The Contradiction of Studying In Law School and Avoiding Knowledge

It's not that the law schools have failed to ask how law fits in with our society's needs. It's worse than that. Law professors affirmatively resist such questions. Consider, for example, this statement by one law professor who appears to wish that things were otherwise:

The law and society movement has been trying to shoehorn its way into law schools for more than 60 years....To be frank, the study of law and society, by whatever name, is something of a stepchild in the law school world.

Law professors have been prodded by former Supreme Court Chief Justice William H. Rehnquist; former Harvard University president Derek Bok; and, decades ago, Ralph Nader, among many others. And yet they continue, by and large, to ignore the functioning of the system. Legal scholars even ignore the study of law firms, despite the fact that huge numbers of law students go directly into law firms upon graduation. These are the same scholars who notice every last detail when talking about their favorite complicated, extremely specialized legal questions. Consider this half-apology from one article in a top law review: "As a preliminary matter, we should perhaps justify devoting attention to so arcane a subject as the career patterns of young lawyers who practice in corporate law firms."

Strange as it may seem, the study of law firms is simply not considered a normal part of the law school curriculum. Similarly, legal experts have declined to do much research on the value of bar admissions character reviews; the use of trial court time; the effectiveness of settlements; the workings of jury trials; how many erroneous decisions are not appealed for lack of funds; and the excessive expenses of celebrity trials, to give just a few examples of areas in which there would seem to be room for a lot more analysis.

There's a reason for law professors to avoid such practical questions. They're no fools. They can't answer these questions. If they tried, they'd fail, and everyone would see right away that they're not suited for it: "Empirical research is hard work, and lots of it; it is also non-library research, and many law teachers are afraid of it; it calls for skills that most law teachers do not have; if it is at all elaborate, it is team research, and law teachers are not used to this kind of effort; often it requires hustling grant money from foundations or government agencies, and law teachers simply do not know how to do that."

Law schools could hope to address these bigger questions about the legal system only by shunting scads of professors in these directions and retraining them for the job.

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Unfortunately, legal experts' lack of information and training in the real workings of the system does not deter them from making far-reaching recommendations based on what they assume the facts must be. As a poignant example, one study concluded that, after 16 years of experimentation on the American public, no-fault divorce was fundamentally flawed, but that legal experts had lacked the scientific data and expertise to understand those flaws. Even the Justices on the U.S. Supreme Court risk "being seriously misled in their interpretation of empirical data [because of, among other things, a lack] of training in statistics and research."

Instead of trying to force-fit empirical studies into law schools, you may be happier if you listen, not to legal experts, but to others, outside the law. For example, the scholar who found that the Supreme Court has problems with empirical issues was not a law professor, but a professor of psychiatry. Even in the law reviews, many of the articles on the management of the law are written by, or rely heavily on, nonlegal experts.

It certainly is possible to find non-law schools that pursue these subjects. To take one field, graduate business schools now offer a variety of law-related graduate studies. At Carnegie-Mellon, Wharton, and Minnesota, for instance, business professors have studied jury behavior, criminal sentencing guidelines, intra-state motor carrier regulation's impact on interstate commerce, risk assessment in environmental regulation, private treble-damage lawsuits, and the legal strategic behavior of corporations. Courses in alternative dispute resolution (ADR) are becoming so important that the most popular offerings at the graduate business schools at North-western, Virginia, and Columbia - and probably elsewhere - are courses in negotiation and ADR.
Similarly, sociologists and other scientists have studied the question of which battered spouses are most and least likely to use legal restraining orders; the extent to which mediation might be better than the adversarial approach in handling child protection and custody and divorces; the process of jury decision-making in criminal trials; and jury standards used in awarding damages.

Lawyers aren't doing these studies. They can't now, and it appears that they won't anytime soon. So in the future, many of the answers we want about the system will have to come from non-lawyers who've been trained to provide them. The findings of experts in computers, math, social sciences, and other technical subjects can't continue to be mere footnotes to the learned books of the law professors. We need those experts' findings much more than we need a lot of the stuff that the lawyers spend their time debating.

These shortcomings of the law schools made it hard for me to accept the whole enterprise. I failed to use my anti-empirical blinders properly; as a result, my legal vision was impaired by the glare coming from a single bright insight: that all those nice, neat cases had gotten into my law books only after a huge, rarely mentioned quantity of human suffering by clients on both sides of the battle.

Those human dimensions didn't interest my law professors much. So maybe it should not be surprising that law schools are often criticized for turning out lawyers who'd rather be adversarial than master "the gentler arts of reconciliation and accommodation." It seems clear that when you diligently avoid areas of knowledge, you inescapably skew the educations of those who listen to you.

Now, law professors aren't irrational. They have the option of being more sensitive or scientific. They ignore that option, partly because their philosophy about the law tells them that a non-sensitive, non-scientific approach is best.

You can learn more about that philosophy in courses on jurisprudence. He doesn't trash the truth just for the fun of it, though. Rather, he says, society has other important goals that justice must consider, even if they force truth into the back seat. One such goal is "social harmony." He notes that some cultures have conflict resolution methods that restore social harmony without emphasizing truth.

In the end, you'll find difficulties all along the spectrum of legal substance, from theory to data, intuition to induction, top to bottom. As long as you exercise your tunnel vision, you might make it through and learn to concentrate only on what the judges say. But the minute you widen your perspective and ask bigger questions, you're going to see that you've been standing in deep doo-doo. The only thing that could be worse would be if you let yourself go beyond thinking about the law, and started to feel what your clients are going to be feeling - a point to which we turn now.

This Is Procedure?

As you're going through law school, you begin to hear things. Sure, you heard them before, but you were able to ignore them in your eagerness to get into this exciting new career. Now, however, when you can settle down and realize that yes, you really are going to be a lawyer, some of these things slowly seep through to your consciousness. You, personally, are going to be involved in - indeed, you may be worsening - a situation that authorities abhor. For example:

The system is ready to crash. It's ready to fall apart without relief. People get frustrated with the system. They blame the lawyers, they blame the courts. You can't get justice when you have to wait five years....

That is from former Los Angeles County Bar Association President Larry Feldman, explaining why the LACBA had filed suit against the State of California, demanding the appointment of more state court judges.

We must not doubt the serious dissatisfaction with courts and lack of respect for law which exists in the United States today. Our adversary system turns objective witnesses into partisans who hope one side defeats the other. It leads to sensational cross-examinations.

Our system of justice is archaic. Uncertainty, delay and expense have created a deep-seated desire to keep out of court, right or wrong, on the part of every sensible businessman in the community.