Book Review

David I.C. Thomson, *The Way Forward for Legal Education*, Durham, N.C.: Carolina Academic Press, 2023, pp. 160, $28 (paper)

Reviewed by Stephen Daniels

Rethink the whole damn thing. My words to capture the message of David Thomson's book *The Way Forward for Legal Education*. It is a slim volume, but one shouldn't be deceived by its modest length. It is ambitious, and the blurb on the book's back cover says some of the ideas might be radical. Among them: having a mostly hybrid first year, along with substantial parts of the second and third years incorporating a heavy dose of experiential learning. If it seems radical, it is soberly radical. *The Way Forward* is an unusual and important book for anyone interested in the state of legal education, the legal profession, and their joint future.

A reviewer's prerogative and a disclaimer are in order at the outset. First, as a reviewer, I'm not a legal academic and do not have a law degree. I'm a social scientist who studies access to justice, lawyers, law students, and legal education—hence my interest in Thomson's book. So, this is an outsider's take on the book—from an informed distance.

Second, I worked with Thomson in the past on a multiyear research project examining, among other things, students' views on and experiences with experiential learning. We published two empirical articles on the findings of that project, which involved surveys of students at Thomson's law school (University of Denver). My role in the project was primarily as data analyst—the number cruncher. Regarding Thomson's book, reference is made to one of those articles in Chapter Four for the finding that students have a "strong preference for learning through experiential courses and that many students had selected [Denver Law], in part on that basis . . . and that these students perceived value in those courses" (59).[1] Alas, I'm just a footnote—two, if you count the *ibid*.

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1. The articles are David Thomson & Stephen Daniels, *If You Build It, They Will Come: What Law Students Say about Experiential Learning*, 13 Fla. A&M U.L. Rev. 203 (2018); David Thomson and Stephen Daniels, *Looking Back: What Law School Graduates Say About Experiential Learning*, 56 Willamette L. Rev. 283 (2020). The reference in the book is to the first article.

Rethinking–The Book's Basics

While the immediate focus is legal education, Thomson's broader concern is the legal profession itself. Early in the book he says both are in a "worrisome state" (3) and both "are at an inflection point" (16). But the profession won't change if legal education–which produces the profession's new members–doesn't change first. It needs to change from the inside out–change the profession's worrisome state by changing the worrisome way in which new members are trained. Importantly, it is not another argument that there are too many lawyers. If anything, it says there are too few–or at least too few of the kind Thomson wants to see.

The Way Forward has a pervasive sense of urgency. It rejects piecemeal change and the too-often-used approach of muddling through as a sustainable model. Something different and more holistic is needed–the stakes are too high. "The time to stand by and suggest incremental changes is over. The legitimacy of the entire education enterprise is in doubt, and systemic change is needed" (126). Thomson calls for bold action (131). "We need a new model for legal education. This book attempts to offer it" (16).

It is one influenced by the 2007 Carnegie Report and the integration of its "three apprenticeships"–the cognitive, the practical, and the ethical-social[2] (13–16). The last is especially important for Thomson and forms the normative framework of his model. "Professional identity is governed only at its base by the Model Rules but is mostly about notions of duty and responsibility to society and the rule of law upon which that society is based" (55). Hybrid/online learning functions as the practical framework.

Stripped to its essentials, Thomson's model starts with eliminating the LSAT and moving much of the first year online in a hybrid format. There would be a test or assessment–a "baby bar" of some kind–to determine who could move on from the first year. The second and third years would also be hybrid, with a heavy dose of experiential learning–especially in the third year. The dose of experiential learning would come not just from the typical clinics, but from redesigned courses that include, for example, simulations–or even entire courses designed as simulations. Thomson strenuously rejects the idea of cutting the law degree to two years, because it would "reduce preparedness for practice" (84).

Weaving through this model is the ethical-social component that Thomson says should permeate all three years of law school–the formation of professional identity. Animating it is the idea of preparation for service, and "preparation for service is about more than competency to practice, but rather about much deeper human values" (107). He devotes an entire chapter to this component–"We Must Reorient Law School Around the Preparation for Service"–how it might be accomplished, and what it is. Thomson draws from "the ancient concept of *agape*" (108). It's more a mindset than a substance. This reorientation–deep change in organizational culture–is the greatest challenge of Thomson's way forward.

2. William M. Sullivan et al., Educating Lawyers: Preparation for the Profession of Law (2007), generally known as the Carnegie Report.

Urgent but Not a Crisis—Stepping Outside the Crisis Literature

Curiously, given the sense of urgency and the call for bold action, Thomson does not use the word "crisis" to describe the current state of affairs, as so many others have.[3] Thomson does not directly engage with what Bryant Garth calls "today's crisis literature,"[4] and wisely so. Doing a simple Google search would lead one to think legal education is (and has been) always on the verge of one crisis or another.[5] Crisis is a favorite characterization in this arena and others.[6] It is a sure attention-getter (often shrill), an indicator of seriousness, and a demand for drastic action in the face of impending doom. There's an immediacy and sense of dread and calamity to the idea of a crisis—to put it simply, the s**t's about to hit the fan.[7] Turning again to Garth, he calls such characterizations the "literature of catastrophe."[8]

For Thomson, what would be the point of engaging with this literature? The answer may be in the broad swath of legal education that is Thomson's interest. Nonelite law schools (the broad middle) and their alleged failings are the targets of much of that literature. They are, notes Garth, "the schools that are easier to get into and tend to serve those who are relatively less privileged—less likely to have the enriched educational advantages that enhance the opportunity to gain access to elite schools."[9] Thomson appears uninterested in the elite or near-elite schools. His interest is in the schools that train almost all lawyers—some (perhaps most) of which are the kinds of schools at the heart of the crisis literature. For Thomson this is the real world of legal education and where the legal profession's future will be made. He wants to help shape that future rather than offering just another bit of crisis-mongering.

One can get cynical about anything labeling legal education as being in crisis—and not necessarily the same crisis as the previous one. Legal education,

3. *See, e.g., The Crisis in Legal Education*, 67 American Academy of Arts & Sciences Bulletin, no. 3, Spring 2016, at 9, https://www.amacad.org/sites/default/files/bulletin/downloads/bulletin_Spring2016.pdf. For a trenchant alternative, see Bryant Garth, *Crises, Crisis Rhetoric, and Competition in Legal Education: A Sociological Perspective on the (Latest) Crisis of the Legal Profession and Legal Education*, 24 Stanford L. & Pol'y Rev. 503 (2013).

4. *Id.* at 523.

5. References with crisis in the title go back generations, e.g., Julius Cohen, *Crisis in Legal Education*, 15 U. Chi. L. Rev. 588 (1948); Karl Llewellyn, *The Current Crisis in Legal Education*, 1 J. Legal Educ. 211 (1948).

6. For instance, the idea of "crisis" is ubiquitous in the rhetoric of tort reform. *See* William Haltom & Michael McCann, Distorting The Law: Politics, Media, and the Litigation Crisis (2004).

7. A piece of cartoon clip art by Mark Lynch, *When It Hits the Fan*, CartoonStock (2008), https://www.cartoonstock.com/directory/h/hits_the_fan.asp, illustrates the idea. It shows a man on the right of the cartoon panel carrying a large fan and a man on the left carrying a large bag of manure. Neither sees the other coming and they will quickly collide—the consequence is clear.

8. Garth, *supra* note 3, at 518.

9. *Id.* at 515.

like any complex institution, doesn't live in a static environment, and it can react. Still, some will say legal education has been relatively resistant to fundamental change. Adjustments, to be sure, and sometimes real changes, have been made (like admitting women and people of color); but as Thomson notes, "the basic model of legal education, created by Christopher Columbus Langdell, the first Dean of Harvard Law School has remained largely in place" (17). Interestingly, and despite the gravity of some of Thomson's ideas, one could ask just how far Thomson is stepping outside of the basic model. Perhaps not all *that* much. Thomson clearly is not prepared to throw up his hands and say good riddance to the entire enterprise—but maybe just certain parts.

Why Now? COVID and a Window of Opportunity

That persistent sense of crisis comes from legal education's inertia in a non-static environment. Rather than crisis, for Thomson it is frustration in the face of inertia. He lists six interrelated matters that make for what he sees as the current inflection point and answers the question "why now"—why it makes sense to lay out a plan for the way forward now. For Thomson it's the decades of criticism of legal education; the challenge of diversity; student debt; the disruption caused by COVID; unmet legal need and access to justice; and a conviction that "legal education must play a greater role in restoring our democratic institutions" (3)

It's hard to argue about these matters because, with the exception of COVID, we've heard about them before. Perhaps that is why Thomson really doesn't engage the literatures surrounding them. Why belabor the obvious? What can he add? The problems are real, even if one is not viewing them from the edge of the abyss. Still, it would be interesting and helpful to hear Thomson's take on something like the 2014 *Report and Recommendations of the American Bar Association Task Force on the Future of Legal Education*[10] or the 2020 *Principles for Legal Education and Licensure in the 21st Century: ABA Commission on the Future of Legal Education*.[11] Each explored fundamental change, generated substantial discussion, commentary, and debate, but neither was approved by the ABA House of Delegates, leaving a host of open questions. Not the least of these questions being, just how resistant is legal education to meaningful change?

Those who know Thomson's earlier work might portray him as a legal academic wanting reform in legal education. A better characterization would be what the political science literature calls a policy entrepreneur—someone who advocates for particular proposals or action and is willing "to invest . . . resources—time, energy, reputation, and sometimes money—in the hope of future return."[12] Among

10. The *Report*'s recommendations were quite controversial and cover areas relevant to Thomson's ideas. https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.pdf.

11. https://www.americanbar.org/content/dam/aba/administrative/future-of-legal-education/cfle-principles-feb-2020-final.pdf.

12. John W. Kingdon, Agendas, Alternatives, and Public Policies 122 (1995).

the returns is the objective to "affect the shape of public policy."[13] Thomson ultimately wants to affect the shape of legal education, but, more immediately, he wants to shape the agenda and the discussion of change.

For many years Thomson has been a leading player arguing for changes in legal education through his writings, presentations, and, especially, the conferences he has helped organize.[14] His ideas on change come together in a cohesive argument in *The Way Forward*. Key among them are the ideas of professional formation, experiential learning, hybrid learning, pedagogy, and assessment. Basically, it's the book's table of contents: "Most of my scholarship over the last fifteen years has centered around the topics addressed in this book" (xx), and the book does engage with the literatures surrounding these issues.

The inclusion of COVID in Thomson's inflection point list is different. It's not a legal education problem in the way the other parts of the list are. Thomson says it has caused a "massive disruption" (3). It is a disruption important for a key interest of his—hybrid and online learning. Bit by bit, the ABA has been allowing more flexibility in those areas.[15] Importantly for him, the response to COVID shows that hybrid and online learning can work. "The debate about whether we should teach law online is over. Indeed, it has been over for some time, but the COVID pandemic proved to many skeptics that this can work" (82).

As a window of opportunity for this one area of special interest for Thomson, it gives us the clue as to the "why now" for him. Why he is offering his plan now when "there have been decades of criticism of legal education" (3). The pandemic's disruption opens a window of opportunity for a wide set of changes in the way legal education is done—not just hybrid/online learning—and he wants to exploit it. He says, "[W]e need to use the pandemic as an opportunity to reflect on the shortcomings of what we had before, and to build a new format for legal education" (80). The pandemic's disruption led him to think broadly, creatively, and holistically—to rethinking the whole damn thing. Importantly, Thomson is not saying it's an opportunity to enact changes right away. Instead, it's Thomson as policy entrepreneur using an opportunity to affect the shape of the agenda for discussion.

He wants the window of opportunity to be wide enough to accommodate a host of emerging or existing trends he aims to build on in creating a cohesive plan for legal education. The "Conclusion" tells us that while the proposed changes may "seem daunting and difficult . . . they are neither. Indeed, gradual movement down this path is already strong—we just may not have noticed it

13. *Id.* at 123.

14. Most recently, the 2019 and 2022 conferences Online and Hybrid Learning Pedagogy: Towards Best Practices in Legal Education. The conference Interrogating the Hidden Curriculum: Implications for Professional Identity is planned for Fall 2023. All three at the University of Denver.

15. "The St. Mary's University School of Law is proud to offer the *first fully online J.D. program accredited by the American Bar Association in the nation*." *Online J.D. Program*, St. Mary's Univ. Sch. L., https://law.stmarytx.edu/academics/programs/jd/online-j-d-program/ (emphasis in original).

yet . . . . The signs are all around" (129). If so, Thomson wants to show us and to lead us.

When he talks more specifically, Thomson is careful to say that something is already out there, as a known problem we recognize or as an improvement accepted or required. For example, eliminating the LSAT is among the very first changes Thomson proposes: "The LSAT must be removed as a criterion for admission and the law school admissions process must be overhauled" (9). The movement to make the LSAT, or other admissions tests, optional has been underway, and some schools have moved away from it. The ABA does not yet appear willing to abandon the requirement for some kind of admissions test, but the movement is underway.[16]

Thomson has long championed experiential learning, and it is an important part of *The Way Forward*. Chapter Four's title is "We Must Expand Experiential Learning." Thomson references the importance of the 1992 MacCrate Report and the 2007 Carnegie Report for pushing the movement for more experiential learning in law school (12–14), and Chapter Four's discussion is well referenced in the contemporary literature on experiential learning. Thomson notes the discussion about experiential learning "has become all the more important because the American Bar Association . . . now requires all law students to take six hours of experiential courses as a part of their course of study"(60).

Although it doesn't get its own chapter, assessment is crucial in Thomson's scheme. It is another trend he is riding. "There has been much discussion recently in legal education about the need for improvements in assessment. The American Bar Association has responded by adding an assessment requirement to the accreditation standards, making the subject even more urgent" (27). He calls for a culture of measurement and assessment that supports continuous improvement. Assessment should be pervasive, taking place at four levels: student; course; program; and school. There are two kinds of assessment—formative and summative. The difference, Thomson says, "can be explained this way: formative assessments are designed primarily to *improve* learning, while summative assessments are designed primarily to *judge* learning" (34, emphasis in original). He has a certain scorn for the usual multiple-choice exams, which Thomson says have nothing to with formative assessment and fostering learning. He does, however, spend the time to explain how such exams can be appropriately used (34–37).

Thomson has also long championed the formation of professional identity and its integration into the entire law school experience. Chapter Three's title is "We Must Integrate the Formation of Professional Identity." His touchstone is the 2007 Carnegie Report and the discussions it has generated on professional identity. Here again, he points to an opportunity: "It is particularly important now, as the ABA has added a requirement to the accreditation standards that

16. *See* Jacey Fortin, *Do Law Schools Need the LSAT? Here's How to Understand the Debate*, N.Y. Times (Feb. 17, 2023), https://www.nytimes.com/2023/02/17/us/law-schools-lsat-requirement.html.

law schools 'shall provide substantial opportunities to students for the development of professional identity'" (39–40).

It's not so much the specific matters making up Thomson's inflection point that provide the impetus for "why now." It's tying together a set of emerging trends he sees to construct a cohesive model for a way forward. Building on emerging or existing trends also has the benefit of presenting his proposals as feasible. In a way, it is a preemptive move to counter likely critics.

If anything is radical, it is this tying together. In this sense, Thomson's is a creative and provocative work of synthesis in the wake of an exceptional disruption. Identifying a window of opportunity is one thing, but windows of opportunity don't stay open forever. They can narrow or close—hence Thomson's urgency in affecting the discussion of change. This makes the book important for anyone concerned about legal education's future, asking the reader to think about familiar matters in very different ways—not as individual issues, but as parts of a whole. One doesn't have to accept Thomson's analysis of the opportunities or the ways in which he wants to exploit them, as the book still leaves much to ponder. Still, there's another reason for the book's importance.

Why Thomson? A Unique Perspective Seldom Heard

A corollary to the "why now" question is the question of "why Thomson." Whose voice are we hearing, and why listen? Thomson's interest, as noted above, is in the schools that train almost all lawyers—many of which are the targets of the crisis literature. In the deeper past, the critics of such schools may have been "the deans of the elite schools,"[17] or the leadership of the organized bar.[18] The contemporary purveyors of crisis and catastrophe, in Garth's view, "tend now to come from bloggers and the set of schools just outside the so-called top rank . . . . But the targets are again the schools that are easier to get into and to serve those who are relatively less privileged …. The popular press is happy to quote them."[19]

Thomson is certainly a critic of contemporary legal education—otherwise, why devote an entire book to rethinking it? He is, however, poles apart from the kinds of critics Garth discusses. In a sense, Thomson is from another world, and addressing those critics directly is beside the point. Why let them dictate the terms of debate? Instead, we're hearing a teacher's voice. Thomson sees himself as a teacher first and foremost. At times the book is a paean to teachers and the joys of teaching; but make no mistake—it is also a book about Thomson's critique of too much bad law school teaching, among other things.

What makes Thomson's argument particularly credible is that his is the voice of the contract, nontenure-line faculty—the voice from the shop floor, the trenches, or however one might characterize it. Thomson talks about (actually,

17. Garth, *supra* note 3, at 515.

18. *See* Jerold Auerbach, Unequal Justice: Lawyers and Social Change in Modern America 40, 108–129 (1976).

19. Garth, *supra* note 3, at 515.

bemoans) "the bifurcated status of faculty" in law schools—"some tenured, and others with a lower status, such as a short or long-term contract. This can be unhealthy and create an 'us' vs. 'them' dynamic" (20).

He goes on to say:

> But we are not just a law school. We are also a lawyer school. And so we also need faculty who have made a long-term commitment to the institution and to their teaching who come from a different perspective and background, and who focus less on doctrinal development in the law and more on teaching the skills our students need to become the lawyers they come to us to become . . . (21).

For him, both the traditional scholar and the teacher—the law school and lawyer school—are needed on an equal footing. He's from the lawyer school, one of "them," [20] and he has something to say. While it does have an edge to it, one that will be familiar to many on his side of that great divide, *The Way Forward* is antidote to the literature of catastrophe and its purveyors.

A Soberly Radical Book

Radical—Kind Of

The Way Forward is a soberly radical book on changing the nature and structure of legal education—and, for Thomson, hopefully the legal profession. If it is indeed radical, it's because the book is an argument for a wholesale rethinking of the nature and structure of legal education as a solution to a set of problems facing legal education and the legal profession. Radical, because Thomson offers a cohesive model, covering a host of specific changes from admissions to assessment to hybrid and online learning to the normative idea that should integrate all the parts and be the guiding star. Most radically, that integrating idea points to rethinking the culture of legal education and how we envision a lawyer. Again, one chapter's title is "We Must Reorient Law School Around the Preparation for Service."

Legal education faces two interdependent and very practical challenges, ones it shares with higher education generally: attracting enough tuition-paying students to keep the lights on (most schools are tuition-dependent); and doing so at a cost a broad range of students can bear (cost is perhaps the greatest barrier to access and diversity). This is where Thomson starts. As noted above, this means eliminating the LSAT. This, in turn, means having a more holistic admissions process that could bring a larger and more diverse set of students to law schools and the profession. The idea is to widen opportunity and access to legal education. Diversity is "mission critical . . . . We must never forget that we are preparing our students *for their future, not our past*, and they will live in a much more diverse world" (20, emphasis in the original). But how to do this?

20. In the book's dedication, Thomson says of himself: "As a second-class citizen of the academy, I have often been overlooked and underestimated as a scholar, and as I switched from practicing law to teaching it, I bought into much of that view" (xix).

Hybrid learning is the key for dealing with the intractable problem of cost and debt for the student and for attracting a more diverse student body as a key result. Thomson's plan is to hang the structure of legal education on a hybrid framework. Redesigning the first year as largely hybrid/online along with a similar, but to a lesser degree, redesign of the second and third years would lower the cost to the student (86–102). In terms of content, the curriculum would look different only in terms of when a student would take certain courses. Conscious of not just cost to students but also operating revenue for the schools, Thomson argues that revenue should be essentially net neutral given a large, lower-cost hybrid first-year class (for both student and school), and smaller second- and third-year classes relying heavily on hybrid/online modalities (118–20).[21]

Drawing on the lessons learned from the pandemic's disruption to the operation of legal education, Thomson thinks his hybrid plan will work. After some initial bumps, law schools and law teachers were able to adapt and move forward with minimal financial costs. After reviewing the extant survey data, he says students are positive about hybrid/online learning. Looking at survey results on student assessments of online and in-person instruction during the pandemic—the gap between the two narrowed in favor of online from 2021 to 2022—Thomson draws the conclusion "that law professors can adapt"[22] (83).

This scheme can work—a large first-year class and smaller second- and third-year classes—if there is "a rigorous test at the end of the first year" (123). The idea is to "admit a much larger cohort of students for a primarily online first year of law school," with maybe half passing that test and going on to the second year (why about half, Thomson doesn't say) (26). But what happens to the students who don't pass or who don't take the exam after deciding law is not for them? In Thomson's scheme, with a larger cohort of first-year students, there would be a fair number in such circumstances.

His answer opens another window for a change to legal education framed by an emerging trend. Assuming they successfully complete the first-year classes, students would be awarded a master's degree in American Law (25). This would not be the familiar LL.M., and a number of law schools already offer the kind of degree Thomson envisions. For example, Washington University in St. Louis School of Law offers the online Master of Legal Studies. "The online Master of Legal Studies (MLS) program is designed for professionals who can benefit from legal training at work but do not wish to become practicing attorneys."[23] Especially intriguing is Thomson's idea that some may use a master's degree to become what he calls a Limited License Legal Practitioner (LLLT)—trained, licensed, and regulated nonlawyers authorized to perform substantive law-related

21. Regarding lower costs for students, Thomson also argues for more hybrid textbooks and other teaching materials (77–79).

22. It would be interesting to hear Thomson's views on the California online law schools—like Concord Law School at Purdue University Global, which has been in operation since 1998, https://www.concordlawschool.edu, or Monterey College of Law, which has been in operation since 1972, http://www.montereylaw.edu.

23. https://onlinelaw.wustl.edu/mls-degrees/online-mls/.

work without an attorney's supervision in one or more well-defined areas of law.[24] Usually this means family law or housing issues.

LLLT is the name used in Washington state, where the first program for such nonlawyer professionals was approved in 2012.[25] Similar alternative legal professionals (with other names) exist in a small number of states, Utah being the most prominent.[26] All are aimed at providing greater access to justice for people with limited means (one of the six problem areas making up Thomson's inflection point). These positions tend to have fewer and different educational requirements (targeted for the allowed practice areas) than Thomson's master's degree recipient. None of the programs has a master's degree requirement; instead, it is an associate degree with extra requirements—especially hands-on or experiential requirements.

Such programs share Thomson's concern with cost and its effect on access to justice, along with his interest in using hybrid/online modalities. With a more stripped-down—but appropriate—training, much or all easily accessible in a hybrid/online format provided by a less expensive community college or state educational institution, the potential nonlawyer professional could complete the training quickly and with a low amount of debt, if any. The idea, then, is that such nonlawyer professionals would be able to serve clients for whom a licensed attorney is prohibitively expensive. Thomson thinks the same could work with his master's degree recipients.

Unfortunately, Thomson doesn't really develop this idea as much as one might like. Adding a new part to legal education that is responsive to the legal profession's shortcomings regarding access to justice would broaden legal education's role. It's not clear, but perhaps Thomson is rethinking the delivery of legal services broadly and the role law schools can play in a reconceived model.[27]

He thinks that the interest in LLLT-like programs will continue, and should. "Expansion of LLLTs will go a long way toward addressing the access to justice issue" (25). This means "law schools have an opportunity to serve a new market of students who seek a cheaper and shorter certification that gets them to the

24. A more formal definition may be: "a legal professional licensed to provide legal services or practice law without the supervision of a licensed lawyer, or who is authorized to provide representation or legal services and is subject to regulatory oversight by a State or Federal agency." *Jurisdictions' Activity on Alternative Licensed Legal Professionals: May 2015*, Nat'l Org. B. Couns. 1, n.1 (May 18, 2015), https://cdn.ymaws.com/www.inbar.org/resource/resmgr/Conclave/Alt_license_table_May_18___20.pdf.

25. *In re* The Adoption of New APR 28—Limited Practice Rule for Limited License Legal Technicians, Order No. 25700-A-1005 (Wash. 2012). *Also see* Brooks Holland, *The Washington State Limited License Legal Technician Practice Rule: A National First in Access to Justice*, 82 Miss. L.J. Supra 75, 89, 124–27 (2013), and Stephen Daniels & James Bowers, *Alternative Legal Professionals and Access to Justice: Failure, Success, and the Evolving Influence of the Washington State LLLT Program (the Genie is Out of the Bottle)*, 71 DePaul L. Rev. 227, *passim* (2022).

26. *See Licensed Paralegal Practitioner Program*, Utah State Bar, https://www.utahbar.org/licensed-paralegal-practitioner/ (last visited July 14, 2023).

27. *See* Kathryne Young, *What the Access to Justice Crisis Means for Legal Education*, 11 UC Irvine L. Rev. 811 (2021).

LLLT" (5). And "law schools have an opportunity to meet that market with new revenue-generating courses and certifications" (125). Those concerned about access to justice might want to know more about Thomson's thinking.

Still, such programs have been and remain controversial and can face fierce opposition from within the organized bar. Although Washington state was the first to approve such program, it was also the first to end its program, judging it a failure.[28] No new LLLT licenses will be issued there after July 31, 2023.[29]

A third perennial challenge legal education faces is deciphering its purpose and nature—what animates the whole enterprise. For Thomson it's the formation of professional identity, which should be integrated throughout the curriculum. The general idea is not new, but the battleground has always been over the substance of what it means to be a lawyer and how to train students accordingly.[30] Thomson is a part of long line of thinkers in the legal academy who have grappled with this issue, but it is likely that few have done so from his perspective. If the book is especially radical, it's in Thomson's response to this perennial challenge.

For Thomson, following the Carnegie Report, professional identity is more than the formal rules of professional behavior and responsibility, and more than the "less noticed, and less implemented" "Values" part of the MacCrate Report (13). Thomson finds in both sources, more explicitly in the former, a sense of morality. Something "above the line," as he puts it, something beyond the idea of professionalism and the formal ethical rules. In *The Making of a Public Profession*, Francis Zemans and Victor Rosenblum call it a "morality of aspiration" that speaks to upholding "standards above those enforceable through a code, standards that take cognizance of a lawyer's and the legal system's role in achieving justice."[31]

As such, it is about a mindset and identity a student develops, but ones that are not formally taught. One of the reasons Thomson so favors experiential learning is its importance for the formation of professional identity and its integration throughout the curriculum. He says,

> Professional formation in law happens in the context of work that is important for the welfare of society, and it involves judgment and concepts of one's personal identity as a human being and as a citizen and member of that society. Because

28. Daniels & Bowers, *supra* note 25, at 259–61.

29. *Decision to Sunset LLLT Program*, Washington State Bar Association: Sunset of LLLT Program (Mar. 31, 2023), https://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/limited-license-legal-technicians/decision-to-sunset-lllt-program.

30. The second issue of the first volume of the Journal of Legal Education contained a mini-symposium titled "Education for Professional Responsibility." It included three substantive essays authored, respectively, by Lon Fuller, Wilber Katz, and Karl Llewellyn, along with a summary report on the conference by Miguel de Capriles. Each substantive essay was originally part of a larger multidisciplinary conference organized by the Carnegie Corp. *See* Brainerd Currie, *Education for Professional Responsibility—Foreword*, 1 J. Legal Educ. 176 (1948).

31. Francis Zemans & Victor Rosenblum, The Making of a Public Profession 170 (1981).

> the subject is so personal to each student, the answers to such questions as "What do I really believe in?" and "What kind of person do I want to be?" and gradually, "What kind of lawyer do I want to be?" are not something we can "teach," at least not through the methods common to law school classrooms. We cannot effectively teach someone to answer such questions in the abstract. When we try to do that, we usually receive tentative answers disconnected from the legal context that animates them. The context and the value judgments students make are the bases from which they will form their professional identity as lawyers (47).

Experiential learning—featuring simulations, clinics, or externships—is important because it puts "students in the role of attorneys" in which they have opportunities to learn and apply skills and begin developing their professional identity (65). Students, however, are not to be left adrift and on their own; these opportunities are to be guided.

Guiding students in the development of their identity presumes there is some substance to the exercise. Writing long ago for a conference exploring similar issues, Lon Fuller noted, "Moral exhortation without content or direction is a futile thing … On the other hand, shall we set about indoctrinating our students with the notion that they must advance certain definite goals? . . . The notion of a whole law faculty dedicated to a particular ideology . . . is basically uncongenial."[32] Thomson says, "[L]aw schools with a religious affiliation [two examples are noted] may have a head start in efforts to promote the formation of professional identity . . . . At these schools, discussions around faith and morality are connected to their missions and are a part of their cultures." For other kinds of schools, reflective of Fuller's concern that compelled uniformity would be "uncongenial," discussions of professional formation "are more likely to be met with skepticism" (51). Feasibility, in other words, is problematic.

Thomson doesn't return to this issue until late in the book, with his seventh chapter, "We Must Reorient Law School Around the Preparation for Service." "Service should be our mantra and organizing principle—across law schools and in every state bar association" (105). It ties back to professional formation and experiential learning. He says, "[T]he experiential opportunities are where the formation of professional identity should be fostered with intention, and within that, the orientation of services to others" (106–07).

There's more here, and it's evident in the chapter's title. It's about the school as an organization, not the more general institution of legal education of which schools themselves are a part. It is in line with the idea of changing the profession's worrisome state from the inside out, and it may be the most ambitious part of Thomson's way forward. He calls for deep, even radical, organizational change. In the "Conclusion," Thomson says a school-level service orientation, which includes a sense of justice, "would go a long way to improving legal education, as well as (over time) the profession, and have the important added benefit of strengthening our democratic institutions" (127).

32. Lon Fuller, *What the Law Schools Can Contribute to the Making of Lawyers*, 1 J. Legal Educ. 189, 202 (1948).

For Thomson, a school's ethos—how it sees itself, its norms, and ways of doing things—must be replaced. Instead of what we usually see, the school should create and operate within an everyday working environment that models service to others, especially in the classroom. In a sense, his goal is a kind of reverse hidden curriculum in which the implicit and the unspoken have a positive purposeful influence. Students learn by being a part of such a school—day in and day out. It's learning by osmosis.

Without the built-in advantages he sees in the religiously affiliated schools, what underlies this reorientation? Thomson turns to something akin to "the ancient Greek concept of *agape*" (108, emphasis in original). To explain it Thomson turns to a variety of sources covering a range of traditions to suggest the ubiquity of the concept—and to argue that it's congenial. He sees the idea of *agape* as "the sense of deep understanding and redemptive good will"[33] (108). It is a selfless commitment to the well-being of others and for community (109).

The concept becomes a bit clearer in his comments on the faculty divide. He says the divide

> undermines . . . [students'] faith that they are part of an institution that professes non-discrimination and yet behaves differently. That they are part of an institution that believes in fairness, justice, and equality and yet behaves differently. It sends a strong message that undermines any attempt to adopt a service orientation, because it sends the opposite message: that even the people who are entrusted with teaching them and preparing them for a life of service to others are engaged in the same internecine and hierarchical divisions that the school professes are wrong in our society and need to be eradicated (112).

Regardless of one's thoughts on the faculty divide, it's the logic of Thomson's comment that's important. Students learn by being a part of a school that models service—learning by osmosis. For this to work "we must be scrupulously consistent. No matter how hard it may be" (112). Hard, yes; but how feasible? Unlike the discussions of his other ideas, on this Thomson leaves us wondering. Still, would Thomson's *agape* be, as Fuller warned, uncongenial?

If Radical, Soberly So

If *The Way Forward* seems radical to some readers, it is a soberly radical book. It is serious and deeply thought through. Unlike too much of the continuing commentary concerning legal education, this book is no rant or screed. It is ambitious, for sure, and Thomson pulls few punches when it comes to the kinds of changes needed or in calling out bad practices. Still, he does so with a dose of pragmatism and with respect for his colleagues and their shared community, offering examples and help on how to institute changes with a tone offering the reader persuasion rather than bombast and derision. Derision, especially, is not a way to model service and hardly a path to success if change is the goal.

33. Martin Luther King, Jr., Buddhism, Japanese culture, Christianity, St. Paul, C.S. Lewis, and others (108–12).

Sober, because Thomson recognizes the likely practical objections and tries to meet them with assurances that he's not a zealot trying to wreck the whole thing. Assurances are sprinkled throughout the book that accentuate feasibility. This may be tied to his position on the great faculty divide and lessons learned in the past—know the potential pushback and try to be respectfully preemptive. He is careful to say that he's not attacking—at least not directly—those on the other side of the divide or the idea of tenure. Early in the book Thomson says, "We absolutely need—and will always need as an essential foundation—respected scholars of the law who are able to analyze and study the law from a position of remove. Sometimes, those faculty members need to take unpopular and challenging positions, and tenure provides an important protection for them" (21).

His tone and approach can be seen in Chapter Four's discussion of experiential learning. In offering his definition of experiential learning, Thomson clearly lays out a framework for different kinds of experiential learning opportunities. In doing so he explains how one can create a new experiential course, or revise an existing one, to provide experiential opportunities fostering professional formation.

His tone can be seen in his discussion of measurement and assessment. He explains that it's a process and then explains how to do it. And, of course, there are his directions for creating an appropriate multiple-choice test. Because hybrid/online learning is a foundation for his way forward, the entirety of Chapter Six is a how-to, with a substantial portion on effective online pedagogy. In all of these situations Thomson is, in effect, willing to sit down with colleagues and help them.

Needless to say, Thomson envisions a host of practical objections that would form the first line of attack from critics. He devotes the final chapter to them: "The Usual Objections are Unfounded." The issues in this chapter are largely follow-ups on ones he raised earlier in the book. For instance, scrapping the LSAT will not cause a cascade of other problems; net tuition revenue shouldn't change; moving to a hybrid/online format won't commodify legal education; teachers can be supported and incentivized in moving to the hybrid/online format; and LLLT opportunities will expand. Still, this may be the least convincing part of the book.

Change is a complex and contingent process, and legal education prefers the less threatening path of muddling through. One can understand Thomson's wanting to allay fears and model the principles that are so important for him. The problem, however, is that he can't foresee all the possible hurdles—no one can. If nothing else, there are too many contingencies that affect change. Dealing with some obvious ones may a responsible approach, but it isn't going to satisfy the harshest critics and nay-sayers. Thomson's discussions earlier in the book showed the *feasibility* of most his proposals, and this is what matters—and all he can do.

More important is Thomson's pragmatism and recognition of the values of incrementalism and experimentation. *The Way Forward* does have a sense of

urgency—urgency in taking advantage of the trends he builds upon by getting his scheme out there to shape the agenda for serious change. He wants to get his scheme, not just the individual parts, into the discussion.

In the opening of his last chapter, we see the pragmatism with an assurance. He says while his proposals may "involve shifting some resources, they do not require immediate or radical transformation of every current aspect of legal education. We still—very much—need tenured faculty who publish scholarship, for example" (115). He emphasizes incrementalism, saying that he isn't advocating for immediate change, and he emphasizes experimentation. There are contingencies, with some schools better positioned, for financial reasons, to take the lead, and others can learn from those experiments (116). We pay too little attention to the many experiments or innovations that have long been out there—successes and failures—and what can be learned from them.[34]

How incremental? The change he envisions is best approached slowly and deliberately. "It will take at least a decade—and likely more—for the proposals contained in this book to be implemented widely in law schools" (116). For lack of better characterization, it's a form of radical incrementalism rather than muddling through—experiments and change in degrees in the service of a larger goal.

There is much to learn from and much to argue about in *The Way Forward*. In reading through, thinking through, Thomson's book, the one thing that continually struck me was the idea that it is the antidote to the literature of crisis and catastrophe—written by a devoted teacher. At the least this should recommend it.

34. The 2014-15 ABA Presidential Task Force on the Financing of Legal Education strongly recommended and encouraged experimentation by law schools. "They must be watched closely and analyzed … allowing others to see what can be done, how, and with what success." American Bar Association, Report of The Task Force on The Financing of Legal Education 14 (2015), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/reports/2015_june_report_of_the_aba_task_force_on_the_financing_of_legal_education.pdf.