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Are law schools conservative institutions?

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NOW WITHOUT HESITATION

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How conservative is legal education?

The most frequent answer to this question is probably "very conservative." But if that answer is correct, it's somewhat surprising. As a group, law professors appear to be quite a lot more politically liberal than the country as a whole, and probably more liberal than their students.

Of course, they could be politically liberal but intellectually conservative, still trudging the same paths as their forebears of past generations. But this picture doesn't seem accurate either. After all, a lot of what law professors routinely do has to be to stay up to date -- not just on what other scholars are writing, but on the latest court decisions and the newest statutes. Perhaps the subject-matter is continuously changing, but the intellectual apparatus brought to bear remains the same? Not so: at least from the time of the legal realists of the first half of the twentieth century, academic conceptions of law have been in ferment, and scholars have pursued one "law and" discipline after another.

Perhaps the teaching methodology has somehow stayed the same, despite all this intellectual change? Certainly law schools have been dominated by the "Socratic method" for most of the past 100 years, since the advocates of this pedagogy won their battle over those who thought other techniques such as lectures were better designed to get essential information across. (Among the losers were the founders of my law school, New York Law School, which long since became part of the Socratic consensus.)

Only this charge isn't terribly persuasive either. The past 40 years have seen at least three major shifts in law schools' programs: the rise of clinical legal education, the intensification and professionalization of legal writing education, and the rise of academic support programs as well. Clinicians, for example, now make up the single largest section of law faculty in the Association of American Law Schools.

So what's left that's pedagogically conservative? The central answer would be the continued use of the Socratic method in the doctrinal courses of the curriculum, which still probably make up the large majority of the classes offered at every school. But even here the case

isn't entirely convincing. Surely much of what is actually taught in law school classrooms wouldn't have been taught 50 years ago -- not only the new cases, of course, but also the new perspectives, some of them profoundly distant from an assiduous focus on the particulars of legal doctrine. It also seems pretty clear that the Socratic method as practiced today is less of a hazing ritual than it was, or was imagined to be, a generation or two ago. (Think of "The Paper Chase.")

One might almost say that the only really continuous feature is that law professors teach by questioning their students, and often challenging their answers, rather than by lecture. That's an element of continuity, certainly, but it seems odd to call a preference for interactive classroom experiences proof of conservatism.

I admit I am overstating the case. The hierarchical feel of the large law school classroom, though less sharp-edged than it once was, still persists. A focus on mastering a certain style of dispassionate, meticulous deployment of legal arguments remains important, both as an intellectual aim and a value that professors model and generally hope to impart. And a concern with the interpretation of more-or-less authoritative texts -- constitutions, statutes, regulations, and of course prior cases -- seems built into legal work and legal teaching, and is necessarily at least somewhat past-looking.

Moreover, though this is a matter as much of institutional governance as of pedagogy, tenure -- first advanced as a protection of independent, radical thought in universities -- is in important ways a conservative institution. Those who have it don't want it taken away, and sometimes don't want it shared with others who don't yet have it, since either or both of those developments would shift the balance of institutional power. At the same time, those who didn't have it and have gained it are sometimes seen as having become more academic (that is, more conservative and depoliticized) as a result.

Still, for a supposedly conservative institution, legal education seems pretty sprightly to me. Even the current movement in some schools towards diminishing teaching loads so as to give faculty more time for scholarship can't exactly be called conservative. To value teaching over scholarship may be right or wrong, but to reduce teaching loads in favor of scholarship is (for its advocates) a "reform," in other words a change, and at least in that sense not conservative. It isn't a return to, or an adherence to, the values of the past but an assertion of the right direction for future development.

The upshot, I think, is that it's a mistake to regard law schools as impervious to change. There's lots of change in the air -- some that I might dislike, or you might, but change nonetheless. (And there are also profound economic forces pressing law schools to change whether they want to or not.) So the question isn't, will law schools change, but

rather, how will they change? That's a better question, offering hope to everyone who welcomes change, but challenging them to win the arguments over which changes to make.
