

## Professional Formation as Social Movement

By William M. Sullivan

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Could current efforts to reshape legal education and give more emphasis to professional identity formation be harbingers of a developing social movement in higher education? I want to argue that they should be seen that way. Furthermore, I want to suggest that conceptualizing those efforts as a social movement helps to explain why recent workshops on the formation of student professional identity focused on the creation of core groups have generated so much enthusiasm, energy, and commitment from faculty and staff from several dozen law schools.

### Law's Disruptive Moment and the Holloran Center's Response

The premise of workshops recently held by the Holloran Center for Ethical Leadership in the Professions<sup>1</sup> and co-sponsored by Educating Tomorrow's Lawyers<sup>2</sup>, is that recent changes in how law is practiced and organized amount to a tectonic shift in the ground beneath legal education. Massive shake-ups in the market for attorneys place new value on educating beginning lawyers who are ready and able to move into the world of practice. To use the business terminology of the hour: this is law's moment of disruption. The Holloran Center, long a thought leader on the critical role of professional formation in the development of effective, service-oriented lawyers, has responded to this disruption through several ground-breaking empirical studies that lay out the goals for positive innovation. They detail the competencies beginning lawyers need (including a foundation of an ethical professional identity) in order to succeed in this changing, much less stable professional environment.

The Holloran Center studies show that preparing for a successful legal career requires both a high level of knowledge and skill in legal analysis and the ability to sustain relationships with colleagues and, especially, to develop fiduciary relationships centered on understanding and serving the needs of clients. In short, the Holloran Center research concludes that effective career development requires the cultivation of values and dispositions fully integrated with the mastery of technical skills and professional relationship competencies.

These findings, which correlate with other recent research, present a new challenge to the inherited structures and practices of law school education. To effectively serve students in today's legal milieu, law schools must be organized to help individual students develop a proactive stance toward career success by serving clients and the public well. Responding to this challenge will require assessing the effec-

tiveness of current arrangements in achieving these goals. It will also demand re-imagining and reshaping the curriculum and modes of teaching to better achieve them. But perhaps most importantly, a successful response depends on how well legal educators are able to understand their new challenges as opportunities that can call out innovative adaptation. How might this happen?

## **How Social Movements Motivate Institutional Innovation**

Psychologists tell us that motivation is closely connected to how situations are interpreted or framed. Frame an adverse event as fated or hopeless and energy flags. Reframe it as a positive opportunity and suddenly the same event calls out engagement. The reframing acts like a psychological catalyst. It transforms previously inert elements. Where, then, does the new framing come from? At moments of disruption, reframing becomes one of the defining tasks of leadership. While reframing depends upon a crucial element of creative discovery, this is usually as much the product of group exploration and argument as of individual invention.

Sociologists have shown how social movements reframe private difficulties to be suffered as shared problems to be solved. Over the last half century, American life has been profoundly shaped by a series of social movements: civil rights, women's rights, and marriage equality to name a few of the most prominent. Each has raised individuals toward new levels of public efficacy through building powerful cooperative relationships. These movements have set in motion patterns of collective resonance that have changed how people in similar circumstances understood their situations. Like a catalytic agent, the new framing of the situation that the movement provides can suddenly generate bonding among formerly unaffiliated groups, weaving trust and connection based upon a new sense of sharing common goals.

Instead of feeling caught up in purely personal hardship or humiliation, activists in these movements become confident that they are struggling together to achieve a new shared good: freedom, equality, or dignity. Through that shared struggle for a shared good, these movements have not only changed the quality of the lives of the individuals who take part in them. They have also changed their identities, their sense of who they are and why their lives matter. And the movements for civil rights, women's rights, and marriage equality, like the labor movement before them, have succeeded in shifting long-established legal and social institutions in dramatic ways. These transformations remain incomplete, of course, and they have also given rise to backlash and efforts to stop or reverse the changes. But the movements are powerful currents, operating all around us.

Major shifts in the way higher education has sought to prepare professionals have been carried out in ways that enact key aspects of social movements. To simplify a complex terrain, we might single out three key features of successful movements for reform in higher education:

- Catalytic Reframing and Articulation of Overarching Goals
- Elaboration of Models of the Possible
- Core Groups and Exemplary Centers

## Catalytic Reframing and Articulation of Overarching Goals

The classic example of how a reframing of a widely-perceived educational problem can lead to a lasting educational innovation is the Flexner Report on medical education of 1910. In the years before the Report, a number of reformers within organized medicine, in particular the American Medical Association, were much exercised in trying to persuade reluctant state legislators and public opinion of the dangers posed by the chaotic and often manifestly unsafe conditions characterizing the poorly regulated practice of medicine in the United States. There was much though scattered discontent, particularly about how poorly many physicians seemed to be prepared. But no would-be reformers had succeeded in framing the problem in a way that could connect it to a plausible solution.

It was the notion of replacing quackery with scientific medicine—articulated in common standards of competence and training—that provided the catalytic breakthrough. The idea was worked out in continuing discussion and debate among a number of diverse advocates for reform. What enabled the various interests to coalesce and finally act together was the new vision of reshaping medical education on a scientific basis that could unite theoretical learning with clinical training.

It was a brilliant idea that has enjoyed world-wide adoption for over a century. However, there were also strong motives of self-interest at work. The AMA wanted not only to shut down quack practitioners but also to achieve a monopoly on the licensing of physicians. In a strategic master stroke, the AMA leadership approached the then-new Carnegie Foundation for the Advancement of Teaching to conduct a study of US medical education. Their intent was to show how bad things were so as to motivate a number of social actors to cooperate with the AMA in setting common standards that would protect the public but also, inevitably, give graduates of “approved” medical schools a big leg up on any competitors for the title “doctor.” President Henry Pritchett of Carnegie also saw a big benefit for his fledgling organization. If the study could prove the value of the Foundation as a competent, “disinterested”—in the language of the day—arbiter of educational quality, that would establish the value of organized expertise in the public mind.

With the publication of the Carnegie study, carried out by Abraham Flexner, himself not a physician but an educator, something new appeared in American medicine. Following its documentation of the often weak preparation of future practitioners in many American medical schools, the Report proposed a single, cogent template for ensuring physician quality. A new model medical school was based closely on the medical school recently established at Johns Hopkins, which imported from Germany the latest ideas of scientific medical training. It combined rigorous study of the sciences with two years of clinical training. This entailed considerable institutional innovation. Future physicians would learn laboratory science. They would also learn to practice in a new kind of hospital that was specially organized to apply scientific knowledge in clinical training. The whole curriculum was then to be topped off by a post-graduate year of supervised hospital experience called the internship.

The Report’s reframing of the problem made possible the articulation of national standards for training and licensure. This gave the AMA and its allies a third-party vindication of its claims about the dangers of the unregulated state of medical education. The Carnegie Foundation got what its leadership needed

to begin its long tenure as an advocate for improvement in higher education. Abraham Flexner went on to a distinguished career as an early version of the educational consultant, producing a number of important studies of higher education in the US and abroad. On the other hand, the new standards required expensive laboratories and even more expensive teaching hospitals. Within a decade half of all medical schools in the US had closed, including most of those serving African-American and women students.

## **Elaboration of Models of the Possible**

The success of the Flexner innovations was never fully replicated in other professional fields, despite Henry Pritchett's best efforts. In fact, a few years later the Carnegie Foundation's Reed Report on legal education was pointedly repudiated by the American Bar Association. That was perhaps in part because legal education had already experienced a major paradigm shift a quarter of a century earlier. This was the revolution in legal education carried out at Harvard University by the dean of its law school, Christopher Columbus Langdell. It is worth recalling that Langdell's model did not result from slow accretion. Rather it began as a highly contentious disruptive innovation.

Strongly supported by President Charles Eliot from the 1870s until the turn of the twentieth century, C.C. Langdell was able to launch an experiment in legal education that explicitly rejected the past and presented a new approach that transformed the way American lawyers were trained. Harvard Law School presented the profession with a new model of the possible. Historians have come to recognize that Langdell's new model law school was in several ways the advance guard of a larger trend. Through Langdell, the academy took the training of future legal professionals out of the hands of the practicing bar and bench. Thanks to Harvard's dynamic and long-serving President Eliot, many of Langdell's key innovations were sustained and later introduced into other fields, including medicine and business. These included the case method of teaching in place of traditional lectures, the use of hypothetical problem-solving to test student understanding of general principles, the reorganization of the law library as a resource for student research, and extensive written examinations to assess academic merit.

Perhaps most crucially, the core of Langdell's revolution was the rejection of the older idea that law schools should select faculty on the basis of expertise in practice. Instead, Langdell's model introduced a counter-principle: Academic achievement, not professional success, would henceforth be the sole criterion for faculty selection and promotion. The new model effectively created a new, entirely academic pathway that placed the education of lawyers in the hands of a non-practicing faculty fully attuned to academic rather than professional standards of merit. In short, Langdell created the first purely academic model of professional preparation, complete with a mechanism for the continuing replication of the new type of faculty.

The premise of the new model was startling in its time. Langdell insisted that academic measures of achievement should be the sole gateway into prestigious career tracks. He reframed legal competence as the measurable academic skill of legal analysis. By defining legal scholarship and learning as science-like in their rigor and objectivity, Langdell's new faculty raised the prestige of the law school within the university—moving it out of the “trade school” category. Once its prestige was established, the new

model also proved financially successful, attracting ambitious applicants willing to pay large tuitions. However, Langdell's model, already in place in most of the nation's university law schools by the time of the Flexner report, never absorbed the medical innovation of blending academic content with supervised clinical practice to accelerate the development of professional expertise.

## **Core Groups and Exemplary Centers**

As the Langdell example suggests, movements for reform gain traction when they recruit and develop core personnel motivated to implement the new model. In the case of the new Harvard Law model, the focus on complex written briefs rather than oral performance fit well with the new corporate law firms emerging at the time to serve the needs of corporations and large organizations. The most successful graduates of the new system went on to form important networks in such law firms, and among judges and legal academics. They shared a common vision and values that enabled the new model within a generation to colonize beyond Harvard, among a sufficient number of leading law schools, to achieve a "tipping point" effect, essentially redefining American legal education.

The critical importance of forming at exemplary centers such core groups committed to change is even clearer in the case of modern business education. Although university business schools date back to Langdell's era, with the University of Pennsylvania's Wharton School pioneering the genre and Harvard inaugurating a case-teaching centered school early in the new century, the rise of business schools is mostly a story of the past half-century. It is linked closely to the simultaneous rise of US corporations to global dominance in what became known as the American Century. This was also, and not coincidentally, the period in which universities grew from small, elite institutions into ubiquitous features of American society that enrolled a growing portion of an expanding middle class.

The reshaping of the business school also can be traced to disparate challenges that were reframed as a chance for collective progress. During the economically expansive 1950s, both the Carnegie Corporation and the then-new Ford Foundation issued critical reports about the low quality of much education in business schools. Younger and perhaps more brash, the Ford Foundation in particular sought to intervene strategically so as to raise the academic level of business schools. Following Langdell's assumption that academic merit was the most reliable gauge of professional promise, Ford invested in a systematic program to upgrade business schools.

The core strategy was to replace informal credentials in business faculties with PhDs in rigorous, scientifically-based disciplines—finance, accounting, marketing, and general management. The model for the new disciplines was, once again, science. But now science was represented in the dynamic new field of "systems analysis," a quantitatively sophisticated approach that had emerged out of World War II "operations research," and was closely aligned with the growing field in electrical engineering that would become information technology. Ford also had a model to promote. The Carnegie Mellon Institute of Technology had been a leader in developing these new scientific technologies. Its curriculum and departmental organization, as well as its emphasis upon project design as a pedagogy, provided the

exemplary center for training core groups of faculty. It was quickly complemented by similar models at universities with strong engineering schools such as the Massachusetts Institute of Technology, the University of California, and Stanford University.

The new disciplines, with their quantitative respectability, supported a large-scale expansion of graduate business education in the form of the Masters of Business Administration, along with PhD programs in all four business disciplines. All this institutional innovation boosted the academic prestige of the new business school model while attracting research funding from outside the university. The expansion of business schools made careers there attractive to faculty with the requisite skills and new academic paths developed with research leading the way. In the 1960s, the new faculty proliferated, creating ever-expanding networks of the like-minded. By the 1980s, the new model was being exported, finding eager imitators in Europe and East Asia. The model and the core groups had gone global.

This is another extraordinary success story of disruptive innovation in academe. Yet, it ends with a significant irony. Business schools, especially MBA programs, are in something of a crisis. Their future suddenly looks unclear. The long reign of confidence that mastery of the right quantitative formulas plus effective professional networking would provide graduates with predictable career success is now widely questioned. The more demanding and unstable business environment post-Great Recession has raised the stakes and undermined the certainties of the postwar model. There is spreading recognition that today's business challenges require a more complex blending of competences, merging technical with conceptual and interpersonal, including ethical, understanding. The inherited model seems ill-equipped, overall, to meet these challenges. In this, business education shares some of the uncertainties facing law schools.

### **Conclusion: Identity Formation Trumps Information Transmission**

There is an additional lesson to be drawn from this quick survey of successful movements that have reshaped professional education. It is that moving professional training into the modern research university has had ambiguous consequences for the project of educating competent professionals committed to serving their clients and the public. On the plus side, it has brought professional training within the orbit of the academy's culture of reasoned argument, demands for evidence, and skepticism about untested assumptions. On the other hand, professions are more like the arts than the intellectual disciplines. They are finally about expertise in performance. Systematic rigor, the great value of the university, has an important contributory role in the formation of professionals but it cannot be the final goal.

Because the university has for so long aspired to systematic rigor of thought, the nineteenth and twentieth century innovations of Langdell in law, Flexner in medicine, and the foundations in business education all insisted upon separating theory and research from practical experience. They gave explicit priority to the clarity of the former as against the ambiguities that frequently attend the latter. An important corollary of that logic was the effort to isolate in pedagogical practice the cognitive from the interpersonal and the moral. This separation of IQ from EQ—emotional or social intelligence as it is

now known—has long held sway, despite professionals' urgent need to reintegrate these capacities for effective practice. While this regime received searching criticism in the past, such as John Dewey's philosophical pragmatism and the critiques of the Legal Realists, overall it has prevailed.

Today, however, the need to provide professionals who can think in flexible and innovative ways may portend a shift in that inherited imbalance in the training of professionals. Thanks to studies of how expertise is actually acquired, it has become evident that even in scientific discovery the boundaries between theory and practice are rarely clear or fixed. For example, the crucial expertise of experimental science is passed on in the intimate settings of laboratory work. There the practices, even the personal commitments of senior investigators and their interactions with their students are inextricably bound up with the process of learning.

Such knowledge is by nature finally an internalized disposition. It cannot be entirely reduced to procedure because it is performative expertise, inseparable from the person who internalizes it. Studies suggest that this is, if anything, even more true for professional education, at least for the most lasting and important parts of it. It is the formation of identity that guides and finally controls what is learned and how it is understood, an insight that has now begun to gain traction in the education of both physicians and lawyers.

The key insight in all this is that meaning trumps information because it shapes how information gets framed. And meaning and identity continue to develop through the student's interaction with the whole milieu in which learning occurs, with teachers, mentors, peers, and clients. If this is correct, then legal education will need reshaping to emphasize attention to the formative effects of students' various educational experiences. The Holloran Center's programs have just this focus.

As this understanding becomes more widely shared, it may mark the early stage of an historic moment of critical awareness. It is not yet a catalytic reframing. That probably awaits elaboration of a new model with effective pedagogies, an exemplary center or several, and coalescence of core groups around these. But if history is a guide, the new focus in legal education on professional identity formation and the creation of core groups of faculty and staff at different schools around the country portend a possible breakthrough moment of just that epochal kind. That would indeed be a tipping point.

## Endnotes

1. The Holloran Center for Ethical Leadership in the Professions is at the University of St. Thomas School of Law (MN). The Center provides interdisciplinary research, curriculum development and programs focusing holistically on the ethical formation of both students and practicing professionals. See UNIVERSITY OF ST. THOMAS, <http://www.stthomas.edu/hollorancenter> (last visited Mar. 12, 2015).

2. Educating Tomorrow's Lawyers is an initiative of the Institute for the Advancement of the American Legal System with a mission to encourage and facilitate innovation in legal education in order to train new lawyers to the highest standards of competence and professionalism. See EDUCATING TOMORROW'S LAWYERS, [www.educatingtomorrowlawyers.du.edu](http://www.educatingtomorrowlawyers.du.edu) (last visited Mar. 12, 2015). The National Institute for Teaching Ethics and Professionalism also holds an annual workshop on teaching profes-

sionalism but has not focused on creating core groups. The Alliance for Experiential Learning promotes experiential education on the second and third apprenticeship but has not focused on creating core groups.