

# Reforming Indian Legal Education: Linking Research and Teaching

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For more than a half century, and certainly since Independence, the great minds in India have struggled to improve the nation's institutions, including its legal systems and especially its law schools. These grand, well-intentioned and high-minded efforts by scholars, politicians, legal practitioners, jurists and even U.S. foundations, largely have foundered. In 1948, a notable reform effort focused on teachers of the law, aiming to improve law schools and the lives of students in part by elevating faculty scholarship; in the decades that followed, attention went to students, their classes and qualifications, or to efforts to provide model study plans and schools.<sup>1</sup>

Yet another chapter in this long effort has opened with the submission of the recommendations from a working group on legal education.<sup>2</sup> These latest would-be reformers, summoned to their labors by the prime minister, no less, have emphasized the need to improve faculty and teaching standards in India's legal academies. They have urged that law schools take a more rational view of legal educators' work load and that they put greater emphasis on research and publication. This, of course, assumes that more research and publication also will boost the quality of teaching and faculty and raise the standards of legal education.

History makes a different case and it is crucial to review the past and present state of Indian law schools before taking on what arguably are the necessary next challenges to fix or improve them. The legal Academy everywhere seeks to find that institutional alchemy, in which a perfect balance is struck among the needs of students and the duties of their faculty to research, publish, teach, and to make a living, all while practicing law in the wider world. Regrettably,

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1. S.Radhakrishnan, *The Report of the University Education Commission (1948)*, <http://www.education.nic.in/cd50years/n/75/7Y/Toc.htm> (last visited Dec. 10, 2009).
2. *See* National Knowledge Commission, *Report of the Working Group on Legal Education (2007)*, [http://www.knowledgecommission.gov.in/downloads/documents/wg\\_legal.pdf](http://www.knowledgecommission.gov.in/downloads/documents/wg_legal.pdf) (last visited Dec. 10, 2009). This working group is a subcommittee of the National Knowledge Commission. The National Knowledge Commission was established in 2005 by India's prime minister to initiate reforms in the field of education. The objective was to establish India as a knowledge-based economy and society. The commission was chaired by Sam Putrida.

the record of reformers has been to ignore real life in India, failing to fully grasp the conditions, characteristics, and practices distinctive to this sprawling nation as it makes its great leaps forward. If they had taken these distinctively Indian traditions and issues into account, might the results of reform been better?

## Part I

### *Legal Education—The Pre- and Post-Independence Scenario*

Legal education in India long was in a deplorable state. Due to disinterest in change at the highest levels of the Academy, there was neither the vision nor the intention to prioritize the study of law. In India, lawyers were divided into categories depending upon the level of their legal training. Those educated in England were called barristers, having earned a barrister-at-law degree. Attorneys were those who actually did not have legal training and were the clerical staff of the courts or local traders. They used their wits to make money.<sup>3</sup>

But by the pre-Independence period, attorneys began to seek legal training in England, too, meaning the legal profession in India became dominated by those with English law degrees. This affinity for lawyers trained overseas had a detrimental effect on the quality of legal education in India, as rich families sent their children off to England to become barristers or attorneys, who, on their return home, were regarded as superior to those who earned their law degree in India.

This long-standing prejudice ensured that legal education in India became a part-time and not a full-time course of study.<sup>4</sup> Most law schools conducted classes at night, in turn insuring that their students worked by day.<sup>5</sup> Because classes were part-time, so, too, were their professors; this arrangement suited the schools because it kept costs down since they did not need to pay full salaries to their teachers. It also meant that Indian law school faculties were largely young, inexperienced men serving their apprenticeship at the bar; many had little interest in teaching, using their appointments to supplement their meager incomes.<sup>6</sup>

Law schools, thus, employed faculty who really were waiting for low-level government service posts, and the schools themselves displayed little interest in promoting serious legal research, teaching, and scholarship. The prevailing lassitude in Indian legal education further was fed by the typical two-year degree program, a course of study that simply was too short to develop the critical thinking and practical skills necessary to effectively practice law.

3. Samuel Schmitthener, *A Sketch of the Development of the Legal Profession in India*, 3 *Law & Soc'y Rev.* 337, 340 (1969).

4. Arjun P. Agarwal, *Legal Education in India*, 12 *J. Legal Educ.* 231, 232 (1959-1960).

5. *See id.*

6. Radhakrishnan, *supra* note 1, at 257-258.

Further complicating reform were the various types of schools offering legal education in India and the qualifications demanded of students to undertake the study of law. In the West, young people typically go to twelve years of elementary and secondary school, followed by four years of college or undergraduate work. Only then do they head to law school, which is considered a graduate, professional program. In India, however, some students start their law studies after a decade of primary and secondary school, followed by just two years of college or undergraduate preparation. But others study law after three years of college. While law degree programs in the U.S. typically run for three years, in India, they were of varied duration. While many students learned the law in programs akin to U.S. undergraduate studies (as many American undergraduate business majors might study their field), some were launched into legal studies more like graduate work in the West. In India, the law was taught in college divisions or departments in some institutions; in others, students attended stand-alone law schools. Some law schools were affiliated or part of major universities; others were not.

Legal education in India had reached such a sorry state that corrective action was demanded, and this began in 1948 with the government's appointment of the first commission designed to improve higher education across the board.<sup>7</sup> Headed by Prof. S. Radhakrishnan, India's second president, it included academics drawn from a number of fields. The panel's recommendations, especially in regard to law schools, were substantial and far reaching. The commission linked the low state of legal education to the lack of strong full-time law teachers and recommended the creation of tenure appointments. The group also sought to elevate the status of law professors to equal that of, say, faculty in the arts and sciences. Commissioners insisted that law schools and law departments in universities have research capacities and adequate facilities, including law libraries, arguing this was crucial to upgrade the quality of teachers who, in turn, were critical to the success of any reforms:<sup>8</sup>

The success of the educational process depends so much on the character and ability of the teacher that in any plan of university reform the main concern must be for securing an adequate staff with qualifications necessary for the discharge of its many-sided duties.<sup>9</sup>

7. *Id.* at 260-263.

8. *Id.* The commission also recommended a three-year LL.B. course, increasing the duration from two years, and that the pre-legal qualification should be a three-year degree course. These proposals meant that eligibility for an LL.B. course would require 10+2+3 i.e. fifteen years of general studies.

9. *Id.* at 69.

An ideal teacher, the commission stressed, should

...arouse the interest of the pupil in the field of study for which he is responsible. He has not merely to convey factual information and the principles and generalizations which accrue from them, he has to stimulate the spirit of inquiry and of criticism, so that minds may acquire the habit of exercising independent and unbiased judgment, and learn to discriminate between adequate and inadequate, relevant and irrelevant data, and to avoid the extremes of haste and indecision in arriving at conclusions.<sup>10</sup>

The only way teachers could fill this idealized role was to do research and keep current in their field. At the same time, the commission wanted the quality of teaching, along with research and publication, to meet the highest standards, observing:

[T]he right kind of teacher is one who possesses a vivid awareness of his mission. He not only loves his subject, he loves also those whom he teaches. His success will be measured not in terms of percentage of passes alone, not even by the quantity of original contributions to knowledge—important as they are—but equally through the quality of life and character of men and women whom he has taught.<sup>11</sup>

The commission clearly wanted research and publication to supplement not supplant teaching. To improve students' critical thinking and challenge their minds to the highest degree, teachers, too, had to be intellectually stimulated and challenged. Among other steps to assist this process, the commission sought to reduce teachers' work loads to give them time for research, recommending a maximum of eighteen hours of teaching per week.

But this focus on teachers' needs, in hopes of boosting the quality of scholarship and instruction, failed to improve legal education in India. The commission's 1948 recommendations largely were ignored and in the absence of significant legal scholarship, the standard of legal education remained appalling.<sup>12</sup> The commission had failed to address systemic failures in the legal Academy, such as the lack of promotional avenues for faculty, much less their abysmally low pay and inadequate secretarial assistance. Commissioners also never said how they would put in place or enforce their hoped-for higher standards in legal education. The best minds stayed away from legal teaching and the lack of good law teachers kept the quality of instruction low.

10. *Id.*

11. *Id.* at 70.

12. See Dyutimoy Mukherjee, *Law Schools and Legal Education in India*, [http://works.bepress.com/dyutimoy\\_mukherjee/2/](http://works.bepress.com/dyutimoy_mukherjee/2/) (last visited Nov. 15, 2009).

Then, in 1961, the Advocates Act created the Bar Council of India<sup>13</sup> to “promote and support law reform”<sup>14</sup>; “to conduct seminars and organize talks on legal topics by eminent jurists and publish journals and papers of legal interest”<sup>15</sup>; and “to visit and inspect universities....”<sup>16</sup> The council also was mandated to “promote legal education and to establish educational standards in consultation with Indian universities and the State Bar Councils.”<sup>17</sup> Further, the act empowered the council “to recognize universities whose degree in law shall be a qualification for enrollment as an advocate....”<sup>18</sup> But before the council could use its powers to determine the standards of legal education and recognize law schools, conflicts arose with India’s University Grants Commission Act, approved in 1956.

That earlier act had also empowered the University Grants Commission to set standards for the nation’s universities,<sup>19</sup> meaning there now were problems in overlap as to who regulated legal education in India. The council could recognize universities granting law degrees but those institutions did not necessarily meet the commission’s standards. The council, by controlling professional eligibility, could shape standards for legal education, but the commission determined what is good teaching.<sup>20</sup>

Fortunately, the groups agreed to coordinate their efforts to improve legal education. The council appointed a curriculum committee to develop and improve the LL.B. and the LL.M. courses and to initiate reforms in the course structure of the LL.B. The council and commission worked together in this effort. For instance, the council conceded that while it can articulate the curriculum, course content must be left to the discretion of the universities. This accommodation was acknowledged by the curriculum development committees the commission convened in 1988 and 2001.<sup>21</sup>

13. See The Advocates Act, No. 25 of 1961, India Code, *available at* <http://indiacode.nic.in/> (last visited Dec. 10, 2009).

14. *Id.* § 6(c).

15. *Id.* § 6(ee).

16. *Id.* § 6(gg).

17. *Id.* § 7(i)(h).

18. *Id.* § 7(i)(i).

19. See The University Grants Commission Act, No. 3 of 1956, India Code, the preamble, *available at* <http://indiacode.nic.in/> (last visited Dec. 10, 2009).

20. See Law Commission of India, 184<sup>th</sup> Report on The Legal Education & Professional Training and Proposals for Amendments to the Advocates Act, 1961, and the University Grants Commission Act, 1956 22 (2002), <http://lawcommissionofindia.nic.in/reports/184threport-PartI.pdf> (last visited Dec. 10, 2009) (The Law Commission noted “The UGC can lay down ‘standards of education’ and the Bar Council of India can lay down the conditions for eligibility of a law graduate to enter the legal profession”).

21. See Curriculum Development Committee, Law Report (2001), [http://www.ugc.ac.in/policy/law/law\\_chap1\\_2.pdf](http://www.ugc.ac.in/policy/law/law_chap1_2.pdf) (last visited Dec. 10, 2009). The conflict over jurisdiction relating to the recognition of law colleges and universities, however, is a persistent problem.

Unfortunately, both groups focused more on the needs of students—for example, tackling curriculum development—than on fostering scholarship. There has been no discussion of the steps that law teachers should take to improve legal education. Moreover, little attention has gone to the need for faculty research and critical thinking or the vital part that law teachers must play in challenging students' minds, both by imparting wisdom and in helping young people to think critically.

Instead, policy-makers have focused on developing courses necessary for professional training with little thought to encouraging faculty scholarship as a way to improve teaching and demonstrate to students why intellectual labor matters in the law. The vision from 1948, that legal education needed to emphasize quality faculty who research deeply, publish often, and teach well got lost or blurred. The council most profoundly displayed that focus on students, not teachers, with its proposal in the early 1980s to increase the time needed to earn the LL.B. to five years from the previous three-year course. The council expected this longer degree program would encourage better students to enter law school earlier and leave better prepared to practice law. To test the five-year LL.B., the council established the National Law School, Bangalore in 1986.

## Part II

### *A Law School with a Difference and the Ford Foundation*

The establishment of a model, national law school in India was not an isolated event nor was the impetus for it utterly original to the council. Instead, the suggestion for such a standard-setting institution can be traced to consultants with the Ford Foundation,<sup>22</sup> an institution that made considerable investments to try to improve Indian legal education.<sup>23</sup>

The Ford consultants were greatly influenced by the American law school system and they believed<sup>24</sup> that existing Indian law departments, such as the one at Banaras Hindu University could be homes for a three-year LL.B. program patterned on the U.S. law school system.<sup>25</sup> The foundation sought

22. See Jayanth K. Krishnan, *Professor Kingsfield Goes to Delhi: American Academics, the Ford Foundation, and the Development of Legal Education in India*, 46 *Am. J. Legal Hist.* 447 (2004).

23. Ford Foundation, *About Us*, <http://www.fordfound.org/about> (last visited Mar. 2, 2009). See Arthur Taylor von Mehren, *Law and Legal Education in India: Some Observations*, 78 *Harv. L. Rev.* 1180 (1965). Von Mehren was one of the Ford consultants who believed that successful reform of the Indian legal system would occur only through broader reforms in the Indian legal education.

24. See Krishnan, *supra* note 22, at 467. Thus, the various recommendations of the consultants of the foundation emphasized a three-year LL.B. course, patterned on the American law school system.

25. *Id.* at 463. As Krishnan points out, Banaras Hindu University was preferred by the foundation because of the presence of Prof. Anandjee, who was the dean of the faculty of law there. Von Mehren himself was impressed by the efforts of Anandjee, who was the first in

to reform Indian legal education by creating stronger and more focused law departments, which would offer the three-year LL.B. program with committed faculty teaching dedicated students.<sup>26</sup> Unfortunately for the foundation, the strategy backfired.

To start, the foundation failed to understand the roots for the failures of the existing law departments, as noted above.<sup>27</sup> Moreover, with continued political interference hindering even the best-intentioned reforms, the foundation repeated mistakes of previous reformers in focusing on improving the quality of the students while ignoring the law school faculty. Foundation consultants appeared to be unaware of the recommendations of the 1948 report on the role of a teacher. They were elated that the Banaras Hindu University readily agreed to their three-year LL.B. plan, and permitted students without a bachelor's degree to enter the program. But the consultants were less concerned about whether the school's faculty would maintain high standards in teaching or internalize a culture of critical thinking; there were no systemic changes to attract the best teachers or to ensure that the best students came to choose the law as their first love.

*Prof. Baxi and the Five Year Law Course—  
Setting the Stage for National Law Schools*

Enthusiasm for the Ford Foundation's reform plans in the 1960s and early 1970s originates with, among other sources, the Gajendragadkar Committee report in 1964 on the reorganization of legal education in the Delhi University.<sup>28</sup> That study made several observations—similar to those of previous reform efforts—as to why India's legal education system was in such an abysmal state.<sup>29</sup>

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post-independence India to introduce the three-year LL.B. program. The other universities, such as Delhi University, also required a bachelor's degree as a pre-legal qualification. But theirs was a two-year law program. To ensure a rigorous law program like those in American law schools, the foundation thought it should insist on the three-year law program. Von Mehren firmly believed that Anandjee had revamped the LL.B. program at Banaras Hindu University, making it more rigorous and, therefore, best-suited to implement Ford's reform vision for legal education in India. *See also* von Mehren, *supra* note 23, at 1185 n.3.

26. *See* Jayanth K. Krishnan, From the ALI to the ILI: The Efforts to Export an American Legal Institution, 38 *Vand. J. Transnat'l L.* 1255 (2005).
27. *See* Part I of this article for an overview of the systemic failures that were and are responsible for the appalling state of affairs in the Indian legal education.
28. *See generally* D.M. Papat, Legal Education and Continuing Legal Education in India, 8 *Int'l Legal Prac.* 7, 8 (1983). The committee was constituted in 1964 by the then-vice chancellor of Delhi University, Dr. C.D. Deshmukh. The committee was chaired by the then-chief justice of India, P.B. Gajendragadkar. The mandate of the committee was to recommend a thorough reform of legal education at Delhi University. *See also* von Mehren, *supra* note 23, at 1185 n.3.
29. *See* Krishnan, *supra* note 22, at 462.

For example, the committee recommended—as had the 1948 study—that students undertake three years of law school, entering with a bachelor's degree. But one notable recommendation of the Gajendragadkar committee was to set up model National Law Schools.<sup>30</sup> As is noted in Krishnan's article, the committee felt that,

[I]t would perhaps be a good idea if three or four model National Law Schools are instituted in our country....These National Law Schools...would be able to attract eminent law teachers who believe in the significance and importance of reorienting legal education in India and who would be prepared to dedicate themselves to that task.... [Also,] these National Law Schools would enjoy more freedom of action in trying newer and newer experiments in improving legal education.<sup>31</sup>

While this model was proposed in 1964, little action occurred until 1975, when the universities commission, in advocating that law schools also conduct workshops on legal education,<sup>32</sup> took up the idea anew as part of a report by the noted Indian jurist Upendra Baxi, then a law professor at the Delhi University. His thrust was to make the legal curriculum reflect social realities and problems, as he notes:

[T]he traditional conceptualization of the law in the common law world is largely in terms of judicial process. Such conceptualization leads, though not necessarily, to isolation of legal processes from social processes and purposes<sup>33</sup>...We have no problem of an overly technocratic legal education (as the advanced countries have). Rather, we have an insufficiently technocratic legal education. So if a sound technocratic legal education is socially relevant, let us first seek to provide it.<sup>34</sup>

While Baxi lamented the sad state of Indian legal education in India, he argued for reforms that would keep the bigger picture in mind, namely, to educate students about the problems and challenges facing their nation, a broader perspective that is common in teaching in advanced countries.<sup>35</sup> Baxi also offered a detailed analysis of the teacher's role, lamenting his lack of

30. *See id.* at 481.

31. *Id.*

32. Upendra Baxi, *Towards a Socially Relevant Legal Education*, <http://www.ugc.ac.in/pub/report/1.pdf> (last visited Nov. 13, 2009).

33. *Id.* at 6.

34. *Id.* at 9.

35. Thus, for example, in the 1948 report, the committee uses the example of the American law school system to support its view that a three-year law program is better than a two-year law program.



understanding, too, of the realities of India. This blindness to contemporary conditions makes Indian law teachers' lessons devoid of critical analysis, dry and insubstantial, he said, noting:

It is true that, by and large, the Indian law teacher expounds on a topic completely alien to the existential experience of the student.... Have we ever paused to wonder, when teaching private international law, how a student in Gorakhpur, Indore or Rajkot<sup>36</sup> can take serious interest in the mysteries of *Indyka v. Indyka*, involving Czech nationals, Polish divorces, English remarriages and divorce petitions and decisions of English Courts in such and related situations?<sup>37</sup>

Baxi demanded that Indian law faculty teach critical thinking, that they force students to put material in context, and, as the reformers in 1948 had sought, he wanted them to take on the key task of inspiring students to think. The professor disagreed with his predecessors from 1948 and the 14<sup>th</sup> Law Commission report as to how students should be taught. They believed that students best learn critical thinking, advocacy, and academic activism, not through passive lectures but by means of the case method used at U.S. institutions such as Harvard Law School. Yet, Baxi argued,

[A] peculiarly American pedagogy cannot simply be successfully transplanted in India. There are several intellectual and material prerequisites for any version of American case-method, which are simply lacking in India.<sup>38</sup>

The case-method approach, he continued, would not work in Indian law schools because important preconditions were absent including:

- The ability of the teacher to admit ignorance about issues which may come up in the class discussion. Such an admission would also require intensive preparation by the teacher before the next class so he or she could fill those gaps in knowledge. This kind of preparation ensures a continuous discourse between the teacher and the taught, requiring instructors to face the insecurity and the uncertainty of a classroom discussion.
- The ability of both the students and the teacher to critically evaluate assumptions. Neither students nor teachers should accept precedents without argument as to their reasonableness.
- Effective communication by the teacher to the students.
- Adequate resources for students. For example, if the class is assigned case readings, sufficient casebooks must be available.
- Students motivated to read and discuss classroom assignments.<sup>39</sup>

36. These are the names of Indian cities.

37. Baxi, *supra* note 32, at 11; National Knowledge Commission, *supra* note 2, at 262.

38. Baxi, *supra* note 32, at 14.

39. *Id.* at 15.

While Baxi saw the benefits of the case method, he also recognized that this method was fundamentally ill-suited to India and, further, that its adoption would actually undermine efforts to reform his nation's legal education. He suggested, instead, that Indian law schools introduce a five-year, integrated LL.B. program, which he wanted to follow as soon as possible after students had finished their primary-and secondary-schooling. He wanted the added law school time for social science courses such as economics, political science, history, international relations, and sociology, along with the study of law. Of this interdisciplinary and multidisciplinary approach to legal education, he wrote:

An endeavor to impart instruction in social science subjects within the framework of a law curriculum would enable the law teacher to meaningfully grasp the relevance of social sciences to law teaching. The law teacher will then be in a position to more adequately explore the social reality of the law and its processes. . . . An attempt to provide an integrated law course of this type would thus be most beneficial for Indian legal education in the long run.<sup>40</sup>

An early start to the study of law would draw more motivated students, Baxi believed, who, in turn, would pressure their teachers to improve their performance, benefiting the whole system of legal education.

This was the first time in post-Independence India that there was a concrete suggestion to lower the age of law students and promote interdisciplinary teaching of law. Baxi did not say how this all was to be accomplished, though he called for detailed deliberations. In the university commission workshop, however, it became clear that the majority of the legal fraternity opposed the five-year LL.B. course.

Opponents insisted that Indian teen-agers, who would be the equivalent of U.S. high school graduates, simply were too young and immature to choose a legal career and to commit to the five-year course of study. They also feared the teens lacked the academic skills at that age to succeed. While many clung to a three-year LL.B. program, others argued in favor of the five-year integrated program, reasoning this would bring the study of law on par with the education of other professionals like doctors and engineers.<sup>41</sup> Baxi, notably, also wanted to set up a National Institute of Legal Education<sup>42</sup> to train law teachers how to teach.

He also envisioned such an institute involved in "curricular planning. . . , law school admission tests, and related matters,"<sup>43</sup> because he recognized the dire need in the legal Academy for research, innovation, evaluation, and standard-

40. *Id.* at 31.

41. *Id.* at 47.

42. This was the name coined at the commission workshops while considering Baxi's suggestion. He had suggested the need to establish the special legal Pedagogy Institute.

43. Baxi, *supra* note 32, at 50.

setting excellence. He referred to the council's failure to establish National Law Schools;<sup>44</sup> evidently for Baxi, his institute for legal education was to be an alternative, a plan supported by those attending the university commission workshop.

*Professor Menon and the National Law School of India—  
A New Era in Indian Legal Education*

It is clear, then, that by the early 1960s the Indian legal fraternity had started thinking about an autonomous law school of national stature, though neither the council nor Baxi had advanced their respective reform plans.<sup>45</sup> It was left to the dynamic N.R. Madhav Menon, a law professor at Delhi University, to establish India's first National Law School.

He, like Baxi, resolved that legal education had to be elevated to the high standing of teaching in other professions such as engineering and medicine. Menon thought the way to do this was to put it in the hands of an autonomous institution that would run law courses professionally, unfettered by bureaucratic and political hindrance.

He wanted to remove law schools—financially, structurally, and administratively—from the existing university system. In light of the failed Ford Foundation reform, this made huge sense. Menon introduced radical measures to create a distinct identity for the national law school, and, in a key step that Baxi had advocated, he created a five-year law degree with a rigorous clinical program. His push for that clinical component ensured that these Indian law schools would be timely and relevant, as Baxi insisted they should be. Menon's emphasis was to develop students' analytical skills and to provide them with practical training through clinics and internships. At the core of his vision was the assumption that the faculty would be of the highest caliber.<sup>46</sup> Indeed, the national school was a success in terms of student quality and successful job placements,<sup>47</sup> and it became the prototype for several other law schools that have opened their doors since.<sup>48</sup>

44. After the Gajendragadkar report, the council had envisioned establishing an autonomous National Law School. But that remained just a vision until 1975 and there were no indications such an institution would be established.

45. Baxi had his reservations about getting involved with an institution where he would be forced to work under the auspices of the Chief Justice of India, who would be the ultimate head of the law school. See Krishnan, *supra* note 22, at 486-487.

46. See Krishnan, *supra* note 22, at 493.

47. See *id.*

48. See N.R. Madhava Menon, Halting Progress of Legal Education, *The Hindu*, Oct. 23, 2001, at 8.

Simply establishing the national schools has helped to change public perception about the value of the study of the law, which, in turn, has raised the caliber of law students. Most students for these law schools come from the middle-class or upper-middle class; few come from humble backgrounds but those who do receive scholarships or student aid.<sup>49</sup>

Jobs are the prime concern of almost all the students at these schools and this has influenced most students' choice of career paths. At the West Bengal National University of Juridical Sciences, typically 90 students out of 100 opt for corporate placements. The story is the same in the other law schools as well, where most students prefer corporate placements. Law firms in India and abroad are never in short supply of applicants who are also graduates of the best law schools in the country.<sup>50</sup>

But some students choose to become practicing advocates, dealing with clients and undertaking litigation. Others pursue further study, and still others become social activists, often joining non-governmental organizations. The new law schools have opened up varied career avenues for LL.B. graduates. Is it fair, therefore, to assume that Indian legal education finally has witnessed the reform so many have pushed for since publication of the 1948 report?

#### *Law Teaching, Law Schools and Legal Education—the Conflicts*

While many important strides have been made, including improvement in the quality of students undertaking the study of the law, a variety of structural problems still constrain India's legal academy. Because law schools pattern themselves after the national model, which stresses continual evaluation, teachers must devote seemingly endless hours to grading piles of essays and exams, projects, and papers. The faculty work load might be manageable if student-teacher ratios were rational, but because Indian law schools are largely self-financed, they must admit large numbers of students to remain financially viable. As a result, a professor may have to grade as many as 140 papers over a four to five month term. A heavy load of administrative duties compounds that time squeeze. The crushing work load means that instructors who want to research and publish don't get the time to do so.<sup>51</sup> Moreover, overburdened teachers don't have time to pursue the higher degrees that determine their promotions. Because law teachers earn the equivalent of professors in other disciplines with lesser demands, those in the legal Academy see little incentive to take on even more work.<sup>52</sup> These impediments, combined with the often

49. There is an absence of empirical data to support these observations. However the author, having witnessed the growth of one of the top law schools, can vouch for these statements from first-hand experience. As of now there are more than eleven national law schools in India.

50. See Malathi Nayak, Law Schools Struggling To Find Jobs for All Their Students, Mint, Jan. 27, 2009, available at <http://www.livemint.com/2009/01/27002046/Law-schools-struggling-to-find.html>.

51. See C. Raj Kumar, Rule of Law and Legal Education, The Hindu, July 4, 2006, at 8.

52. See C. Raj Kumar, Improving Legal Education in India, The Hindu, June 27, 2007, at 8.

ramshackle facilities, are powerful disincentives, discouraging those with talent who might think about joining legal academia and, ultimately, producing a stagnant pool of frustrated teachers who wish they never joined a law school in the first place.

For law school professors, then, little has changed since 1948. Teachers continue to be of sub-standard quality with faculty at the extremes—either those highly self-motivated and deeply devoted or those demoralized and at a dead-end. In the middle lie the average faculty members who love to teach but also want decent pay and a reasonable schedule. When they can find neither, they quit and go elsewhere, producing a constant churn of faculty that helps neither the schools nor individual students. The relentless attrition means too many faculty see law schools simply as a way-station to better jobs, meaning they also lack a vital commitment to their institutions. These conditions have produced faculties comprised disproportionately of young instructors for whom the law school is their own training ground. Students are critically aware that their teachers, from whom they must take instruction, criticism and discipline, are often close to their own age, sometimes producing an unhealthy environment in which students and faculty treat each other as adversaries.

### Part III

#### *Research, Publication and Teaching—Setting the Priority Right*

Even in a perfect world where India had surmounted all the other challenges confronting its legal Academy, scholars still would need a way to measure the quality of their research and its impact on improving teaching standards. The latest reform proposals from the working group state that research ought to be accompanied by publication in peer-reviewed journals, and, further, that an instructor's publication record should be a factor in his or her promotion, with special weight given to heavily cited articles. These recommendations are commendable as they are meant to establish India as a knowledge economy that will encourage legal scholarship and create legal scholars. At the same time, these proposals ignore realities on the ground.

To start, the working group ignores the demands of undergraduate teaching, a particularly pertinent consideration in that the duration of the LL.B. course in India is five years,<sup>53</sup> meaning students begin their study of law after high school or after ten years of schooling and two years of college. The average age of a student at the outset of an LL.B. program varies from eighteen to twenty years. Many law students, thus, are young and only moderately steeped in the rigors of academia. If the young people are schooled well, they have acquired academic basics, including initiative, techniques to study complex issues across many disciplines, as well as ambition for a legal career and both the discipline

53. However, some institutions like the Delhi University continue to offer a three-year LL.B. degree. The requirement for admission to this course is a graduate degree in any discipline. See Delhi University, [http://www.du.ac.in/show\\_department.html?department\\_id=Law](http://www.du.ac.in/show_department.html?department_id=Law) (last visited Dec. 18, 2008).

and desire for learning. As envisioned in 1948, their professors, in turn, are to act as their friends, philosophers, and mentors, guiding them toward their law degrees and creating an environment of intellectual dynamism. The working group sees the law schools as providing “leadership in the field of ideas.”<sup>54</sup> But for this to occur, classroom teaching must become the main activity that drives research and publication.

The working group’s recommendations, sadly, also come against the backdrop of the absence of any debate in India as to the role of college, university, and law school teachers. Contrast this relative silence with the lively dialogue in American universities on the ties, for example, between peer-reviewed publishing and good teaching.<sup>55</sup> Consider, for example, the valuable arguments of Ernest L. Boyer, an American described as “a leader of educators and an educator of leaders.”<sup>56</sup> In his influential report prepared for the Carnegie Foundation for the Advancement of Teaching, he took issue with the traditional deference given research and publication. He argued for a broader view of academic work, saying: “Theory surely leads to practice. But practice also leads to theory. And teaching, at its best, shapes both research and practice.”<sup>57</sup> Boyer saw value in four kinds of scholarship, namely the scholarship of discovery, integration, application, and teaching.<sup>58</sup>

He saw the scholarship of discovery as original research and knowledge creation, something now called cutting-edge work. By “integration” in scholarship, he meant how original research would be interpreted.

Those engaged in discovery ask, “What is to be known, what is yet to be found?” Those engaged in integration ask, “What do the findings mean? Is it possible to interpret what’s been discovered in ways that provide a larger, more comprehensive understanding?”<sup>59</sup>

54. National Knowledge Commission, *supra* note 2, at 10.

55. See Benjamin Barton, Is There a Correlation Between Law Professor Publication Counts, Law Review Citation Counts, and Teaching Evaluations? An Empirical Study, 5 J. Empirical Legal Stud., 619 (2008), available at [http://papers.ssrn.com/paper.taf?abstract\\_id=913421](http://papers.ssrn.com/paper.taf?abstract_id=913421) (last visited Dec. 10, 2009).

56. Messiah College, Biography of Ernest L. Boyer, Sr., [http://www.messiah.edu/boyer\\_center/about\\_boyer/](http://www.messiah.edu/boyer_center/about_boyer/) (last visited Dec. 18, 2008).

57. Ernest L. Boyer, *Scholarship Reconsidered: Priorities of the Professoriate* (John Wiley & Sons 1990) (A Special Report prepared for the Carnegie Foundation for the Advancement of Teaching).

58. *Id.* at 16.

59. *Id.* at 19.

Integrative work also may help to put original research in a new context, as a legal scholar might do by interpreting data collected by an anthropologist. As for those dealing with practical applications of the theory, Boyer noted that scholars here would ask:

How can knowledge be responsibly applied to consequential problems? How can it be helpful to individuals as well as institutions? And further, can social problems themselves define an agenda for scholarly investigation?<sup>60</sup>

Boyer rejects the notion that anything and everything can be regarded as the scholarship of application, or service-oriented scholarship; sitting on committees or advising student-run groups cannot be regarded as the scholarship of application. Instead, such work must have a direct link with the teacher's field of study and flow from his or her professional activities. On the other hand, work that shapes public policy clearly meets the scholarly criteria. The application as well as creation of knowledge counts.

As for the scholarship of teaching, Boyer regrets this area gets so little consideration or is even thought of as irrelevant, arguing, "[w]hen defined as scholarship, however, teaching both educates and entices future scholars."<sup>61</sup> Echoing Indian authorities in 1948, Boyer argues that teachers not only deliver information, they also help enable students to think critically. This means teachers themselves must develop the art of critical thinking and research.

[I]nspired teaching keeps the flame of scholarship alive. Almost all successful academics give credit to creative teachers—those mentors who defined their work so completely that it became, for them, a lifetime challenge. Without the teaching function, the continuity of knowledge will be broken and the store of human knowledge dangerously diminished.<sup>62</sup>

Boyer himself practiced what he preached, creating a new rank of "Distinguished Teaching Professor" at the State University of New York to reward teaching excellence and a commitment to student learning.<sup>63</sup> Further, he sparked a debate among American academics on the priorities of teachers, leading to an acceptance that faculty academic excellence cannot be determined solely through research and publications. He helped raise awareness in American higher education that excessive emphasis on research and publication can cause faculty members to disregard their teaching roles. For Boyer, classroom work is not mundane, drudge labor but rather a key part of the intellectual discourse.<sup>64</sup>

60. *Id.* at 21.

61. *Id.* at 23.

62. *Id.* at 24.

63. See Krishnan, *supra* note 22, at 481.

64. See generally Robert F. Bruner, The Keys to Superior Teaching, Present Value: An Informal Column On Teaching, Sept. 30, 1999, at 1, available at [http://papers.ssrn.com/paper.taf?abstract\\_id=184591](http://papers.ssrn.com/paper.taf?abstract_id=184591) (last visited Dec. 10, 2009).

Yet the academic divide remains, pitting advocates of research and publication against those leaning toward teaching,<sup>65</sup> and in India, we, too, may be mired in this endless argument. There is a special danger for Indians, however, for we may forget to pause and assess our priorities as educators. The recommendations of the working group may be just the start of a bigger conflict, as the heavy emphasis on research and publication will force our law schools to hire those with the maximum number of peer-reviewed publications,<sup>66</sup> but who, frankly, shirk teaching for their own research and writing.

Law schools, in turn, may lose their good teachers and, by rewarding only research and publishing, they may undermine the art of teaching and end up commodifying rather than disseminating knowledge.<sup>67</sup> While value should be given to research and publication, especially as it elevates the legal Academy, great weight and reward also should go to those who kindle the minds of tomorrow's scholars. Law schools must acknowledge that teaching also is an act of research,<sup>68</sup> and they must eliminate any dichotomy between research and teaching.<sup>69</sup> This divide will persist if we continue to rate publication higher than teaching, creating faculty internecine conflict.<sup>70</sup> The schools will suffer severely.<sup>71</sup>

If professors are preoccupied with research and publication, then students' interest in their course work will wither,<sup>72</sup> and the schools will produce dissatisfied lawyers with a poor understanding of the law. That, in turn, will affect the placement and recruitment of young people, without whom the law

65. See Ernest L. Boyer, *From Reconsidered to Scholarship Re-assessed*, *Quest*, 1996, at 129-139.
66. See Erik E. Lehmann & Susanne Warning, *Teaching or Research? What Affects the Efficiency of Universities* (2003), [http://papers.ssrn.com/paper.taf?abstract\\_id=393780](http://papers.ssrn.com/paper.taf?abstract_id=393780) (last visited Nov. 27, 2008).
67. See Lewis Elton, *Recognition and Acceptance of the Scholarship of Teaching and Learning*, 2 *Int'l J. for Scholarship Teaching & Learning* 1 (2008), available at [http://academics.georgiasouthern.edu/ijsotl/v2n1/invited\\_essays/Elton/Invited\\_Essay\\_Elton.pdf](http://academics.georgiasouthern.edu/ijsotl/v2n1/invited_essays/Elton/Invited_Essay_Elton.pdf) (last visited Dec. 10, 2009).
68. See Robert F. Bruner, *Ideas Have Consequences: Why Research Matters for Excellent Teaching*, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=411282](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=411282) (last visited Nov. 27, 2008).
69. See Julian Webb, *Taking the Culture of Scholarship Seriously?*, *Directions Legal Res.* (2007), available at <http://www.ukcle.ac.uk/directions/previous/issue14/editorial.html> (last visited Dec. 10, 2009).
70. See generally Marin R. Scordato, *The Dualist Model of Legal Teaching and Scholarship*, 40 *Am. U. L. Rev.* 367 (1990).
71. See Robert W. McGee, *The Ethics of Accounting Faculty Mobility at Undergraduate Universities: A Comment on Smith*, 2 *J. Acct., Ethics & Pub. Pol'y* 489 (1999), available at [http://papers.ssrn.com/paper.taf?abstract\\_id=242348](http://papers.ssrn.com/paper.taf?abstract_id=242348) (last visited Dec. 10, 2009).
72. See Baxi, *supra* note 32, at 31.



schools may find it difficult to survive. If students fear they won't find jobs after graduation, law schools will ultimately be unable to attract new students and remain financially viable.<sup>73</sup>

While Indian reformers have long argued, without empirical data, that research and publication will lead to good teaching, research conducted in America, Britain, Germany, and Australia has failed to demonstrate that connection.<sup>74</sup> Instead, those studies find that research and writing for peer-reviewed publications requires a different kind of orientation by faculty, who must have the time and energy to discover knowledge and interpret it. Those may not be the same skills required for teaching, which demands patience, humility, good communication skills, and empathy.<sup>75</sup> Still, as western scholars have demonstrated, because teachers must hear out students and help clarify their thinking on legal issues, good teaching can lead to good research; studies show that class discussions inspire teachers toward further research and publication,<sup>76</sup> proving that that teaching is, indeed, a form of scholarship.<sup>77</sup> If western institutions of higher education can strive to balance their view of the importance of research, publication, and teaching—even giving more weight sometimes to teaching—that should be the goal for India as well.

## Part IV

### *Conclusion*

Indian law schools should implement the recommendations of the knowledge commission with caution, giving proper weight to teaching as well as research and publication in peer-reviewed journals. Law schools also may wish to conduct the same rigorous peer-review of faculty classroom work, for example, by creating committees of outside experts to review and evaluate recorded lectures. Law schools should establish the criteria for assessing teaching quality based on course objectives, just as journals set standards for the papers they publish. The schools should also determine how to weight

73. Because law schools in India are mostly self-financed institutions, they need revenue from student fees. Further, for many students, a five-year LL.B. course is a gateway to better jobs and bigger salaries. Hence, they will find no reason to pay a higher fee to enroll in law school if their prospects after graduation are weak. They would rather join the traditional law colleges, which are subsidized by the state, and hence have an extremely low fee structure.
74. See Michael J. Prince, Richard M. Felder & Rebecca Brent, Does Faculty Research Improve Undergraduate Teaching? An Analysis of Existing and Potential Synergies, 96 *J. Engineering Educ.* 283, 283-294 (2007).
75. See David L. Spencer, Don't Devalue the Lecture Theatre, *The Australian*, Aug. 20, 2008, at 39, available at [http://papers.ssrn.com/paper.taf?abstract\\_id=1261846](http://papers.ssrn.com/paper.taf?abstract_id=1261846) (last visited Dec. 10, 2009).
76. See William Becker & Peter Kennedy, Presentation at the University of South Australia: Does Teaching Enhance Research in Economics? (Aug. 5, 2004), [http://papers.ssrn.com/paper.taf?abstract\\_id=601504](http://papers.ssrn.com/paper.taf?abstract_id=601504) (last visited Nov. 27, 2008).
77. See Jack R. Fay & Galen L. Rupp, Just What Is Skillful Teaching, [http://papers.ssrn.com/paper.taf?abstract\\_id=646741](http://papers.ssrn.com/paper.taf?abstract_id=646741) (last visited Nov. 27, 2008).

teaching evaluations in setting faculty pay. Because Indian law schools deal so heavily with undergraduate studies, teaching must be given primacy and there must be strong deterrents to those who seek only to focus on their own research and aggrandizement through publication. In the end, however, the goal must be clear—to emphasize a culture of legal scholarship in all its forms. True progress in India's legal Academy will be measurable and remarkable when reformers embrace this holistic approach, dealing with practical realities, recognizing the needs of students and instructors, and rewarding all scholarship—teaching as well as research, writing, and publication.