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“Down the ringing grooves of change”:* Law School Futures, Past and Present

MARC GALANTER**

JUST before his look to the future Dean Manning looked back to twenty-five or thirty years ago and where we have come since then. I thought I might start by looking in that direction. I am very fortunate today in being able to tell you about a very exciting discovery that will add immeasurably to the history of American legal thought. Some of you may recall that in 1962 there was an all-star group of leading educators called the Nostradamus Commission. It prepared a report to chart the course of legal education over what was then the next quarter century—which has just now come to an end. That report was disseminated in various early drafts, but was lost, or was at least long thought lost, in the great fire that swept the headquarters of the Association of American Law Schools in 1963. I can report today that a copy of that report was uncovered by the indefatigable Professor Schlegel in the course of his researches into the papers of early post-Realists and we now can read it in its entirety.

I want to summarize very quickly the recommendations of the Commission. Briefly, they recommended that law schools should double in size and should change their recruitment to shift to about 40 percent women students as well as a healthy sprinkling of minorities. They should abandon the required curriculum in the second and third years and substitute a varied smorgasbord of electives and seminars. They should curtail the use of the socratic method of instruction by at least 65 to 75 percent and should incorporate a lot of non-case material into the curriculum, while leaving appellate courts and their opinions as the central axis of study. They should abandon faith in law as a self-contained, autonomous body of knowledge, and adopt a more instrumental view of law as a tool of policy. They should promote intellectual diversity by becoming a home to lively movements that view law from vastly different perspectives. You will recognize this as a remarkable anticipation of the arrival of law and economics, law and society, critical legal studies, feminist legal theory and the federalist society. Further, the Commission rec-

* “Let the great world spin forever down the ringing grooves of change.” Tennyson, *Lockesley Hall*, in *THE COMPLETE WORKS OF TENNYSON* 95 (1920).

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commended that the law schools should relate legal education to practice by providing clinics and skills-training for a few students and by sending all students out for intensive legal work experiences during their law school years. And finally, the law schools were advised to link themselves closely to the world of practice by serving as hiring halls for recruitment into the large law firms.

Due to the remarkable prescience and wisdom of this Commission and, of course, to prodigies of implementation by a whole generation of law school deans and faculties, these plans have been brought to fruition. We have enjoyed a smooth transition from the law schools of the early 1960's to the law schools of today, which do in fact incorporate each of the features that I have noted. Our task today is to see if we can match the wisdom of the Nostradamus Commission is discerning the needs of the next twenty-five years and the changes law schools should make to accommodate them.

What does this little conceit tell us? It reminds us law schools have changed a great deal in the past twenty-five years— in size, in the make-up of the student body, in curricular form, if not content, in teaching methods, in relation to the market for legal services and in relation to the larger currents of intellectual life. It also suggests that these changes were not part of anybody's plan. It is hard to think that any of them originated in policies deliberately adopted by actors within the law school realm with, I suppose, the one partial exception of the development of clinics. Instead, these changes reflect the growth of population and shifts in gender roles, increasing investments in education in the society at large, the changing organization of legal practice, particularly the changing organization of large law firms which itself reflects changes in the market for legal services, and intellectual currents in the academy from hard core Chicago economics to soft core critical Marxism, which flowed around, and eventually into, the law schools.

Throughout these changes the law schools have been reactive, dependent, derivative. They have been on the receiving end of a whole variety of influences to which they have adapted very successfully. It is less clear that they have done very much to shape the legal world and the larger social world that surround them. It is even hard to say if the law schools' products, lawyers, have had any influence on the way things have gone out there. Robert Nelson and his collaborators are trying to compare the group representation of Washington lawyers with non-lawyer lobbyists, in order to see whether being a lawyer makes any difference. So far, they have found little to distinguish the activities and impact

of the lawyers they are studying from those of non-lawyers.¹ So, the wider impact of the increased presence of lawyers in our society remains an open question and one that I think should be pursued—even by law schools.

Although I am unable to tell you what the weather will be like a few years from now, there are some things we can see at work that will affect the world of law schools. First, the demographics are changing. Even with a leveling off of the increase in law school enrollments the profession is going to continue to grow for a number of years and will be well over a million by the end of the century. Law firms also will continue to grow as they become national and international. We will probably see the first thousand lawyer law firm before too long² and perhaps the first five thousand lawyer firm within a few years. It is interesting to imagine that five thousand lawyer firm—if it were constructed like the ones of today, which it probably won't be—going out to hire 900 associates in a year. Maybe they will recruit them in high school and then just contract with a college and law school to process them from that point.

This speculation is based on the assumption that the large law firm as we know it is going to be with us forever. But, recall that the law firm came into being at the very end of the 19th century—at about the same time as the law school as we know it—and neither may be forever. As Dean Manning suggested, we may see the legal profession organized in very different ways: huge firms staffed by salaried lawyers, other large aggregations of salaried lawyers in corporations and governments, and various kinds of boutiques and speciality firms. Alternatively, firms may be connected by networks or by entrepreneurs, who, like general contractors, will assemble and coordinate various combinations of lawyers to work on particular jobs. There may be a new function for the law school in this kind of networking and coordination.

Another feature implicit in Dean Manning's address was that the line between legal services and other services is fading. We see firms bringing in non-lawyers; we see firms setting up subsidiaries to do investment counseling and a variety of other kinds of business. Dean Manning gave a nice example of the change in discourse that is concomitant with

1. Nelson, Heinz, Lauman, and Salisbury, *Private Representation in Washington: Surveying the Structure of Influence*, 1987 AM. B. FOUND. RES. J. 141 (1987).

2. A June 1989 merger of Jones, Day, Reavis & Pogue with Hansell & Post resulted in a firm with 1,040 attorneys. Winter, *Jones Day Builds International Presence*, Wall Street J., Jul. 6, 1989, at B6, col. 4. Baker & McKenzie had reached the 1,000 mark more than a year earlier, but purists may dispute whether it is a single firm or a network of firms.

this shift in big-time lawyering, when he portrayed a conference with lawyers that sounded just like people from a business school. This is an extremely significant observation. The picture that it points toward could be summed up under the term deprofessionalization. For at least some sectors of the legal world, we are envisioning very different kinds of relationships between lawyers and clients; not enduring relationships of trust and confidence, but a straight out purchase of services. Similarly, we are talking about different relations within the firm—much less in the way of enduring collegial relations and much more hierarchy, subordination, giving of orders, and promotion through a series of steps, very much the picture of the corporate hierarchy. We are talking about the breakdown of the notion of what is strictly legal and thus the exclusive province of lawyers, and a diffusion, a blending of the legal and the non-legal, and presumably of lawyers with other types of specialists.

In all these ways, we are moving very rapidly away from the notion of law as a self-contained, autonomous discipline practiced by collegial groupings that are different from ordinary business organizations, and that have different kinds of relationships with their clients than do people who are just out in the market place buying and selling services. Thus, when we look forward twenty-five years, we have to ask, “What’s in store for the law schools in a post-professional legal world?” The emergence of a post-professional world is obviously going to mean major changes, but those changes may involve some opportunities for us, as well as some constraints. They may finally free us from the notion that the prime function of the law school is to train professional lawyers. At least for those law schools that are interested in seeing themselves as centers of knowledge about the legal process and about the larger society’s relation to the legal process, it may represent a remarkable opportunity. In any event, when we gather here again in 2012 for the 125th anniversary, we can check back and see whether these predictions fared as well as those of the Nostradamus Commission.