

# BOOK REVIEW

## LAW, UNIVERSITIES, AND THE CHALLENGE OF MOVING A GRAVEYARD

*Dean Wendy Collins Perdue \**

RETHINKING THE LAW SCHOOL: EDUCATION, RESEARCH, OUTREACH AND  
GOVERNANCE

By Carel Stolker. Cambridge University Press, 2014. 454 pp. \$125.00

The last five years have been difficult ones for American legal education. With applications to law schools declining 40% nationally, many schools are struggling to maintain quality in the face of significant budgetary pressures. But one component of the legal-education world has been robust: there is a boom market in books, articles, reports, websites, and blogs filled with criticism and even anger at the current state of legal education. There are many villains in these narratives—greedy universities that suck resources, self-absorbed faculty who are indifferent to their students, and dishonest deans willing to misrepresent their current reality—and many victims—duped college graduates and lawyers leading miserable lives of tedium, long hours, and depression.

Against this dark narrative genre, Carel Stolker's new book, *Rethinking the Law School*, stands in sharp contrast. Having been both a law school dean and university president at Leiden University in The Netherlands, Stolker brings the perspective of a dean who has sought to innovate, and of a university president who has dealt with the political, academic, financial, and managerial complications of a modern university. The book offers a broad look at legal education around the world, along with a thoughtful exposition of the challenges facing law schools and law

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\* Dean and Professor of Law, University of Richmond School of Law.

deans. Stolker is no cheerleader for the current state of legal education, but recognizing that “the nature, content and quality of legal education is a subject that flares up frequently and dies down again,”<sup>1</sup> he approaches the issues without the shrillness and anger that characterize some of the current commentary. He also leavens his realism with some welcomed humor, noting, for example that “changing a university is like moving a graveyard, you get no help from the people inside.”<sup>2</sup>

Stolker comes from the European tradition which views higher education as a public good,<sup>3</sup> rather than primarily a private “economic investment to secure future private earnings.”<sup>4</sup> As a result, throughout the book, his primary concern is not that education consumers might not get the product that was advertised, but that society might not get the educated professionals it needs.

Quality legal education and the good lawyers it produces play an important and sometimes underappreciated role in establishing the rule of law in developing economies around the world.<sup>5</sup> But the need for quality legal education is not solely a third-world issue. In 2001, the Japanese government concluded that continued economic growth would require *more lawyers* and a better legal education system. For Americans used to cheerily quoting Shakespeare about killing all the lawyers,<sup>6</sup> the idea that having more well-educated lawyers might be good for the economy seems startling. But the Japanese assessment derived from an understanding of the role of law and of lawyers:

For the people to autonomously form social connections as self-determinative beings, it is indispensable for them to receive the cooperation of the legal profession, which can provide legal services in response to the specific living conditions of each individual and his or her needs. As in the case of medical doctors who are indispensable for people’s health-care services, the legal profession should play the role of the so-called “doctors for the people’s social lives.”<sup>7</sup>

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1. CAREL STOLKER, *RETHINKING THE LAW SCHOOL* 138 (2014).

2. *Id.* at 380 (quoting Geoffrey Boulton, *Global: What Are Universities For?*, UNIVERSITY WORLD NEWS (Mar. 29, 2009), <http://www.universityworldnews.com/article.php?story=20090326200944986>).

3. *Id.* at 44.

4. *Id.* at 46.

5. *See id.* at 275.

6. WILLIAM SHAKESPEARE, *THE SECOND PART OF KING HENRY THE SIXTH*, act 4, sc. 2.

7. *Recommendations of the Justice System Reform Council—For a Justice System to Support Japan in the 21st Century*, JUSTICE SYSTEM REFORM COUNCIL (June 12, 2001), <http://japan.kantei.go.jp/judiciary/2001/0612report.html>.

Stolker similarly observes that law “deeply affects human beings in their daily lives,”<sup>8</sup> and he quotes David Walker’s introduction to the Scottish legal system where he describes law as “an area in the field of studies of men’s relations with one another.”<sup>9</sup> The bottom line for Stolker is that law is “a condition for civili[z]ed living”<sup>10</sup> and that therefore quality legal education is as well. “No matter where you find yourself in today’s globali[z]ing world, good legal education and research are of utmost importance for social stability, the rule of law and economic growth,” he writes.<sup>11</sup>

In Stolker’s view, good legal education is at its core an academic enterprise that belongs in the university—connected to the profession but separate from it.<sup>12</sup> This is not only because of the importance and complexity of law and its connections with other academic disciplines, but also because of the nature of what we educate lawyers to do. Stolker argues that good lawyers need more than technical expertise; they need what he calls an “academic attitude” of skepticism. Skepticism (not to be confused with cynicism) is at the core of the lawyer’s work: “A lawyer is bound to develop a routine s[k]epticism, taking no argument at its face value, no set of words as meaning what it seems to say. That is a condition of legal life.”<sup>13</sup> In a single sentence, Stolker captures much of what we mean by “thinking like a lawyer”: “[W]e teach students not only to look for the solution to a problem but also to seek out the problem in a solution.”<sup>14</sup>

Beyond acclimating new lawyers to a mindset of skepticism, law schools should, in Stolker’s view, *educate* and not merely train lawyers.<sup>15</sup> Law has enormous social consequences and well-educated lawyers ought to be able to discern and evaluate the broader impacts of the structures they reinforce or create, and to “reflect on the wider world in which law functions.”<sup>16</sup> Nearly a

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8. STOLKER, *supra* note 1, at 97.

9. *Id.* at 97. (quoting DAVID M. WALKER, *THE SCOTTISH LEGAL SYSTEM* 2 (2001).

10. *Id.* at 96.

11. *Id.* at 32.

12. *See id.* at 151.

13. *Id.* at 144 (quoting Peter Birks, *Editor’s Preface* to 2 *PRESSING PROBLEMS IN THE LAW: WHAT ARE LAW SCHOOLS FOR?* at xiv (1996).

14. *Id.*

15. *Id.* at 115.

16. *Id.* at 146; *see also id.* at 147 (noting that students must “gradually develop a professional attitude, become aware of the social context in which law functions and, in conjunction with this, assume their social responsibilities”).

hundred years ago, Professor Eugene Gilmore made a similar point in an address to the Association of American Law Schools. He put it this way: “The problem—How should I try this case?—and the problem—How should cases be tried?—are distinct problems” and our law schools should educate lawyers who can answer both questions.<sup>17</sup>

Many critics of modern legal education believe law schools focus far too much on Gilmore’s second question and not enough on the first, and these critics are likely to join the chorus of disdain for much modern legal scholarship. Judges and practicing lawyers doubt the usefulness of much legal scholarship. They would like more articles that “tidy up after the judges” and fewer articles offering normative critiques. The criticisms of legal scholarship are not only from practicing lawyers who find it insufficiently practical, but also from academics in other disciplines.

If practitioners think legal scholarship too theoretical, some academics consider it too rooted in the world of practice<sup>18</sup> and lacking a distinctive research methodology.<sup>19</sup> Moreover, they deem its normative character insufficiently academic. As Stolker notes, “Astrophysicists are interested in what black holes *are*, not in what they *ought* to be.”<sup>20</sup>

Stolker takes on the critiques directly. He argues that law schools (and deans) should seek a balance among visionary scholarship that focuses on “playing with new ideas, perspectives and theories,”<sup>21</sup> and scholarship of a more professional character which is intended “to help judges and legislators in their task of keeping the law on track.”<sup>22</sup> He also criticizes the system of student-edited journals and argues for greater access to legal sources. What Stolker does not do is question the premise that law schools and law professors should devote time and energy to research and scholarship. Given the impact of law on all aspects

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17. Eugene A. Gilmore, *Some Criticisms of Legal Education*, 7 A.B.A. J. 227, 229 (1921).

18. See STOLKER, *supra* note 1, at 208.

19. See *id.* at 204.

20. *Id.* at 206.

21. *Id.* at 219.

22. *Id.*

of social life, Stolker thinks it beyond dispute that law is a subject that warrants serious academic study. “[L]aw is far too important, and too complex, not to be treated as an academic discipline,” he observes.<sup>23</sup>

Treating law as an academic discipline and situating it within the university means that law schools must be understood within the context of the broader strategic challenges facing universities as institutions. Stolker does not shy from this issue and offers a clear-eyed and insightful discussion of some of those challenges of the modern university, including funding and regulatory pressures, diversification and internationalization, and “corporatization” of the enterprise. There was a time, Stolker notes, when “[t]he university was governed and administered, not managed.”<sup>24</sup> But no more. Today, students are seen as consumers, not co-creators of their education, and faculty are “knowledge providers” in a “human resource production industry.”<sup>25</sup> To his credit, Stolker’s description of the modern university is neither unduly nostalgic about a bygone golden era, nor bitter about modern realities. He outlines the challenges along with the compromises that universities make to survive. But underlying it all is a tone of respect for the core enterprise of universities: “adventurous research; . . . providing students with an inspirational education; . . . societal impact.”<sup>26</sup>

Throughout the book, Stolker brings some welcomed historical, comparative, and cross disciplinary perspective. He notes that around the world, there are periodic controversies about “the nature, content and quality of legal education” which flare up and then die down,<sup>27</sup> citing complaints about legal education in various countries and at various earlier periods.<sup>28</sup> He quotes a 1931 report on Dutch legal education decrying the poor writing skills of young lawyers and the lack of adequate practical preparation,<sup>29</sup> which if read without noting the citation, one could easily assume

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23. *Id.* at 97.

24. *Id.* at 67.

25. *Id.* at 52.

26. *Id.* at 86.

27. *Id.* at 138.

28. *Id.* at 136, 138.

29. *Id.* at 138.

was from a recent exposé on the ills of modern U.S. legal education. He also notes that other disciplines suffer their own periodic angst about teaching, scholarship, and identity.<sup>30</sup>

As a sitting law dean, maybe this is just a simple case of misery loves company, but I do find comfort in the history and comparisons.<sup>31</sup> It is oddly reassuring to know that around the world, legal education is a topic thought to be sufficiently important to warrant controversy and that law deans everywhere wrestle with many of the same issues. And like Stolker, I agree that the persistence of the issues and concerns “does not mean that no progress has been made” but rather “how difficult the answers to these very old questions are.”<sup>32</sup>

Some may be frustrated that a book entitled “Rethinking the Law School” does not purport to map out an agenda of changes. To be sure, Stolker offers ideas and suggestions on topics ranging from teaching materials,<sup>33</sup> to assessments,<sup>34</sup> to methods for enriching legal pedagogy,<sup>35</sup> along with his own personal tips on deaning.<sup>36</sup> But the emphasis in this book is on thinking about and understanding law schools, not an action agenda.

Stolker says that he has written the book for his “fellow deans across the world,”<sup>37</sup> and I enthusiastically recommend it. I would particularly recommend it for deans who are several years into their deanship and are feeling a bit mired in the minutia of management and the challenges of survival during these last several turbulent years. Stolker does not gloss over the difficulties that law schools face, but contextualizes them in a way that is both bracing and inspiring. “There is much that has to be treasured, and there is much to be done.”<sup>38</sup> Indeed.

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30. *Id.* at 189–90.

31. *See id.* at 138.

32. *Id.* at 138–39.

33. *Id.* at 169–70.

34. *Id.* at 185–87.

35. *Id.* at 197–99.

36. *See, e.g., id.* at 344 (“spend as much as you can on food”); *id.* at 362 (“stay physically and emotionally close to your teams”); *id.* (“keep bureaucracy away from academics as much as possible”); *id.* at 363 (“[a] university need some ‘characters’, but not too many”).

37. *Id.* at 11.

38. *Id.* at 387.