

Book Review

Deborah Maranhville, Lisa Radtke Bliss, Carolyn Wilkes Kaas and Antoinette Sedillo López, eds., *Building on Best Practices: Transforming Legal Education in a Changing World*, Matthew Bender, 2015, pp. 520, \$50.00 (hardback).

Reviewed by Jeffrey R. Baker

Introduction: The Canon of Reform and Pedagogy in Legal Education

Building on Best Practices: Transforming Legal Education in a Changing World is not a second edition. It is an ambitious addition to the work begun by *Best Practices in Legal Education: A Vision and a Road Map*.¹ This work sets out to examine “the best of current and emerging practices in legal education that will guide individual teachers and law school administrators in designing a program of legal education that meets the needs of the lawyers of tomorrow.” (xxxvii) It is “an attempt to synthesize important developments in legal education that have occurred since” *Best Practices* (xxxvii).

In 2007, *Best Practices* stood alongside *Educating Lawyers: Preparation for the Practice of Law*, the widely discussed *Carnegie Report*.² These two books, in turn, inherited the legacy of the famed *MacCrate Report, Legal Education and Professional Development—An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*.³

In 1992, Robert MacCrate published a report commissioned by the ABA to assess legal education and a perceived gap between law schools and the bar. The report concluded that there was no real gap: “There is only an arduous road of professional development along which all prospective lawyers should travel. It is the responsibility of law schools and the practicing bar to assist students and lawyers to develop the skills and values required to complete the journey.”⁴

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1. ROY STUCKEY ET AL., *BEST PRACTICES IN LEGAL EDUCATION: A VISION AND ROAD MAP* (2007) [hereinafter *BEST PRACTICES*].
2. WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PRACTICE OF LAW* (2007) [hereinafter *CARNEGIE REPORT*].
3. *LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP* (American Bar Assoc. 1992) [hereinafter *MACCRATE REPORT*].
4. *Id.* at 8.

The *MacCrate Report* sparked, or at least accelerated, a generational movement to reconsider the enterprise of legal education. Since the Langdell era, perhaps, law schools generally held themselves to be centers of scholarship and learning, teaching about the law, its nature and analysis, with relatively little emphasis on professional formation, deferring to the bar for the practical training of young graduates.⁵ The *MacCrate Report* gave new, persuasive and formal structure to a critical conversation about legal education. Law schools began to respond to mounting pressures to train law students how to practice, not merely to know the law and “think like lawyers.”

In the next decade, the *Carnegie Report* described three “apprenticeships” essential to an effective professional education: (1) the cognitive apprenticeship that teaches knowledge and ways of thinking; (2) the practice and skills apprenticeship that teaches forms of expert practice; and (3) the professional identity and purpose apprenticeship that imparts ethical standards and a deeper sense of lawyers’ roles and responsibilities in society.⁶ *Best Practices* took up the effort to identify specific steps and ideas to complete legal education across four stages of curriculum development: identifying objectives, selecting useful learning experiences for those objectives, organizing those experiences in an effective sequence, and designing methods of evaluating the effectiveness of the experiences.⁷ In tandem, these two projects gave a framework to the *MacCrate Report* foundation. *Building on Best Practices* continues the project of constructing a more functional, sustainable structure.

Even at its publication, Professor Roy Stuckey and the other authors of *Best Practices* noted that “any description of ‘best practices’ will soon be eclipsed as we refine our understanding of the desirable goals of legal education and how to achieve them.”⁸ *Building on Best Practices* takes up that mantle with four editors and fifty-nine authors from forty-four schools who attempt to address the complete scope of legal education in three parts. Part One is “Building an Effective Law School: Mission and Accountability.” Part Two is “Building a Program of Instruction that Meets the Mission.” Part Three is “Building and Maintaining an Effective Institution.”

5. See *id.* at 4-5. Fledgling efforts in clinical education in the early twentieth century provided pioneering models of legal aid practice for law students, but they were few and marginal even within their own law schools. See Peter A. Joy and Robert R. Kuehn, *The Evolution of ABA Standards for Clinical Faculty*, 75 TENN. L. REV. 183, 187 (2008). Only thirty-five law schools had forms of clinics in the late 1950s. *Id.* In the 1960s and 1970s, the Ford Foundation funded the Council on Legal Education for Professional Responsibility (“CLEPR”), which funded early legal clinics within law schools and broadened the concept of clinical legal education through the academy. See BEST PRACTICES, *supra* note 1, at vi-vii; see also J.P. “Sandy” Ogilvy, *Celebrating CLEPR’s 40th Anniversary: The Early Development of the Clinical Legal Education and Legal Ethics Instruction in U.S. Law Schools*, 16 CLINICAL L. REV. 1 (2009).
6. CARNEGIE REPORT, *supra* note 2, at 27-28.
7. BEST PRACTICES, *supra* note 1, at 2-3.
8. *Id.* at 4.

The Changing World

Building on Best Practices calls for transformation in a changing world. *Best Practices* and the *Carnegie Report* addressed legal education in 2007, near the height of an economic bubble, on the brink of the Great Recession and the eve of the persistent enrollment crisis.⁹ Its authors may have sensed, but did not directly confront, the crises soon to beset law schools with structural upheavals.

At least two competing challenges confront American legal education in 2016. First, law schools face economic crises after precipitous drops in applications and enrollment. Since a peak in 2010, the number of potential applicants taking the LSAT has fallen to 1987 levels, when there were twenty-nine fewer law schools.¹⁰ Although debate spirals about the causes, students surely have come to doubt the value proposition of three very expensive years of intense work and stress for increasingly doubtful prospects for lucrative entry-level jobs. Even since the end of the Great Recession, the enrollment crisis persists, so this is likely a structural reset and not just a fluctuating economic cycle.

Second, accreditors and state bars are imposing significant new regulatory reforms on law schools. In 2015, the American Bar Association adopted new accreditation standards that will be deployed over the next several years.¹¹ These include a new requirement that students complete more experiential course work to prepare for practice.¹² The New York and California state bars are experimenting with more dramatic requirements for admission to the bar, from mandatory pro bono to much heavier requirements for practical, applied experiences or courses.¹³ Accreditors also insist on new structures of outcomes assessment, rather than measuring inputs and programs, requiring schools to retool emphases and metrics for measuring success.

9. See generally David Barnhizer, *Redesigning the American Law School*, 2010 MICH. ST. L. REV. 249 (2010); Daniel Thies, *Rethinking Legal Education in Hard Times: The Recession, Practical Legal Education, and the New Job Market*, 59 J. LEGAL EDUC. 598 (2010); Brian Z. Tamanaha, *FAILING LAW SCHOOLS* (2012).
10. Mark Hansen, *Count Off: Law School Enrollment Continues to Drop, and Experts Disagree on Whether the Bottom is in Sight*, 101(3) A.B.A. J. (2015). This trend may be slowing, or it may have reached the bottom. See *Three-Year Applicant Volume Graphs*, LAW SCHOOL ADMISSIONS COUNCIL, <http://www.lsac.org/lscresources/data/three-year-volume> (last visited Mar. 2, 2016); see also *Latest LSAC Report (as of February 5): Applicants up 1.2% from this Time Last Year*, BRIAN LEITER'S LAW SCHOOL REPORTS (Feb. 11, 2016), <http://leiterlawschool.typepad.com/leiter/2016/02/latest-lsac-report-as-of-february-5-applicants-up-12-from-this-time-last-year.html> (with link to data from the Law School Admissions Council for early 2016).
11. AM. BAR ASS'N SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, STANDARDS REVIEW COMMITTEE, OVERVIEW OF CHANGES TO THE STANDARD FOR APPROVAL OF LAW SCHOOLS (2014).
12. *Id.*
13. Jeffrey R. Baker, *The Hope and Promise of California's TFARR Reforms*, CLINICAL L. PROF BLOG (Jan. 28, 2016), http://lawprofessors.typepad.com/clinic_prof/2016/01/the-hope-and-promise-of-californias-tfarr-reforms.html (with links to New York and California materials).

This is the changing world of legal education, pressed by intersecting forces that are often at cross purposes. Undeniable market pressures and regulatory reforms demand complex structural changes within resistant institutions often hidebound with inertia. Law schools must cut costs while rebalancing curriculum, faculty, programs, and outcomes across the three apprenticeships of professional education. *Building on Best Practices* joins the canon of writing and scholarship, from the *MacCrate Report* onward, that attempts to ground the best aspirations of legal education in practical, useful solutions.

Transformation in Three Parts: Lessons from the Assessment Movement

Building on Best Practices charts the path for institutional and curricular reform within the prevailing structure of outcomes assessment. Like the refined demands of new ABA accreditation standards, *Building on Best Practices* draws from the trend toward objective measurement of identifiable goals. Institutional assessment follows a constructive, progressive cycle: identifying outcomes and goals, developing means to measure progress toward those goals, measuring performance in light of the desired outcomes, evaluating results, and developing and implementing changes, before starting again.¹⁴

Thus, rather than evaluating a school based on its inputs, like the metrics of an incoming class, the library budget, or faculty research assistance, a school should measure its success based on how well it achieves the goals it sets for itself. *Building on Best Practices* proposes this process as the means to strengthen and improve the enterprise of legal education. Each law school must reckon what it wants to be in a topsy-turvy environment, then mark out a course to achieve it well within its own contexts and markets. It is not enough for schools to add or remove programs, to build a space, or to invest in a class with higher entrance metrics. Instead, schools must be able to articulate why they should do those things, to have a clear purpose for making the moves they make, and to use good tools to determine whether they work.

1. Creating an Effective Law School Mission

Building on Best Practices notes that the ABA requires a mission statement for accreditation, but it suggests that schools move beyond pithy, generalized marketing statements toward more meaningful articulations of institutional purpose (15-23):

A law school can best achieve excellence and have the most effective academic program when it possesses a clear mission, a plan to achieve that mission, and the capacity and willingness to measure its success or failure. Absent a defined mission and the identification of attendant student and institutional outcomes, a law school lacks focus and its curriculum becomes a collection of discrete activities without coherence (12).¹⁵

14. LORI E. SHAW & VICTORIA L. VANZANDT, *STUDENT LEARNING OUTCOMES AND LAW SCHOOL ASSESSMENT: A PRACTICAL GUIDE TO MEASURING INSTITUTIONAL EFFECTIVENESS* 18 (2015).
15. Citing GREGORY MUNRO, *OUTCOMES ASSESSMENT FOR LAW SCHOOLS* 3-4 (2000).

An effective statement of a school's mission should be clear, specific, and honest (15-16). It should prioritize values and goals that inform institutional decisions (17-19, 21). The mission then becomes the principal description of the outcomes the law school seeks to achieve and gives a foundation for assessing the school's performance toward that goal (26).

The authors give new emphasis to a developing realization in legal education that one size does not fit all. Law schools can and should fill different roles and spaces in markets of education and practice, and their missions should reflect their contexts. Four types of law schools serve as examples that may not be in any real competition with one another and that ought to define their missions differently, depending on their places in the world:

- (a) private elite programs that place their graduates most commonly in Wall Street practice, as diplomats and policymakers, or as academics;
- (b) public university law schools that have a special commitment to providing access to students from their home jurisdiction and preparing those students for a full range of practice, including service as prosecutors, civil servants, and judges;
- (c) private law schools of newer vintage that are committed to preparing "Main Street" practitioners to engage in solo practice and to meet the needs of those of moderate means; and
- (d) schools with a religious mission that seek to include faith-oriented goals as part of their mission (26).

As a best practice, acknowledging and embracing these distinct missions will inform how schools craft their respective programs and measure their success relative to their identity and context. This means schools should be free from measuring themselves against schools that may have very different purposes. It also suggests that schools should not chase national rankings that promote uniformity to the detriment of local needs and discrete values.

2. Building a Program that Meets the Mission

Building on Best Practices suggests that a school that has clearly articulated its direction and goals in its mission should commence to build or refine a program that meets that mission, squaring its moves with a clear and realistic strategy to fulfill its goals. This begins with a review of the curriculum in light of the established characteristics of effective education (45-65). This review should invoke discussions of the best balance among doctrinal, skills, and experiential courses, informed by the school's mission and articulated values (46-47).

A school with best curricular practices will create a thoughtful sequence for students to progress through its program, to build on foundations with integrated pathways from orientation to graduation (52-58). Schools should attend to deepening understanding of learning theory and science (67-72). This knowledge will inform other improvements necessary to design effective programs of teaching and learning, including attention to students' environment and well-being, integration of intercultural competence and sensibility, and commitment to teaching for transfer (67-99).

In a changing world of legal education and law practice, *Building on Best Practices* urges schools to incorporate emerging knowledge and skills that are essential to contemporary and future practice (253-412). These include a committed focus on professional formation, beyond the basic transmission of knowledge and technique. Professional formation requires a rich, applied understanding of the role of lawyers in society and the integration of personal values and commitments in a balanced professional life. As a best practice, in addition to professional imperatives of pro bono and public citizenship, law schools should incorporate teamwork, problem-solving, alternative dispute resolution, inter-professional and intercultural relationships, technology, and business literacy. Consistent with the school's mission, these ideas are essential to forming ready lawyers, beyond basic doctrine and traditional skills.

3. *Building and Maintaining an Effective Institution*

In its final major section, *Building on Best Practices* calls for deliberate assessment of institutions to promote disciplined progress toward desired outcomes (415-421). The authors propose that an institutional culture of assessment is critical to the best practices of legal education. This implicates decisions throughout the school, including traditional grading practices, and requires conscious commitment to implementing diverse experiences for students.

A clear, honest assessment of teaching and learning, informed by thoughtful balancing of doctrine, skill, and professional formation, will require a critical examination of faculty and resources (427-444). These conversations will require humility and creativity to consider how schools should retool for the changing world. If these conversations are to be successful, deans and faculty leaders must proceed with wisdom and courage against impulses to retrench into anachronistic models.

The authors observe that any transformation of institutions and curricula, with a century of tradition and staid practices, will encounter concerns and objections (453). Reconsidering the balance among scholarship, teaching, and service may strike at entrenched interests and inertia on faculties, especially where certain classes of professors have more power and security than others (432-443, 454). Cultural inertia may contribute resistance to the rapid upheavals of technology, new markets, and generational values. Haunting all of these conversations are popular national rankings that do not measure more meaningful, contextual missions of law schools and that skew honest assessment of school performance (455-457). Debates over cost and resource allocation, especially in an era of increased scarcity, will influence and disrupt the straightforward pursuit of best practices (458-459). These are not matters to mourn but realities to navigate within institutions committed to improvement.

Conclusion

Building on Best Practices is a worthy addition to the canon of literature on reforming legal education. Before the Great Recession, without today's pressing economic incentives, law schools made uneven strides to incorporate lessons

from *MacCrate*, *Best Practices*, and *Carnegie*. Today, compounding economic crises and escalating accreditation requirements make reform urgent, necessary, and inevitable. To demonstrate that law schools can still add value to careers and society, legal educators must grapple with structural changes that affect every aspect of teaching, learning and researching. *Building on Best Practices* provides diverse expertise and useful guidance on approaching these challenges and on improving and expanding the enterprise of legal education.