
Book Reviews

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Failing Law Schools. By Brian Z. Tamanaha. Chicago: University of Chicago Press, 2012. 216 pp. \$25.00 cloth.

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The jig is up. Countless articles have exposed the disconnect between legal education and legal practice, and countless more have exposed the fibs of some law schools when it comes to reporting certain information to *U.S. News and World Report*. Whatever we have been doing wrong has finally caught up with us. Among the loudest and bravest voices excoriating law schools is Brian Tamanaha, the William Gardiner Hammond Professor of Law at the Washington University School of Law.

And “excoriating” is not an exaggeration. Even in his preface, Tamanaha starts out with the assertion that “law schools are failing abjectly in multiple ways” (p. ix). He attributes those failures to the American Bar Association’s process of self-regulation, the selfishness of law professors who want to research more and teach less, the corrupting influence of *U.S. News & World Report’s* rankings, and the business model of most law schools. In so doing, he gives voice to a lot of the frustrations that many of us feel when we hear our colleagues claim that the system is not broken and does not need fixing (e.g., Rapoport 2006, 2012).

What makes his book so interesting is that it is not the screed of an outsider who pulls together secondhand stories in order to speculate about legal education. Rather, he is a true insider. He is a law professor who has also served as an interim dean. (True to his gutsiness, he served as interim dean while he was still an untenured professor.) He has seen legal education from all three vantage points: law student, professor, dean. What he has seen troubles him greatly, and it should trouble all of us.

The book is divided into four sources of the crisis in legal education. He starts with the accreditation process, moves from there to the way in which faculty preferences work against changing legal education, turns to what I refer to as the “lies, damned lies, and statistics” involved with chasing the *U.S. News & World*

Report rankings, and concludes with some dire predictions about law schools' ability to continue along their self-destructive path. If ever there were a time to quote Yeats (1956, pp. 184–85)—“The centre cannot hold”—then, based on Tamanaha's book, this is it.

I devoured the book but, then, I am fascinated by the changes in the legal profession and how those changes might eventually lead to changes in legal education. I like reading the types of research done by folks like Bill Henderson, Andy Morriss, Jim Chen, Jeffrey Lipshaw, Paul Campos, Bernie Burk, Dave McGowan, and Deborah Jones Merritt. (I know—Campos is *persona non grata* among many of my colleagues, a fact that Tamanaha recognizes in his book, on pp. 77–78.) The problem is not with what Tamanaha is saying. The problem is that the people who most need to read (and think about whether they agree with) these critiques are not necessarily the ones most motivated to do that.

These critiques are scary. They paint a very real picture of an educational system with, at best, perverse incentives and, at worst, venal behavior. In short, they make us feel bad.

And they should. When we shift around our pedagogical priorities (like which students to admit; which students should get the big scholarships) to chase the ordinal ranking of a news magazine that does not even publish much news any more, we *should* feel bad—especially when the bulk of that magazine's rankings are based on painfully small sample sizes (the reputational surveys), inputs that say nothing about the quality of the school's educational program (LSATs and undergraduate GPAs), and easily manipulated outcome measures (placement).¹

But changing our priorities will, for all but a handful of elite law faculties, mean admitting that we cannot all be Yale, or Harvard, or Stanford, and that we must give up the attempt to replicate what those schools are doing. Tamanaha makes this point effectively, especially in the first and last sections of his book, where he quite rightly points out that the unitary model of legal education—three years of education taught primarily by tenured professors—is a very expensive model. He argues that more flexibility in the types

¹ Tamanaha ticked off a lot of people, including me, when he alleged that some schools, including mine, had obviously manipulated their placement statistics because there could be no way that schools that were not Yale could have Yale-like placement rates: “Incredibly, a number of law schools ranked far beneath Yale reported a notably higher employment rate, including George Mason (96.4%), Loyola Marymount (94.1%), Kentucky (94.2%), and UNLV (93.2%)” (Tamanaha 2012). Now that I've been behind the scenes at UNLV, I can state categorically that we've never lied; we've never fudged; we've never even squinted wrong about our statistics. Our placement numbers reflect the fact that many of our graduates go to small, mid-sized, or branch offices of larger law firms, so the recent crash in BigLaw job availability just didn't affect us much.

of law schools could give many law students a good education without necessarily training all of them to be leaders and policy-makers (pp. 23, 26–27, 172–76).

Giving up the chase to become Yale has real consequences in terms of the mobility of a school's students and faculty: The more schools depart from the traditional model, the less likely their graduates are to be considered for BigLaw jobs and the less likely their professors will move up to higher-ranked schools. (Of course, a BigLaw job is not the brass ring of careers any more.) There is a lot of hard-wired resistance to Tamanaha's assertions, and, in a market of declining enrollments, a lot of fear associated with changing the status quo. Some schools, though, have been prescient about the changes. (I had the pleasure of hearing some of the discussions that the Roger Williams University School of Law has been having. That's one school that won't be caught unawares.)

The first step in solving a problem, though, is admitting you have one. Even the people who think that legal education is just fine as it is need to read this book.² Otherwise, their confirmation bias will cause them to keep the status quo just long enough to find themselves irrelevant—or worse.

The bravest thing a law faculty can do these days is to read about the problems—many of our own making—in modern legal education. The best way to start is by reading this book.

References

- Penny, Timothy J. (2003) "Facts are Facts," *The National Review Online*, Sept. 4, available at <http://www.nationalreview.com/articles/207925/facts-are-facts/timothy-j-penny>.
- Rapoport, Nancy B. (2006) "Eating Our Cake and Having It, Too: Why Real Change Is So Difficult in Law Schools," 81 *Indiana Law J.* 359.
- Rapoport, Nancy B. (2012) "Changing the Modal Law School: Rethinking U.S. Legal Education in (Most) Schools," 116 *Penn State Law Rev.* 1119.
- Tamanaha, Brian (2012) "When True Numbers Mislead: 98% Employment 'Not Fully Accurate Picture,' ASU Dean Says," *Balkanization* blog (April 2), available at <http://balkin.blogspot.com/2012/04/when-true-numbers-mislead-98-employment.html>
- Yeats, William Butler (1956) "The Second Coming," pp. 184–5 in *The Collected Poems of W. B. Yeats*.

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² As Daniel Patrick Moynihan famously noted, "[Y]ou are entitled to your opinion, but you are not entitled to your own facts" (quoted in Penny 2003).