



Search

- Home
- Finance & Economics
- Business & Industry
- Politics & Law
- Environment
- Culture
- Opinion
- More
- 中文

English > Opinion > Commentaries > Point of Order -Why Legal Education Matters



By Paul Gewirtz and Jeffrey Prescott 10.06.01 14:53

Point of Order -Why Legal Education Matters

Building a good legal system rests on an effective legal education that cultivates creative problem-solvers that use reasoned argument as a method of persuading others

As law and lawyers are playing a bigger and bigger role in China's development and society, it is not surprising that new attention is being given to legal education and to law schools in China. Clearly a wide-ranging debate, bold experimentation, and new thinking will be necessary as China retools its legal education system to help train the next generation of legal professionals. Perhaps some ideas from the American experience may be worth reflection.

Americans know and expect that many senior government officials will be graduates of leading U.S. law schools. President Obama, Vice President Biden, and Secretary of State Clinton all have law degrees. When President Obama meets with his full "Cabinet" – the heads of all the major U.S. government departments – 40 percent of those in the room have a legal education. Indeed, 25 of our 44 American Presidents were legal professionals. A significant percentage of U.S. corporate CEOs are former lawyers, and many social organizations were founded or are directed by someone with legal training. Law schools in the United States prepare their graduates not only to practice law and teach law, but also to play leading roles in government, in business, in foreign affairs, and in the full range of institutions that influence policy and society.

Why is legal education so important in the U.S.? Our legal institutions are far from perfect, but we see law as central to advancing our economic prosperity, maintaining our social stability, securing our liberties, and building a more just society. Law schools are important because law and legal institutions are important. Legal education in the United States, then, is the training ground for America's future.

Legal education should prepare people for the roles they will play after law school. This apparently simple idea actually creates a daunting challenge for legal educators, and not simply because lawyers play many different roles. Law teachers can be certain that many – perhaps most – of the current legal rules will change during their students' careers. New areas of law are sure to develop. For example, in the United States 20 years ago, who could imagine that there would be laws of cyberspace, laws regulating then-unknown complex financial instruments, or laws of bio-ethics in medical practice? Similarly, in China, the law today is very different from what it was 20 or 30 years ago – and we can confidently predict that the law will continue to change rapidly in China. Thus, the best lawyers usually work on matters where the legal issues are complicated, the answers

Related Articles

Latest Opinion News

NEWS ANALYSIS

BLOG

Rough Ride for Mining Industry M&As

Commercial Chinese Banks Short of Capital

Bursting with a Bang Instead of a Whimper

Domestic Car Makers Eye More M&As

Developers Bid Adieu to First-Tier Markets



Most Commented

Most Viewed

Steve Jobs and The Maker

White Liquor for the Karakoram Highway

New System for Assigning Airport Time Slots

Sweet Spot for China's Blue-Collar Revolution

Dismantling Factories in a Dreamweaver Nation

Images

Video

Audio



aren't clear, the strategies for prevailing aren't obvious, and the stakes are high – they work on the frontiers of legal development and legal practice. They need to be "problem solvers" where the relevant factors in the "problem" are not numbers but complex people and institutions and evolving legal rules.

Our experience in the United States is that the best legal education trains students to "think like a lawyer." What does this mean? It means that a good program of legal education should give students skills that, experience shows, will enable them to address legal problems effectively: (1) to think critically; (2) to think not just about what the law is, but what it should be; and (3) to use reasoned argument as a method of persuading others.

First, good law schools help students develop the habit of critical thinking. Critical thinking means asking questions about everything – the facts, the legal rules, basic premises, hidden assumptions, logical steps, what seems inevitable and what is possible to accomplish, what is the best result, whether other people's ideas are right, whether one's own assumptions are right. The best legal education challenges students to ask probing questions because this is essential to almost everything lawyers do. The best legal education is as much about teaching students how to ask good questions as it is about providing specific answers.

Second, since the best legal education anticipates that the students' careers will not involve just routine matters, legal education should engage students in discussing what they think the law should be, as well as understanding what the law is now. Law students need to keep the functional purposes of law in mind, not just its formalities, and should develop the tools to question whether the purposes of particular laws are the right ones and whether the law's purposes are actually being realized.

Just as importantly, good law schools should address questions of what "justice" and "the rule of law" require, since these are the ultimate goals of a good legal system. They should be part of the analysis whenever novel legal issues are presented for resolution, and a motivating force in legal reforms. Of course, the meaning of "justice" or "the rule of law" can be complicated and debatable. But discussing and debating these ideas should be part of legal education. Indeed, legal educators should encourage law students to use their professional skills to contribute to the good of society. If legal professionals do not feel a responsibility to contribute to the rule of law and to promote justice, who will? And since lawyers are deeply enmeshed in the complex real world and are not immune to its temptations, particularly when the stakes are high, the best legal education should prepare students to act ethically, and think about difficult ethical and moral challenges. (In the U.S., this task is easier because law is a graduate education program: law students have already completed a four-year undergraduate degree in some other field before starting a three-year law school program. Many students have worked for several years before entering law school. So students come to legal education with a diverse set of background values and educational experiences.)

A third aspect of "thinking like a lawyer" is to recognize that not everyone starts out sharing one's own point of view. To be effective as a lawyer means learning how to persuade other people with reasoned argument and analysis. The best legal education trains students to reason persuasively. Law is a culture of argument, in which lawyers are constantly engaged in a reasoned, back and forth effort to persuade others. To be persuasive typically requires an understanding of where other people are coming from so that one can shape one's arguments to their concerns, not only one's own.

How do law schools build these important intellectual skills? It starts with the classroom and private study. Since the core of legal education is training in ways of thinking and analysis, hard work in reading, speaking, and writing are ideal ways to develop those skills. The best legal



Scoop, Punch, Takeover: Women's Soccer in China

classrooms have active discussion and dialogue, not just lecturing. The law school classroom is the place where the skills of critical thinking can be practiced by the students and also modeled by their teachers. Students' private study should also be active rather than passive – constantly interrogating what they read rather than just memorizing it – and students should see dialogue with their peers as key to the learning process.

Law schools in the United States and elsewhere have also learned that there is great value in providing law students an experiential element in the course of their legal training – an exposure to real cases, real clients, law-in-action. This is typically done by "clinics" [诊所] that are now a central part of every major U.S. law school. These clinics expose students to the real life of the law – not only as observers, but also as practitioners-in-training. Clinical legal education helps introduce the idea that lawyers can make a social contribution, since the clinic's clients are often disadvantaged persons who could not otherwise afford legal services. American law students typically find clinical education an invaluable part of their training and an enjoyable supplement to the classroom.

Good legal education also includes an emphasis on research. The best law teaching reflects the scholarly impulse to think deeply and probe critically, seeking ways to improve the law and not just to summarize it. The best legal scholars – and the best law teachers – combine theory and practice. They combine idealism about how law can be improved with realism about what is possible. Their knowledge of law is often informed by other disciplines, such as economics and political science. We sometimes hear complaints in the U.S., and we are sure they are heard in China too, that legal scholars sometimes make proposals that are not "completely practical." But legal practitioners, including government officials, are often "too practical." They can be so focused on day-to-day practical affairs that they do not think enough about improving the system of justice. Legal scholars are a tremendous resource for a legal system and giving them time and space for free inquiry is very much in society's interest.

Legal education is important and difficult. It is important because law itself is so important and pervades so much of public policy and human affairs. It is difficult because addressing legal issues well and building good legal institutions are difficult. These challenges create tremendous opportunities for those who work in the field of legal education and try to improve it. Legal education in the United States is about strengthening American society and about America's future, for the same reason that a strong legal system and the rule of law have been central to America's strengths. Legal education is about training people who, in many different ways, are future leaders in their society. Only a few will become President of the United States, a Cabinet Secretary, a CEO, or a leader of a social organization, but they all can develop skills that contribute to their society.

Paul Gewirtz is Professor of Law and Director of The China Law Center, Yale University; Jeffrey Prescott is Deputy Director of The China Law Center, Yale University.



Comments (0)

jeffreyprescott

Submit

News By Category

Finance & Economy

- CDH to invest US\$ 10 Mln in BON TV**
- A Class of Its Own**
- Backroom Deals Rattle a Shenzhen Brokerage**

Politics & Law

- Probe Opens into Official in Jiangxi**
- Buying a Passage in Henan's Coal Industry**
- Evidence of Coercion**

Opinion

- The Puzzle of Carruades de Lafite**
- Clear Corruption from Aviation's Skies**
- The Folding and Faulting of Big American Media**

Culture

- Book Review: New Crisis, Old Problems**
- Culture's Long March from Revolution to Crises**
- Dr. Ma's Clinic**

Environment

- Lead Poisoning Cases Stonewalled**
- With Cave-Ins, China Gets a Sinking Feeling**
- Mounting Tensions over the Mekong River**

Industry & Company

- Danone's Faber Tries a Solo Strategy in China**
- Google's China Operation License Renewed**
- Ripening Broadcast Sector Tastes Mango Media**

- Finance & Economics
- Business & Industry
- Politics & Law
- Environment
- Culture
- Opinion

- Blog
- Focus
- Week in Review
- Calendar
- Ask Caixin

- Read Caixin
- Subscription
- About Caixin
- Work at Caixin
- Contact us
- RSS

All copyrights for material posted and published on Caing.com are the property of Caixin Media Company Ltd. or its licensors. Copying, reproducing, republishing, or any other use of Caing.com content without Caixin's permission is prohibited.

Partner Center:
China Daily
Global Times