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Reflecting on the Past, Preparing for the Future: A Q&A with AALS President Paul Marcus

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Reflecting on the Past, Preparing for the Future
A Q&A with AALS President Paul Marcus

By Jim Greif

The last four decades have seen tremendous changes in our country's law schools. Paul Marcus, 2017 AALS President and Haynes Professor of Law at William & Mary Law School, has brought his experiences during this time to his leadership of the association. Professor Marcus recently sat down with AALS News to discuss the past, present, and future of legal education.

Professor Marcus, law schools have seen tremendous growth during your career and, more recently, a sharp decline. How has legal education handled both?

Well, I've been in legal education a long time and have been active with both AALS and the American Bar Association. I have visited a lot of law schools. I've also been involved as a member of inspection teams at more than 20 law schools throughout the country. In just this past year as AALS President, I have visited eight schools.

The growth was astonishing leading up to 2007. We had thousands of people applying to law schools across the country. The major problem we had was how to deal with the large number of applicants. Do you expand your admissions

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committee? Do you involve faculty with it? Do you have enough faculty to teach that many students? Are the facilities adequate to handle growth? It really was quite an astonishing period in legal education; that all changed in 2008.

The drop was not just sharp, it was precipitous. We now have about the same number of students enrolled in law school that we had 30 or 40 years ago, even though the population of the country has grown greatly in that period. We have more schools than ever before, and yet the numbers of students are back to what they were in the 1970s.

I think we handled the growth and the decline reasonably well, but not perfectly. The growth was a heady period. Schools expanded their faculty size, libraries, and facilities and developed new programs—all to the positive, I believe. Most schools seemingly did not believe that the bubble would ever burst and growth would continue. Perhaps schools did not save for or anticipate the rainy day that did come about 10 years ago.

How schools have handled or are handling the decline is a bit of a mixed record. I think some schools early on were quite prudent in trying to prune back their expenses, and they understood that the admissions decline was not a one- or two-year development; it was likely going to continue for a while.

On the positive side, that decline really forced us to rethink what it is we do in legal education, how we use our resources, and what quality legal education is.

One thing during the last 20 or 30 years that has been very positive is the increase in diversity of our student bodies and faculties. When I started at UCLA School of Law—I graduated in 1971—there was one African-American professor and one woman on that large faculty in a very major metropolitan area.

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That was not uncommon throughout the country. Happily, over this period we have seen the numbers of women and minority students and faculty increase. Law schools are beginning to reflect what our actual population looks like.

The variety of courses and specializations within law school curricula have increased even in a period of declining enrollment. How have you seen legal educators meet the need for a wide variety of specializations while facing limited resources and budget constraints?

The real pause here in terms of where we are is that we are asked now to do much more with significantly fewer resources. The demands really are greater than they’ve ever been in terms of the kinds of courses that we ought to be teaching.

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We have real demand for variety in our curricula—courses that just were not offered 10 to 20 years ago. I glanced through a few law school websites recently and found advanced litigation courses, gender and the law, food and drug administration, cyber law, transactional courses involving real estate and commercial law, health law, law and economics, and disability law. These are all really important areas of the law that have developed over the last two decades.

At the same time, state funding for public law schools has declined tremendously over the last 20 to 30 years. If a public law school today receives 20 percent of its budget from the state, that’s quite high and that’s viewed as very positive. When I was dean of the University of Arizona (1983–1988), that would’ve been shocking. We received well over 50 percent of our budget from the state, and yet we are now asked to do more, quite appropriately, to have high quality legal education.

Quite a bit is happening with the recognition that these are tight times financially. In some urban areas, we have law schools that are pooling resources such as library materials. Also, if you are a student at one school but see a course in another school nearby that’s not offered at your institution, arrangements can often be made to take that course. At major universities across the country, law schools are partnering up with other units on campus to offer courses to not only law students but also students in business schools, history departments, and political science tracks.

We’re also seeing concentrations in areas such as environmental law, business law, national security law, criminal justice, and intellectual property.

What are some of the ways that law schools have been working to better connect with the bar and bench? What are the advantages of these connections for faculty and for students?

This has been one of the great successes of modern legal education. We are much less distant from the practicing bar and the judiciary than ever before. The complaint had been for many years that law professors had their heads in the clouds and that we really didn’t fully understand what the practice of law is like.

Frankly, the complaint had something to it. But that is a complaint one does not hear as much anymore. I think there are advantages for both faculty and students to understand what’s happening out there and to be able to partner with judges and law firms. Students benefit through internships and externships with practicing lawyers and judges.

There are some programs across the country that are really worthy of note. Many law schools have a “professor of practice” or sometimes referred to as a “professor from practice.” You see folks who go on to the faculty in these positions who had tremendous experience. Some that I know of served as a U.S. Attorney, some were major litigators at international law firms, some court of appeals judges, including at my own school, and they add immeasurably to the program on a long-term basis. On a short-term basis, we see programs such as the “judges in residence” at some schools, in which state and federal judges come to a school for short periods of time, maybe teach condensed courses, give lectures, and meet with students.

Inns of court have developed across the country where students, faculty, practicing lawyers, and judges get together on a regular basis both to socialize and to talk about significant issues related to legal education and practice. I think the benefits of these efforts are great, and there is real progress in terms of involving the bench and the bar with legal educators.

Before the JD is a nationwide study led by AALS intended to understand the factors contributing to the decision to pursue a JD or not. Why is it important to hear directly from college and law students about these factors? How can law schools use the information learned from this project?

We have not understood, and we never tried to understand, why people do choose legal education or do not choose legal education. Frankly, we didn’t have to. We were swamped with applications, and they just kept coming from highly qualified prospective students. That has not been the case for the last 10 years. And I think the AALS initiative on this, led by our
executive director Judith Areen, is a superb effort to try to understand what is happening with young people going into advanced degree programs, both in law and elsewhere.

To a certain extent, it's the flip-side of what the ABA Foundation and NALP did some years ago with their After the JD project. That has been very useful in providing information on what lawyers do after they graduate from law school: their success levels, their satisfaction rates, where they go, what salaries look like, and what their career paths are. I think it's been quite helpful for all of us in planning for our students.

Our hope now with Before the JD is that we can learn a lot about where students get their information and how they make their decisions. If we have that information, we can do a much better job of showing what it is that we do with law school and why legal education is so vital to a working democracy.

With the many stressful demands on law graduates who are practicing law—especially at large law firms—there is a renewed focus on the mental health and well-being of lawyers. What can be done in law school to help future lawyers get the support and help they need to have a successful career and work-life balance?

Bar associations across the country merit praise for recognizing that it is important to focus on the mental health and well-being of lawyers. This is a relatively recent phenomenon and an extremely important one. We need to know why many lawyers are having difficulties both within law school and after law school in terms of their well-being.

I think law schools are now turning to focus attention on it as well. I'll mention three initiatives that are proving successful in this area. One is an informal discussion group where people in law schools get together regularly to talk about stress levels and about how one copes with a very intense educational experience.

Second, the counseling centers at universities and individual law schools offer to engage students in counseling and make clear that there's no stigma involved. I will say this is an area where I have a real stake because my wife is at the counseling center here at the College of William & Mary, though she doesn't see law students. I think it's very important that it be made clear to law students that this is a real opportunity for them to get assistance on a confidential basis.

Third, we've seen an increase in lawyers using mindfulness training. I think is useful for getting lawyers to really pay attention to who they are and try to relieve their stress levels through various kinds of exercises and education. This is spreading throughout the country, and I think it's a very positive sign.

As the legal profession becomes more global, what have law schools done to help prepare students for this more interconnected world?

I think we've done a lot in terms of international and comparative law as well as engagement with lawyers and legal educators across the world. The number of courses offered in this area is up substantially. There was a time when a law school might have only one course in public international law. Those days are gone. Law schools, even small law schools not near major metropolitan areas, offer public international, private international, and comparative law courses.

We also have much more international engagement. We have professors from other countries who visit the United States and offer short courses, or give lectures and meet with students. Our professors go overseas to teach and lecture. I've done that on numerous occasions, most recently in Brazil and Australia. It is beneficial in terms of what you can bring back to your home school as a professor.

U.S. students now have the option of studying all over the world, whether it's a semester away, a year-long fellowship, or a summer program. Our students can go from Paris to Beijing to Sao Paulo to Cairo—it's almost unlimited in terms of the study abroad options available for students.

The AALS Executive Committee created a special subcommittee to focus attention on what we in the U.S. face with issues of international and comparative law. And that subcommittee itself established what we call the Transnational Advisory Group, involving leaders in legal education from Australia, Brazil, South Africa, France, among other countries. We are engaged in very fruitful conversations on how we can involve schools outside the U.S. on a more substantive level than has been done before.

Clinical and experiential opportunities have also grown significantly, giving students more hands-on opportunities than in the past. In your view, how has this changed what is taught in the classroom?
I think even saying “grown significantly” understates it quite a bit. I am a big fan of clinical and experiential learning opportunities. UCLA is a large law school in a big metropolitan area. In the fall of 1970, I was one of a few students in their first experimental clinic which was one of the first in the country.

Today, law schools across the country have multiple clinics involving subjects such as immigration law, veterans’ benefits, special education, housing, small business opportunities, and criminal justice. It’s been a great opportunity for our students to have real hands-on education in how the practice works taught by people who really know what they’re doing and are experienced lawyers.

But it’s not just the clinical experience or limited experiential opportunities outside the traditional classroom. Traditional classrooms are changing as well. We now offer many more smaller courses that are linked to skills training. Even in the core courses, we see different techniques being used such as the so-called flipped classroom where a professor can offer materials ahead of time and students teach part of the of the semester. It is a wonderful way for students to learn the material by being the instructor. I use this in my class all the time.

We also have student presenters and small “law firms” gather together to prepare documents and argue cases. It’s just not the way it was. Classes are much more hands-on and connected with the practice, and I think it’s been a real boost for legal education.

These opportunities have also given students an opportunity to address access to justice for individuals and families in need. As “Access to Justice” is the theme of the 2018 Annual Meeting and your presidency, can you discuss why exposure to these issues will help students no matter what area of the law they the practice upon graduation?

I think is important for a number of reasons. We have a special calling and obligation as lawyers. Supreme Court Justice Sonia Sotomayor expressed it very well when she said, “We educated, privileged lawyers have a professional and moral duty to represent the underrepresented in our society to ensure that justice exists for all, both legal and economic justice.”

We do have an obligation. We are privileged to be able to get a law degree in the United States. Focusing on access to justice demonstrates to students what that obligation is and we learn about the struggles and issues of people we would not normally be exposed to.

Last week, as a matter of fact, I taught a course with six students at the regional jail here, “Literature and the Law.” We meet with inmates on a regular basis. It’s a real eye-opener for our students. It’s a different form of access to justice. Not just representation, but showing those who are less fortunate and underrepresented that lawyers in our society care about what happens to them and want to ensure that when they leave the incarcerated situation, they are better off than when they went in. That has a real impact on our students and I believe it should.

What is your outlook for legal education in the next 10 years? What can law schools look forward to?

My crystal ball is pretty cloudy right now. I’m not sure I could have predicted what happened over the past 10 years. Still, I believe we will continue to be devoted to our core curriculum. I don’t think we will see many changes there. We will remain focused on doing what we do best: develop critical thinking and problem solving among our students. We will accelerate the emphasis on the obligation of lawyers to serve our community no matter what kind of practice they are engaged with. There is so much going on now with law schools about how we teach, what we teach, who will teach, that it’s hard to say where we are moving. There have been many changes over the past decade. I would say stay tuned! There is much more to come.