

PRINCIPLES FOR LEGAL EDUCATION AND LICENSURE IN THE 21ST CENTURY

Principles and Commentary

American Bar Association

Commission on the Future of Legal Education



AMERICANBARASSOCIATION

Commission on the Future
of Legal Education

TABLE OF CONTENTS

1 THE IMPERATIVE FOR A MOVEMENT FOR CHANGE	3
1.1 An Accelerating Crisis	
1.2 A Design Problem	
1.3 An Obligation to Drive Change	
1.4 An Incentive to Embrace Change	
2 INSPIRING THE MOVEMENT	6
2.1 Begin with Foundational Principles	
2.2 Move to Operational Principles	
3 DEFINING THE MOVEMENT	7
3.1 Legal Education Models	
3.2 Law School Accreditation	
3.3 Licensure	
3.4 The Bar Exam	
3.5 Access to Justice	
4 DRIVING THE MOVEMENT	10
5 APPENDICES	11
5.1 Commission Acknowledgements	
5.2 Select Commission Bibliography	

The views expressed in this document have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the ABA.

This document presents the findings of the twelve experts who were appointed to the ABA’s Commission on the Future of Legal Education. The Commission worked for over two years—including extensive research, broad and thoughtful stakeholder engagement, and principled dialogue—on the seemingly intractable problem of how to better align legal education and licensure in the United States to the modern needs for, and requirements of, legal service delivery.



PATRICIA D. WHITE, CHAIR

Professor of Law and Dean Emerita
University of Miami School of Law

AMERICAN BAR ASSOCIATION COMMISSION ON THE FUTURE OF LEGAL EDUCATION



DAVID FAIGMAN

Chancellor and Dean
University of California Hastings
College of Law



HORACIO E. GUTIERREZ

Head of Global Affairs &
Chief Legal Officer
Spotify



GILLIAN HADFIELD

Schwartz Reisman Chair in Technology
and Society, Professor of Law, and
Professor of Strategic Management,
University of Toronto; Faculty
Affiliate, Vector Institute for Artificial
Intelligence; Senior Policy Advisor,
OpenAI; Author, *Rules for a Flat World*



HONORABLE ANDREW D. HURWITZ

United States Circuit Court Judge
United States Court of Appeals for the
Ninth Circuit



DEBORAH JONES MERRITT

Distinguished University Professor
and John Deaver Drinko/Baker &
Hostetler Chair in Law
The Ohio State University
Moritz College of Law



VANESSA NORDYKE

Senior Assistant Attorney General,
Oregon Department of Justice
President 2018, Oregon State Bar



BLAKE D. MORANT

Professor of Law and Former Dean
The George Washington University
Law School
President Emeritus of AALS Fellows



DAIQUIRI STEELE

Forrester Fellow
Tulane University Law School



DAVID STERN

Executive Director
Equal Justice Works



RICHARD SUSSKIND OBE

Author, *Tomorrow's Lawyers*; Technology
Adviser to the Lord Chief Justice of
England and Wales; professorships at
University of Oxford, Gresham College,
UCL, and Strathclyde University



DAVID B. WILKINS

Lester Kissel Professor of Law;
Director, Center on the Legal
Profession; and Vice Dean for Global
Initiatives on the Legal Profession
Harvard Law School



ANDREA P. SINNER, DIRECTOR

Retired Executive Managing Director,
Accenture
JD 2017, University of Miami
School of Law



1 THE IMPERATIVE FOR A MOVEMENT FOR CHANGE

1.1 An Accelerating Crisis

The world is transforming at an accelerating pace. The practice of law in the United States is also transforming, albeit more slowly than the world and markets in which it operates. Technology, globalization, and mobility are core enablers of these shifts, and the legal profession and the delivery of legal services are not immune from their inevitable impacts.

The rule of law and our institutions are more important than ever for our democratic society, a functioning economy, and individual rights. However, access to legal services and justice is onerous and expensive. In almost every legal arena in the United States, most people and organizations cannot afford competent and cost-effective legal services. Failure to acknowledge and aggressively respond to these challenges threatens America's competitiveness and democratic institutions.

Our established system of legal education and licensure is preparing the next generation of legal professionals for yesterday rather than for tomorrow. It is preparing them for a world that will not exist sooner than we might like to imagine. There are important and meaningful exceptions to this assessment. Those exceptions typically come from the hard work of institutional and individual innovators. They are not a result of systemic change or of how our system of education and licensure is designed.

As stewards of the legal system, all lawyers are responsible for responding to these challenges. One of our most important collective duties is to develop the next generation of legal professionals ready to lead, support, and serve society as a whole and all who need legal services. We must prepare these professionals to serve society and clients in the decades to come. We must also attend to the well-being of those who provide legal services. How we attract, prepare, and support our future stewards matters.

1.2 A Design Problem

The American Bar Association's Commission on the Future of Legal Education found a growing disjunction between what kind of legal services are needed and the ways in which we currently prepare and license lawyers. Rather than continuing predominantly to protect the *status quo*, the profession must better manage for both stability *and* change. We must have a defensible rationale for what we retain in our current education and licensure model. We must also be prepared to lead radical and systemic change if we are committed to the future of access and service, and the rule of law.

Our profession cannot serve clients effectively unless our education and licensure system acknowledges the sweeping changes wrought by technology, globalization, and mobility. Similarly, we cannot improve access to justice without significant changes in how we educate and license the next generation of legal professionals.

We have a design problem. A design problem that will not be solved without principled reform.

We have not lacked good ideas for aligning legal education and licensure with service models that would better serve society. Indeed, many in and associated with the profession have done excellent and creative work in recent years and decades. Instead, our gridlock stems from substantive and systemic obstacles.

Through its work the Commission considered, among other trends and factors, the following systemic obstacles. It is the opinion of the Commission that that we will not progress with much-needed change in legal education and licensure as long as these obstacles remain in place.

ENTRENCHED SERVICE DELIVERY MODELS	The profession holds onto its closed system of traditional, and expensive, service delivery models, to which the exclusive path to entry is provided by our current, and expensive, education and licensure system.
ONE SIZE FITS ALL EDUCATION MODEL	Law schools use a relatively invariant model that remains wedded to 20th-century curriculum and pedagogy, while shortchanging development of the competencies needed today and in the future. We encourage students to focus on historical rites of passage, and frequently to be resistant to change. We do not do enough consistently to teach them to learn how to learn for a long career in a rapidly transforming world.
COUNTERPRODUCTIVE EDUCATION STANDARDS	We regulate law schools in ways that are myopic, outdated, and excessively one-size-fits-all. Ordinarily ranking the multitude of law schools exacerbates those characteristics. All of this affects how schools prioritize their resources. It diverts their focus from anticipating the effects of technology, globalization, and mobility; experimenting with new educational models; and adapting to changing professional requirements. It also encourages incrementalism.
EXCLUSIVE USE OF A GENERAL LICENSE MODEL	Our profession currently both over- and under-regulates. On the one hand, too many services unnecessarily require a general law license that necessitates seven years of post-secondary education and subsequent completion of an expensive licensing process. On the other hand, certification is not required for many critical and complex specializations.
FEAR OF TECHNOLOGY	Technology is all too often viewed as a danger rather than as a force to enable transformative change. It offers tremendous opportunities to enhance service and efficiency, broaden client bases, and improve access to those in need of legal services.
OUTDATED BAR EXAM	The bar exam tests both too much and too little. On the subjects it tests, success depends on extensive and granular rule memorization and application. At the same time, it fails to test key skills central to the practice of law. Given its gatekeeper role and influence on legal education, it thus discourages curricular innovation and inhibits the imagination of what a legal professional will be in the 21st century.
MISGUIDED APPROACH TO DISRUPTION	Our profession’s approach to disruption is both under- and over-inclusive. On the one hand, we act as if the question is about what is happening to lawyers, while not understanding the broader context, the blurring of boundaries, and the impact on clients and society. On the other hand, we act as if everything must change, rather than exploring how we can strategically manage for both stability and change.
DEEP-ROOTED ADHERENCE TO THE STATUS QUO	In our closed competitive system, entrenched institutional governance and culture are common across educators, regulators, and the profession. The system prioritizes preserving the <i>status quo</i> , rather than taking bold collective risks to meet the challenge of a transforming world. This inclination to minimize change further stymies efforts to improve inclusivity.

1.3 An Obligation to Drive Change

We must acknowledge this crisis and accept our obligation to lead a movement for meaningful, aligned, and accelerated change. Members of the bar take an oath to protect the rule of law, support access to justice, and serve clients with integrity. Yet, paradoxically, as a group we undermine these goals by failing to lead for the future in how we educate and license the next generation. It is indefensible to make no reasonable collective effort to better serve future generations.

1.4 An Incentive to Embrace Change

Proactively embracing change serves institutional interests. If we do not show collective leadership now, we may forfeit the chance to control, or even influence, the future of legal education and licensure. We may also lose the opportunity to serve a broader, enormous, and untapped market; a market configured differently and unconstrained by our current assumptions about legal education and a lifelong general license.

2 INSPIRING THE MOVEMENT



2.1 Begin with Foundational Principles

The Commission took a serious and fresh look at the problems facing legal education, licensure, and access to justice. As the Commission listened to and collaborated with a multitude of stakeholders, it found many perspectives on these topics and more. It also found widespread agreement on what the Commission titled *Foundational Principles*. It is vital that all legal professionals and institutions recognize each of these principles; valuing them lays a foundation for how we collectively approach a movement for change.

STEWARDSHIP	We are guardians of the legal system within our democracy and accordingly work to defend liberty, pursue justice, and maintain the rule of law for future generations.
INQUIRY	We promote critical inquiry and scholarship about law and legal institutions.
ACCESS	We are committed to developing a legal system that provides affordable and effective legal assistance, guidance, and protection to all.
SERVICE	We are a service profession and endeavor continually to better serve our clients, our institutions, and society as a whole.
INCLUSIVITY	We are committed to developing an inclusive profession that values diverse backgrounds, viewpoints, and roles.
ADAPTABILITY	We strive to ensure that our legal institutions and service models anticipate and reflect our rapidly evolving and technology-enabled world.

2.2 Move to Operational Principles

The Commission then developed a set of *Operational Principles*, which offer additional guidance on how the *Foundational Principles* can be used as the basis for a movement for change.

VALUE FOCUS	The costs of legal education and licensure should be designed to advance the quality and availability of legal services. Today, these costs do the opposite—they act as a barrier. We should address the cost of both becoming and hiring a legal professional.
ONE SIZE DOES NOT FIT ALL	Law schools should be able to follow distinct missions serving their students and communities, while reflecting the variation of roles needed for the widespread provision of legal services. Our service delivery models and our system of licensure should also reflect this variation of roles.
PROBLEM SOLVING FOCUS	Every legal problem is embedded within a larger context. Legal professionals should develop exceptional problem-solving, legal-reasoning, and communication skills for a multi-disciplinary, team-oriented world.
21ST CENTURY COMPETENCIES	We should collaborate across and beyond the legal profession to identify the competencies needed in the rapidly evolving legal services landscape. Law schools and employers should work together to ensure these competencies are being developed. Licensure should certify entry-level proficiency in the competencies required for these roles.
LEVERAGING TECHNOLOGY	Technology continues to drive change at an accelerating pace, affecting how—and even whether—legal professionals are needed for tasks traditionally considered exclusive to lawyers. Legal professionals should be able to identify where technology can or potentially could improve service and access.
VALID MEASURES	Legal educators, licensing authorities, testing organizations, and employers should develop fair, valid, and reliable measures to assess progression and competence.
MOBILITY	Our system of legal education and licensure should eliminate unnecessary barriers to living and working in our globalized, interconnected, and mobile world.
WELL-BEING	We should address, improve, and support the well-being of current and aspiring legal professionals. Well-being promotes the strength of the rule of law and our legal system, and the quality of service to clients.

3 DEFINING THE MOVEMENT



The Commission makes the following **Recommendations**. Our call is for educators, regulators, and practitioners to design their institutional practices to align with the **Foundational** and **Operational Principles** in addition to serving their respective goals. The **Principles** suggest important changes in legal education models, law school accreditation, licensure, the bar exam, and our approach to improving access to justice. The **Principles** also illustrate the need to collaborate on solutions that will support meaningful and systemic change. The time has come to lead through a movement of bold principled action rather than through incremental reaction.

3.1 Legal Education Models

ANTICIPATE THE FUTURE

Law schools must understand the continuously evolving ecosystem of legal service delivery. They must design educational experiences focused on contemporary and anticipated needs. They must also understand the needs of all those who could benefit from legal services, including those who currently lack access to them. Employers must recognize that unique areas of practice will always require rigorous ongoing training programs and supervisory structures in the workplace. By focusing together on the future, law schools and the profession can develop a generation of legal professionals prepared for the modern practice of law and the lifelong learning that practice requires.

IMPROVE THE JD

Adapt JD education to better reflect the **Foundational** and **Operational Principles**. Use the **Principles** to assess conventional practices and, where appropriate, to develop new strategies. High tuition rates and differential discounting, for example, reduce inclusiveness and diminish access to legal services. Strict grading curves may stifle pedagogic innovation and the full development of skills and knowledge that students need to serve clients. Minimal formative feedback may dampen learning and undermine inclusiveness. Embracing a variety of pedagogies across the curriculum, rather than relying so heavily on teaching from appellate cases, could enhance development of diverse skills. Increasing team-based work and grading, similarly, could better prepare students for the workplace. Other concerns may justify some current practices, but law schools must assess all practices in light of the **Principles**.

EXPAND ALTERNATIVES TO THE JD

Regulatory and bar exam changes would further create the incentives—and in some cases the freedom—for law schools to respond to market reality with new degree programs, pedagogies, and funding models. Legal educators and the profession must embrace the reality that preparation for law practice does not always require seven years of post-secondary education. Shorter, more focused educational tracks are appropriate for some of the varied roles in the legal service delivery ecosystem.

PRIORITIZE EVIDENCE-BASED CHANGE

In support of this movement for systemic change, we must transform the collection and use of data critical to the study of legal education and licensure with a focus on objective outcomes. This will require a fundamental change in collaboration across all of our institutions.

RE-ENVISION ADMISSIONS

We must take a serious look at how we determine who will be afforded seats in each class and, importantly, how much each of those seats will cost; the admissions process and assessment tools must continue to adapt to align with the changing requirements for legal education in our rapidly evolving and technology-enabled world. The need to re-envision admissions would amplify if the profession evolves to one which includes multiple targeted licenses.

RE-ENVISION FUNDING MODELS FOR LEGAL EDUCATION

We must find new funding models for legal education. The predominant funding model, as for much of higher education in general, is not sustainable. Tuition dependent institutions are in fact largely funded by student debt. This fact has grave implications both for access to a legal education and for access to legal services. Without finding new funding models, many law schools will increasingly face an existential crisis.

3.2 Law School Accreditation**RE-THINK ACCREDITATION STANDARDS**

Create accreditation standards with the objective of reflecting the *Foundational* and *Operational Principles*. A fresh look might, for example, support education for varied degrees and licensure models, encourage pedagogical initiative and discourage entrenchment, facilitate multi-disciplinary and multi-law school collaboration, and reward transparent innovation and experimentation. Schools should be required to demonstrate through independently measured learning outcomes how they are adding value to students, society, the profession, and access to justice.

ADDRESS LAW SCHOOL RANKINGS

In conjunction with regulatory changes and improving the definition, collection, and use of relevant data, address the myopic and counterproductive rankings to which law schools are beholden. We must develop consumer information tools which meaningfully allow students to make appropriately individualized informed choices. A single ordinal ranking of a wide variety of kinds of institutions cannot do that. We must work together to address this collective action problem.

3.3 Licensure**IMPLEMENT TARGETED LICENSURE**

Change Unauthorized Practice of Law rules and implement targeted licensure to better reflect the varied needs that legal service providers meet; restrict the JD and current licensure requirements to those jobs that demonstrably need that level of preparation and regulation. We must find pathways for individuals and organizations to serve those who cannot afford a lawyer. We must also address the need to support mobility for legal professionals. At the same time, explore expanded specialization certification, periodic re-licensure or re-certification, and other initiatives focused on protecting the public. Our goal should be for all legal professionals to operate at the top of their respective licenses.

3.4 The Bar Exam

ADJUST THE BAR EXAM IN THE NEAR TERM

Building on the progress of the Uniform Bar Exam and the NCBE's Testing Task Force, enhance the current bar exam. This might well include refining the relative priority given to critical skills and doctrinal memorization. It might also include establishing a target national cut score that reflects the objective of passing all those who demonstrate entry-level competence.

TRANSFORM THE BAR EXAM IN THE MEDIUM TERM

Demand and support experimentation and research focused on a better assessment system. An improved assessment would be valid for the entry-level competence required for current and future legal service delivery models, be offered at flexible times and with an enhanced portfolio of assessment instruments, and use a uniform grading system and cut score for the knowledge and skills applicable in all states. States would retain the separate responsibility to ensure their applicants demonstrate essential state-specific knowledge.

SUPPORT EXPERIMENTATION TODAY

Bar exam alternatives in current use include apprenticeships, honors programs, and diploma privileges. These and other possibilities, such as staged exams and professionalism institutes, merit serious attention. Some Commission members will continue related work on ground-breaking empirical studies, and on innovative efforts to develop potential alternative approaches to the bar exam.

3.5 Access to Justice

ARTICULATE LEGAL EDUCATION & LICENSURE'S ROLE IN ACCESS TO JUSTICE

Despite laudable intentions, the profession has not successfully addressed the root causes of our access to justice challenges. As with the problems related to legal education and licensure, we tend to focus piecemeal on solutions that have little chance of producing systemic change. We must develop a comprehensive framework that can be used by members of the broader community focused on these issues. We should all be working in alignment on our fundamental access problems.

4 DRIVING THE MOVEMENT



There is positive change already underway; passionate innovators in every sector of legal education and licensure strive for progress every day. To build on that work, we need systemic change—and we need it now. The *Principles* articulated here point the way toward doing that. We can modernize our system of legal education and licensure to better prepare the next generation of legal professionals, serve existing and future client needs, and improve access to justice. But we must first believe that we can succeed.

The Commission believes that systemic change is possible. The *Foundational* and *Operational Principles* provide a platform for structured change. Individuals and institutions can use these *Principles* to assess current practices and fashion new ones. The *Principles* likewise support collaboration among institutions.

Educators and regulators still have a chance to shape our own outcomes and benefit from a broader and differently configured market. That path is far less costly than reacting to external triggers such as changes to educational loan limits or the inevitable further changes in legal service delivery market dynamics. Those changes would upend our system of legal education and licensure.

There is no individual or institution that can do this alone. Additionally, if we believe that our institutions are immune from the reality of the shifting world, we will not make progress. But if we collectively return to first principles—in the form of the *Foundational Principles*—we can create a meaningful movement for change. We can also rely upon the *Operational Principles* as a guide for developing a more detailed roadmap to the future.

The Commission welcomes principle-based dialogue on how we can collectively move forward. Some Commission members will continue to work with key jurisdictions and leaders throughout academia, the judiciary, and the practicing bar. Although continued study is critical, we must move forward purposefully with aligned, transparent, and meaningful change. It is past time to shift collectively from study into action.

5 APPENDICES

5.1 Commission Acknowledgements

The Commission is grateful to the ABA for showing the leadership to sponsor this initiative (founding sponsorship from ABA President Hilarie Bass and completion sponsorship from ABA President Bob Carlson), and giving it the freedom to be truly forward-thinking rather than tethered to the *status quo*.

The Commission also thanks all those who work hard every day on making progress toward the future of legal education and licensure, and indeed the future of the profession, many of whom were remarkably generous with their time in support of the Commission's journey. The Commission has not attempted to highlight the great works of all those individuals. It instead submits this call to action and hopes that agents of change find messages in this document that are helpful to the collective cause.

Finally, the Commission commends those institutions—including state Supreme Courts—who are engaged in innovative projects focused on improving access to justice, reforming the bar exam, and better preparing students for the future. With principled alignment, together we can amplify those efforts.

5.2 Select Commission Bibliography

As noted in the preamble, the Commission worked for over two years—including extensive research, broad and thoughtful stakeholder engagement, and principled dialogue—on the seemingly intractable problem of how better to align legal education and licensure in the United States to the modern needs for, and requirements of, legal service delivery.

The public testimony and a select bibliography from this endeavor remain on the Commission's website, which can be found at www.ambar.org/futureoflegaleducation.



AMERICANBARASSOCIATION

Commission on the Future
of Legal Education