current faculty in law teaching, has recently introduced a Ph.D. in law, citing the increasing number of prospective law teachers who are obtaining Ph.D.s in other disciplines. The question remains whether having a Ph.D. in another discipline necessarily implies a lack of practice experience or even a primary identification with that other discipline. Yale Law School, *Yale Law School Introduces Innovative New Program—Ph.D. in Law* (2012) <http://www.law.yale.edu/news/15782.htm>.

97. Even as long ago as 1997, adjunct faculty taught as much as “20 to 35 percent of the upper-level curriculum.” Andrew F. Popper, *The Uneasy Integration of Adjunct Teachers into American Legal Education*, 47 J. LEGAL EDUC. 83, 83 (1997). There is some indication that current expansion of experiential learning requirements has led to increased use of adjunct professors. James H. Backman & Cory S. Clements, *Significant but Unheralded Growth of Large Externship Programs*, 28 BYU J. PUB. L. 145, 190 (2013) (“About half of the survey respondents indicated that their law schools have increased the number of adjunct faculty to help with the growth of externships.”). ABA standards do limit adjunct faculty to less than half the coursework students take. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF L. SCH. § 402 (2015-16) (“The full-time faculty shall also teach during the academic year either (1) more than half of all of the credit hours actually offered by the law school, or (2) two-thirds of the student contact hours generated by student enrollment at the law school.”). Recommendations” from the ABA Task Force on the Future of Legal Education have included proposals to use even more adjunct faculty to lower costs and expose students to the practice of law. Peter A. Joy, *Law Schools and the Legal Profession: A Way Forward*, 47 AKRON L. REV. 177, 190 (2014) (citing Illinois State Bar Association, *Special Committee on the Impact of Law School Debt on the Delivery of Legal services, Final Report & Recommendations* (Mar. 8, 2013), <http://www.isba.org/sites/default/committees/Law%20School%20Debt%20Report%20-%203-8-13.pdf>).

98. Twenty-seven percent of all full-time clinical faculty nationally are on a traditional tenure track that apply unitary scholarship standards. Thirteen percent are on a clinical tenure track, a significant percentage of which require some form of regular scholarship production. Bryan L. Adamson, et al., *Clinical Faculty in the Legal*

that this scholarship is unlikely to effectively explore the questions of justice it argues should be central to legal education because these faculty “have no regular interaction with even doctrinal legal scholars, much less scholars from other disciplines in the university.”<sup>99</sup> Again, the question is the extent to which this observation holds true in the majority of law schools today.

The chapter goes on to argue that this division between interdisciplinary theoretical scholar/classroom teachers and professionally-oriented clinical teachers undermines the centrality of justice and of promoting the legal profession and professional identity through teaching and scholarship. It argues for a unified academy, with justice as a centerpiece. Chapter four goes on to refute the legal education reform proposals offered by the Carnegie Report<sup>100</sup> and by law professor Brian Tamanaha.<sup>101</sup> The latter proposal, which would divide law schools into two “tiers,” would dilute the value of both the practical and the theoretical forms of education these schools would provide, with no guarantees of lower costs for either. The book argues that the former “integrationist” approach suffers from a theoretical vacuum, having no conception of the law or lawyering.<sup>102</sup>

The book then posits a concrete proposal built on a series of required courses consisting of no more than three credit hours each: “the first year would then include four three-credit common law (and private law) courses of property, contract, civil procedure and tort, and four three-credit public law courses, including international law, criminal law, constitutional law, and an introduction to administrative and legislative processes.”<sup>103</sup> A heavily required second-year curriculum would include:

a course (from a range of offerings) on justice, an interdisciplinary course (again from a range) focusing on either critique of law or the context of law, a course on the legal profession, a course (from a range, with different substantive focuses) centered on administrative processes, a course (again, from a range) focused on legislative process, a course on corporate law, and a course on tax law.<sup>104</sup>

Finally, the third year would be given over to courses focused on the student’s employment interests and skills oriented courses.

It is unclear how dramatic a proposal this is. Of the roughly ninety hours necessary for graduation in most law schools, almost half of those hours are already in required courses.<sup>105</sup> With the new accreditation standards requiring six credit hours of “experiential” coursework, the required curriculum is growing. While many of the courses that the

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*Academy: Hiring, Promotion and Retention*, 62 J. LEGAL EDUC. 115, 127 (2012).

99. WEST, *supra* note 1, at 179.

100. WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).

101. TAMANAHA, *supra* note 2.

102. WEST, *supra* note 1, at 21.

103. *Id.* at 189.

104. *Id.* at 191.

105. CARPENTER, *supra* note 82. The ABA Survey of curriculum reports that in 2010, the average units for

author suggests should become required are now electives, they are nonetheless popular electives, given the regularity of their appearance in law school curricula. Thus, ultimately, it is the author's directive to give greater attention to theory in general and the theory of justice that marks the suggestions of *Teaching Law*.

#### IV. LEGAL EDUCATION'S FUTURE

While only Robin West's book focuses exclusively on law schools, all have significant observations about the future of legal education. All three books suggest that reform in legal education is necessary. All suggest the need for cost controls and transparency; the need to respond to changes in the future of legal practice; and the challenges of legal education's identity as both a part of a university and a part of a profession. All note the dramatic changes in the practice of law and legal education that have occurred in the past decade, with some varying views on the causes of these changes. Moliterno notes especially the effect of law firm and corporate client shifts of training costs for new associates back to the law schools, as the willingness to hire or pay for new law school graduates has declined dramatically as calls for graduating "practice ready" students have increased.<sup>106</sup> Rhode is especially cognizant of the social justice costs of these transformations in legal education and suggests that reforms should address in particular the unmet legal needs of the average client.<sup>107</sup> West paints a picture of transformations that are rudderless efforts to respond to a current crisis without a core mission.

The authors are uniformly discouraged by the response of law schools in resisting reform. Moliterno is cautiously heartened by the response of the ABA in responding to the crisis in legal education but he finds in legal education itself the same self-protectionism as the book describes of the profession at other times. Rhode agrees. As she elsewhere observes: "[a] fundamental problem in American legal education is a lack of consensus among faculty that there is a fundamental problem, or one that they have a responsibility to address. Law schools have a long and unbecoming history of resistance to reform."<sup>108</sup> West argues that current proposals for reform do not address the central "existential crisis"

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required for graduation was eighty-nine units and the median was eighty-eight units. *Id.* at 26. The largest number of reporting schools reported ninety credit hours. *Id.* at 26-27. Of these, the first year of law school typically takes thirty to thirty-two credit hours, all of which are required in the majority of law schools. *Id.* at 48. The American Bar Association requires three additional courses beyond the first year: Professional Responsibility, an upper-division writing experience, and a course providing "other professional skills." *Id.* at 31. At an average of two credit hours each, this makes an addition six required credit hours. *Id.* Finally seventy-six percent of law schools have additional required courses beyond the first year, the most common being Constitutional Law (if not offered in the 1L year), Evidence, Advanced Legal Writing, and Business Organizations. *Id.* at 67.

106. MOLITERNO, *supra* note 1, at 195-96 ("An economic transfer has accompanied the desertion of a system in which mostly corporate clients willingly paid for the training of beginners at major law firms. Now, law firms are shifting the training cost to law schools by demanding that they undertake more practical preparation.").

107. RHODE, *THE TROUBLE WITH LAWYERS*, *supra* note 2, at 122 ("Tuition payments by poorer students subsidize scholarships for richer ones.") (citing Richard A. Matasar, *The Viability of the Law Degree: Cost, Value, and Intrinsic Worth*, 96 IOWA L. REV. 1979 (2011)). Professor Rhode suggests that "[t]hree years in law school and passage of a bar exam are neither necessary nor sufficient to guarantee proficiency in many areas where needs are greatest, such as uncontested divorces, landlord-tenant matters, immigration, or bankruptcy. . . . The diversity in America's legal demands argues for corresponding diversity in legal education." *Id.* at 128.

108. RHODE, *THE TROUBLE WITH LAWYERS*, *supra* note 2, at 136-37 (citing Edward Rubin, *The Future and Legal Education: Are Law Schools Failing and, If So, How?*, 39 LAW & SOC. INQUIRY. 499, 500 (2014); Robert W. Gordon, *The Geologic Strata of the Law School Curriculum*, 60 VAND. L. REV. 339 (2007)).

of legal education and that “we run a quite real risk that these reforms, or others taken in response to changing market conditions and professional complaints, will actually make our deeper problems all the more intractable.”<sup>109</sup>

Each provides some proposals for shifts in focus and curriculum changes. The books agree that experiential education serves multiple goals of preparing students for law practice, for leadership, and for meeting the demands of the profession.<sup>110</sup> All would suggest using the third year to focus on experiential learning. All would include a broader range of learning outcomes than traditionally provided by law schools.

Not surprisingly, the authors draw their lists of curricular additions and reforms in part from their own expertise and the perspective of their home institutions. All three teach at elite, private schools.

Moliterno has spent decades teaching and directing programs in legal skills, clinical, and professional responsibility.<sup>111</sup> His current law school (Washington and Lee) has between thirty-six and thirty-nine full-time faculty members and a near equal number of part-time faculty who teach about four hundred students.<sup>112</sup> His list of curriculum additions would include: problem-solving, business-sense, project management, collaboration, statistics, emotional needs of clients, and creativity.<sup>113</sup>

Rhode’s expertise lies in professional responsibility and social justice.<sup>114</sup> Stanford, where she teaches, is a large law school with between seventy-six to ninety full-time faculty teaching a total of 574 students.<sup>115</sup> She emphasizes the teaching of values and ethics, of course, and like Moliterno, she also suggests that lawyers can learn from non-lawyers. The specific leadership skills she suggests that law schools should include in their curriculum looks like a page from a business school curriculum: “problem solving, teamwork, influence, organizational dynamics, and conflict management.”<sup>116</sup>

Robin West is a professor of Law and Philosophy at Georgetown University Law Center, where she specializes in legal theory. Georgetown is massive compared to the other authors’ schools, with nearly two thousand students, a faculty of 124 full-time instructors, and 149-185 part-time faculty.<sup>117</sup> Her proposal does not deny the value of an interdisciplinary perspective or of professional skills training, but would balance these

109. WEST, *supra* note 1, at 23.

110. MOLITERNO, *supra* note 1, at 228-29; RHODE, *supra* note 1, at 97 (specifically endorsing “mentoring, problem-solving and role-playing”); WEST, *supra* note 1, at 156, 177. Not surprisingly, Professor Rhode has also developed teaching materials for leadership education. Rhode & Packel, *Leadership, in LAW AND LEADERSHIP: INTEGRATING LEADERSHIP STUDIES INTO THE LAW SCHOOL CURRICULUM* (Paula Monopoli & Susan McCarty eds., 2013).

111. Washington & Lee Law School, *James E. Moliterno*, <https://law2.wlu.edu/faculty/profiledetail.asp?id=298>.

112. ABA STANDARD 509 INFOR. REP. (2014) <http://www.abarequireddisclosures.org> (last visited Jan. 27, 2016).

113. MOLITERNO, *supra* note 1, at 232-33.

114. Stanford University Law School, *Deborah L. Rhode*, <https://law.stanford.edu/directory/deborah-l-rhode>.

115. ABA STANDARD 509, *supra* note 112.

116. RHODE, *supra* note 1, at 29.

117. ABA STANDARD 509, *supra* note 112.

with courses that would expose students to a broader range of law and a deeper understanding of legal theory.<sup>118</sup>

One is left hungry for the conversation that would ensure if all three authors were placed on a law school's curricular reform taskforce. Even more interesting would be the addition to that taskforce of faculty from public, regional law schools.

An interesting addition to that conversation might come from the national conversation over outcomes and assessment of student learning. What is missing from all three proposals to some extent is the method by which law schools could ensure that students would transfer knowledge across the authors' suggested menus of skills, theory, and doctrine. Certainly methods of curricular reform that amount to "add X and stir" do not necessarily translate into more learning. Harvard Education Professor David N. Perkins refers to the problem of dividing content from context as "aboutitis" creating "endless learning about something without ever getting better at doing it."<sup>119</sup> Students learn and retain knowledge best when theory, doctrine, and practice are combined.<sup>120</sup> The teamwork and collaboration skills that Moliterno and Rhode emphasize are important not only for students to learn, but for faculty as well. For West's suggestion that law schools "embrace pluralism,"<sup>121</sup> faculty members must improve their own collaborative skills, as they will increasingly need to share their classrooms,<sup>122</sup> clinics, and assessments to achieve the outcomes students will need and demand.

While all three authors express pessimism regarding law faculty and their ability or desire to change, the fact that the authors have invested the time and resources to produce well-researched, thoroughly documented, and passionate calls for reform is ultimately the most hopeful sign of all.

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118. WEST, *supra* note 1, at 191.

119. DAVID N. PERKINS, MAKING LEARNING WHOLE: HOW SEVEN PRINCIPLES OF TEACHING CAN TRANSFORM EDUCATION 6 (2009).

120. Barbara Glesner Fines, *Out of the Shadows: What Legal Research Instruction Reveals About Incorporating Skills throughout the Curriculum*, 2013 J. DISP. RESOL. 159, 183 (2013) (discussing "the curse of coverage" in which "the ever-present drive for 'coverage' implicit in the growing size of course books and the press of the 'mile wide and inch thick' bar examination lends advantage to the 'breadth' side of the equation in the battle between depth and breadth").

121. WEST, *supra* note 1, at 208.

122. Rhode's observations regarding the tendency toward competition in the lawyer personality, translates into a culture norm of competition within law schools as well, a norm that forward-looking law schools and faculty will need to adjust if improvements in pedagogy will be successful. Barbara Glesner Fines, *Competition and the Curve*, 65 UMKC L. REV. 879, 906 (1997).