BOOK REVIEW

The Way Forward Includes Surprising Turns

The Way Forward for Legal Education
David I. C. Thomson (Carolina Academic Press 2023), 136 pages

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The pandemic radically changed the way law schools provided legal education during 2020 and much of 2021. Now that we are mainly on the other side, Professor David I.C. Thomson has used the lessons learned to chart a path toward a just-as-radical revisioning of the law school of the future. In *The Way Forward for Legal Education*,[1] Thomson makes a compelling case that the shift to online and hybrid learning is not only inevitable, but essential for the survival of law schools, the future of the legal profession and, in a sense, democracy itself. His model embraces our inevitable cultural shift toward an increasingly online world and seeks to address many of the critiques that have plagued law schools for decades.

The book begins with the critiques of legal education that most legal educators are already all too familiar with: the LSAT is a far too discriminatory admissions tool; traditional large classes taught through the Socratic method are cost-effective but not best suited to learning; we do a poor job inculcating legal values into our students; the cost of law school burdens graduates with crushing debt; and at the end, our students are still insufficiently prepared for practice.

Thomson takes these critiques a step further and places them in the context of many problems facing the legal profession. Because of our current model of legal education, access to justice is far too limited, the lawyer class is insufficiently diverse, and, perhaps most important, the profession as a whole has lost its moral compass and dedication to service. He lays two of society's most critical problems—systemic racism and the

[1] David I. C. Thomson, The Way Forward for Legal Education (2023).

ongoing attack on the institutions of democracy and the rule of law—partly at the feet of the failings of legal education.

The book starts and ends with this premise, but Thomson lays out the problem he seeks to solve most clearly in stating, "we have lost our way in our mission, and thus so has the profession."[2] Thomson says that law schools must therefore change both what they teach and how they teach it.

Professional identity and a culture of service

Thomson acknowledges that law schools do a fine job teaching doctrine and the rules that govern legal practice. But he asserts that we do far less well on things that are less tangible, the neglect of which has had dire consequences for our profession. One thing Thomson says we don't do well is coach our students through the formation of their professional identities. This is not a controversial proposition. What is unusual about Thomson's approach to this issue is that he does not shy away from saying directly that professional identify formation is about standards of moral behavior.

While many professors believe that teaching morality is beyond our scope, Thomson provides concrete examples of how law professors can develop their students' professional identities and encourage moral practice decisions, primarily through small, experiential, simulation-based classes. He argues convincingly and in detail that such experiential learning opportunities are essential to preparing our students for practice as well as developing their professional identities, and that the second and third years of law school should be devoted almost entirely to such courses.

The second less-tangible thing that we don't do well is teach our students that the practice of law is fundamentally about service. Thomson points out that we have lost the idea of the lawyer-statesman, the good public citizen dedicated to service, fighting for justice, and protecting the oppressed. He says that we must reorient legal education around a culture of service if we are to address the problems faced by the legal profession. But he proposes more than that: a radical shift toward legal education based in love and compassion—hallmarks of his own teaching—rather than competition and humiliation.

When I first began teaching 16 years ago and got my first painful set of student evaluations, I sought Thomson's help. He asked me a question that I will never forget: "Do you love your students?" Thomson was referring to

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2 *Id.* at 113.

the kind of love to which he devotes almost an entire chapter: the selfless love of others that drives us to serve. He draws on several philosophical and spiritual traditions in describing this kind of love and explaining its connection to a culture of service. This alone makes *The Way Forward* unique among books on legal education.

Hybrid and online learning

Both doing a better job with professional identity formation and fostering a culture of service require us to invest in high-touch, small, interactive, experiential courses. But such courses are expensive and resource-intensive, which raises the question: how do we pay for it?

The first part of Thomson's answer lies in online and hybrid learning. Thomson, a long-time and highly prescient promoter of online learning, has known for decades what most of us were forced to learn during COVID: *if done well*, online and hybrid instruction can be as effective for student learning as it is cost-effective for the institutions offering it. Moreover, most of our students will have significantly remote careers. Thus, Thomson says, we not only can, but have an obligation to, prepare them for this reality.

While many law professors accept hybrid modalities more readily today, fully online learning faces more resistance. But even with respect to that, Thomson supports his argument with surprising recent statistics that indicate that our students are much more ready for it and appreciative of it than we thought.

It is impossible to argue with Thomson's assertion that the pandemic has taught us that we have no excuse to keep doing things the way we have been doing them. Nor can we truly dispute his assertion that classes should be designed, and in many cases, completely redesigned, to focus on learning, including formative assessment, student learning objectives, and choice of teaching modality—live, hybrid, or fully online—based on those learning objectives.

The Way Forward is an argument for change but not exactly a how-to manual. Nevertheless, Chapter Five, "The Future is Hybrid" and Chapter Six, "Online Learning is Part of Our Future" offer some concrete suggestions for how to design courses effectively in that format. The ideal course that Thomson envisions is rich, complex, and very different from what most law school classes are today. And they would require a significant investment of professor time to convert.

Fully redesigning all of our courses is a laudable goal but a very big ask. When professors object to being asked to redesign their courses, it

isn't typically because they don't believe their classes would be improved. It is because we are, as a profession, exhausted, overworked, and stressed by ever-increasing demands to put more time and effort into our service, teaching, and scholarship.

Thomson rightly points out that most universities have teams of instructional designers standing by ready to help us redesign our courses. Indeed, law professors are likely behind the curve in taking advantage of the expertise of these colleagues. But the redesign is only the first step. To teach excellently a full load of small, interactive, experiential classes with ample formative assessment takes an enormous amount of work that leaves time for little else. Some of that work can be automated or delegated, but much cannot. Many professors already feel that they do not have the time for the quiet reflection that leads to discovery and growth.

Further, so much student interaction, especially with the personal touch, love and compassion that Thomson urges, is intensely emotionally draining. Taken together, these stressors are a recipe for burnout. While Thomson's argument that a move to hybrid and online learning is both necessary and inevitable is convincing, he has no ready solutions for these obstacles to implementation, perhaps because the obvious solution is reduced faculty course loads, and that is unlikely to gain much traction with many law school administrators.

A restructured law school and profession

Even in a hybrid or online format, such courses are still hugely resource intensive and thus very expensive. The second part of Thomson's answer to the cost question is the most interesting and most radical of Thomson's proposals. The backbone of his model is for law schools to admit a much *larger* cohort of 1Ls, without requiring the LSAT or GRE. We would teach them almost entirely online and at scale, and charge them lower tuition than we currently do.

While that is a radical enough proposition, Thomson goes further. Under his model, at the end of the first year, students would be given a rigorous, almost bar-like exam. Based on performance, roughly half of the 1L class would be permitted to advance to the upper-level curriculum. The other half would be dismissed and granted a Masters in American Law.

After that, the dismissed students could seek a bit more training and become certified as Limited License Legal Technicians. LLLTs are a small but growing group of professionals who perform the mechanical,

repetitive legal tasks that make up a lot of transactional lawyering but that so many still cannot afford because law school, and thus legal services, is so expensive.

The half of the 1L class that moves on to complete the JD would spend an additional two or three years in law school in a mix of significantly redesigned online, hybrid, and in-person courses. The courses would be primarily small and experiential and have a high degree of professor-student interaction and plenty of formative assessment. These classes are where professional identity and the dedication to a culture of service would be fostered. All this would be made possible because of the extra revenue brought in by the expanded 1L class.

Thomson makes a persuasive argument that this model would have many positive effects. It could eliminate reliance on the discriminatory LSAT for law school admission, lower the cost of attending law school while more 1Ls would increase law school revenue, and reduce the debt burden even of those students who complete law school so that they can have more freedom of choice about their future careers. It could also make a rudimentary legal education available to many more people and thereby increase the availability of legal services that can be performed by LLLTs.

These are intriguing solutions to critical legal education and legal profession shortcomings. However, for a book so grounded in morality, it leaves some moral questions unanswered. Is it right to create a large class of second-class-citizen "sub-lawyers" who would likely be viewed as law school flunkouts? Is it right to fund the more resource-intensive upper-level program with the tuition money of 1L students who the law school admits knowing that it plans to dismiss half of them?

How would this system impact how students view admission to different tiers of law schools? When prospective students know that the bottom half of the class will be dismissed and never get a JD or become lawyers, will they choose schools with lower admission standards in hopes of making the cut? Is this fair to students in the top and bottom halves of their classes across different tiers of schools? Would this "up or out" model bring back the cutthroat mentality that law schools have made significant strides in reducing in the last few decades? In what ways might this system disproportionally impact the very BIPOC students who this model is meant to elevate?

While Thomson does not address these concerns in *The Way Forward,* he is a scholar who thinks deeply and writes frequently in this field, so I hope that his next article will further explore the moral and practical implications of this model.

Coming in at a concise and manageable 136 pages, *The Way Forward* is a provocative read, especially for those who balk at the notion of fully

embracing digital delivery of legal education. Given that digital delivery is seemingly inevitable, it's an essential read for anyone who wants to think about what that could look like.