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As the country celebrates its 250th anniversary, old methods of training lawyers are back in style

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John Trumbull's painting *Declaration of Independence* depicts the moment when Thomas Jefferson offers the first draft of our country's founding document to John Hancock at his desk. The iconic image includes members of the Second Continental Congress in rapt attention as the papers are delivered to the group of men in what's now known as Independence Hall.

It could be assumed that most of those portrayed in white wigs and tailcoats who signed that bedrock legal document were lawyers.

But that's not the case.

A National Archives document shows that of the 56 signatories, only 25 listed their primary occupation as lawyer. Those men learned primarily through apprenticeships, experiential education and supervised practice rather than through what law schools look like today. But as the nation prepares to celebrate its semiquincentennial, those older methods of bar admission have made a comeback of sorts as jurisdictions throughout the country have started turning back to them as a means of addressing shortcomings in the law school system.

To mark the 250th anniversary of the signing of the Declaration of Independence, the *ABA Journal* traced the purpose and pedagogy of legal education throughout our nation's history to gain insight on where we are now and where we might head. Can the future of best practices to educate lawyers and admit them to the bar be found in a close look at the past? Could early American educational methods offer a preview of what's to come—and what to avoid—in legal education? And how can debates about the proper balance between academics and working with the practicing bar to provide quality legal education inform today's and tomorrow's standards?

Apprentice days



Abraham Lincoln was self-taught and "read the law." (Photo by Fotosearch/Getty Images; Joe Mabel)

Since the country's founding, when the Founding Fathers were white men, slavery was legal and women didn't have the right to vote, societal and legal education norms have changed dramatically.

"There were swaths of people who were not admitted to the nation as people, let alone lawyers," says Danielle Conway, who is the dean at Penn State Dickinson Law and also president of the Association of American Law Schools.

Among our country's founders who were attorneys, only some were formally educated as lawyers, and that

was in England, says Joan Howarth, professor emerita at the University of Nevada Las Vegas William S. Boyd School of Law.

Graduation from law school would not become mandatory in many states until the 20th century, and even today some states, including California, allow “law office study” instead of a formal degree.

That means notables such as Daniel Webster, Strom Thurmond, and 60 U.S. Supreme Court justices, including James Byrnes—who didn’t graduate high school—took different pathways to law.

Instead of law school, many early leaders, including John Adams, trained as apprentices or clerks—a typical pathway to becoming a lawyer in the common-law world.

These apprentices often did not have an undergraduate degree, but they paid an experienced lawyer to gain access to their law library and to learn via working side by side, possibly for years, before joining the bar.

Some, like Abraham Lincoln and Alexander Hamilton, were self-taught and “read the law” by borrowing books from established lawyers but did not learn alongside them.

“What was unusual about Hamilton was that he did it in three months,” Howarth says.

That might sound impressive, but there was a lot less law to learn then, notes Deborah Jones Merritt, professor emerita at the Ohio State University Moritz College of Law.

“There were relatively few colonial laws. There were no income tax laws, no intellectual property law,” says the co-principal investigator of the landmark 2020 report *Building a Better Bar*.

And at that time, there were no standards for work required of apprentices before they could join the bar, and much of their time was spent transcribing laws.

“It doesn’t sound like the apprentices were interacting with clients,” Merritt says. “Were they really getting any client interaction or responsibility for cases? Or were they basically stenographers?”

In addition, supervisors were not vetted, notes Justin Simard, a member of the American Society for Legal History. “Teaching this young lawyer was not a high priority for these men,” he adds. “They were busy lawyers. They were trying to get work done.”

School Days

The colonies did have one small law school.

Two years ahead of the Declaration of Independence, the Litchfield Law School, the nascent nation’s first law school not associated with a college or university, opened in Connecticut.

The 18-month program involved lectures as well as hands-on learning, including the creation of the first moot court, according to the state of Connecticut Judicial Branch. Its first student was Aaron Burr, the brother-in-law of Tapping Reeve, the school's founder, who was a lawyer and judge along with being an educator.



"Reed's concept was to supplement the experience of lawyers," says Howarth, author of *Shaping the Bar: The Future of Attorney Licensing*. Litchfield educated 1,100 students before closing in 1833.

The American University Washington College of Law was the first one to be founded by women. (Photo courtesy of American University Washington College of Law)

"Litchfield was a better balance between experience and learning than a lot of what legal education became," she adds, noting that most formal legal education over time became associated with universities.

Those seeds were planted with the pedagogy of James Wilson, one of the original five associate justices of the U.S. Supreme Court and the first law professor at the College of Philadelphia, the forerunner of what is now the University of Pennsylvania Carey Law School.

The school, which opened in 1850, had a grander focus than teaching practical skills, says Simard, an associate professor at Michigan State University College of Law.

"His idea was to train people to be prepared to be the next generation of political leaders," Simard says. "We have this new republic. What we need to educate people on is not the nuts and bolts of the law. It's these big ideas about democracy, and what does that look like going forward."

Inevitably, the backlash came. "Just like today, after a while, lawyers were saying, 'Hey, we need practical skills,'" he adds.

But instead of more time rolling up their sleeves and digging into the work, legal students were sent even deeper into academia.

Christopher Columbus Langdell, dean of Harvard Law School from 1870 to 1895, introduced the case system and formalized legal instruction around lectures, reading case books and memorization—a pedagogy still used today.

"There's some assumption that if we teach the students the law and big-picture legal principles, they'll figure out how to be lawyers once they start," Simard says.

Though apprenticeships or pathways like Lincoln's still were common, they were looked down upon, and Langdell's system kick-started the beginning of law school elitism, sources say.

"These guys were big snobs," Simard adds.

Langdell prioritized hiring professors who were academics with little practical experience, underscoring the importance of reputation and prestige.

"Prestige is to law schools as profit is to corporations," Howarth says. "We don't have another measure."

But it was more than snobbery that led to law school's importance growing while apprenticeships fell out of vogue. As the country grew and the economy moved toward industrialization, the need for lawyers grew dramatically as they served business elites, says Daniel Thies, chair of the council of the ABA Section of Legal Education and Admissions to the Bar.

"It was no longer feasible to educate enough lawyers through the apprenticeship model," he adds, "and it'd be very hard to standardize it make sure everybody gets the best education."

That shift led to the founding of the American Bar Association in 1878, and within 15 years, the Section of Legal Education became the ABA's first section. "The ABA's Legal Ed council was one of the primary movers setting standards to govern clinical education," Thies adds.

While each state supreme court determines requirements for joining the bar, the ABA has encouraged aspiring lawyers to receive training in law school since its founding in 1878. Just a year later, the Standing Committee on Legal Education and Admissions to the Bar recommended that a law school diploma be considered as essential for admission to the bar. Over time, educational requirements expanded, ultimately leading to the requirement of an undergraduate degree and graduation from a three-year program at an accredited law school in many jurisdictions in the years following World War II, according to *Shaping the Bar*.

While the ABA has been the sole accreditor of law schools since 1952, Alabama, Florida and Texas recently cut ties, and other state supreme courts are considering moves to create their own accreditors. To date, no states have forbidden law schools from seeking ABA accreditation.

Practicality matters

Despite law schools' near-monopoly on training aspiring lawyers for more than 70 years, there has been a consistent refrain during the 20th and 21st centuries that legal education is not practical enough, Simard says.

Thies agrees. "The profession always realized that something was lost with the apprenticeship model," he says. "The history of the second half of the 20th century is, in large part, a story about the efforts to reclaim that."



In 1910, Ohio State University's law school had its own football team. (Photo courtesy of Ohio State University Moritz College of Law)

That discussion grows louder as debates rage about how much hands-on learning should be mandatory during law school.

“What we have known since the 1970s is that interactive learning, hands-on learning, experiential education is a much more effective model to teach,” Conway says.

The 1992 report *Legal Education and Professional Development—An Educational Continuum* by the council of the Section of Legal Education and Admissions to the Bar’s Task Force on Law Schools and the

Profession: Narrowing the Gap (aka the *MacCrate Report*), was a turning point, Thies says. It spelled out lawyering skills graduates need for practice, underscoring what new lawyers should be able to do and what they should know. This included problem-solving, legal analysis and reasoning, and legal research. The report also listed core values such as committing to competent representation of clients and striving to promote justice, fairness and morality.

“It shows that it takes both the academy and the practicing bar to help train new lawyers,” Thies says. “There’s a partnership that has to happen.”

Pedagogy has evolved. Although they are now common, legal writing courses, legal clinics and externships are relatively recent innovations, Simard says. And now, ABA accreditation standards allow for externships and for students to be paid for credit-bearing internships. But how much hands-on is too much?

“Law school legal clinics have to limit the number of students because it’s a lot of work to make sure these students are learning and the clients are still getting what they need,” Simard says. “That’s a big challenge.”

In the '90s, ABA accreditation standards evolved, allowing more courses taught by adjuncts who often are working attorneys, Simard says. “That exposure enabled something more like the apprenticeship model in law school,” he adds.

But what that partnership between academics and the practicing bar looks like is still up for debate.

Last year, the section’s council proposed doubling required experiential learning credits, via work in a clinic or a field placement involving working with a client, from six to 12. That update to Standard 303 met fierce opposition from law school deans, many claiming it would give the section unnecessary control over curriculum and increase tuition costs. It later was withdrawn.

Swinging Back

As calls for more practice-ready graduates grow, there's been a renewed interest in supervised practice as a step toward licensure.

Last July's report from the Committee on Legal Education and Admissions Reform suggests licensure requirements that de-emphasize the bar exam could simultaneously help new graduates gain hands-on skills while easing access-to-justice troubles around the country.



Students at Northeastern University School of Law, class of 1986. (Photo courtesy Northeastern University School of Law)

That idea has been catching on. In the past two years, six jurisdictions have approved methods of licensure that put less emphasis on tests or memorization and more weight on practical skills learned on the job while earning a paycheck. Four others are formally considering similar moves.

But the colonial-era apprenticeship model has been updated. Unlike the path taken by Lincoln and his contemporaries, the newer supervised practice models to licensure are add-ons to law school, not instead of it.

"It's not just the sense that we're rediscovering the value of learning from practitioners and actually working hands-on in the law," says Howarth, a member of the Bar Licensing Commission that developed a newly launched, three-pronged pathway in Nevada, "but it's always now in combination with a three-year law degree."

What work is expected of the neophyte lawyers has been clarified, as recent calls for more practice-ready new lawyers have emphasized that more tasks involve client interactions.

"Nowadays, supervised practice requirements are really more focused on whether you can show that you're confident in interacting with a client and taking responsibility," Merritt says. "That's a big difference."

And unlike apprenticeships in days of yore, some current-day programs, like in Oregon, require supervising attorneys to take training.

"You have to be very careful about how you set it up. You're really outsourcing a lot of important legal education to practicing lawyers, and that's not their main job," Simard says. "That's the lesson that history teaches us."

Thies says there's even more potential for further blending of the law school and supervised practice models.

"If you had a third year of law school that looks more like an apprenticeship, and it faded into a first year of supervised practice as an alternative to the bar exam, then all of a sudden you've got two years of what looks like an apprenticeship but with a lot more standardization," Thies says.

Still, one potential pitfall remains, he adds. "The same old struggle continues—how to handle the thousands of lawyers attempting to be admitted to the bar each year. This is the challenge, scaling these programs to be big enough to admit a lot of lawyers."

Other cultural challenges, like the COVID-19 lockdown, necessitate different types of learning. "We are encountering a generation of students who engage with asynchronous engagement far more than the prior generations," says Brian Gallini, the dean of the Quinnipiac University School of Law, who co-chairs Connecticut's committee to consider a public service pathway to licensure.

That means along with doctrinal knowledge, these future lawyers need practice in civil discourse, civil advocacy, the ability to sit and be in conflict and be "present and bringing those professional skills to the table," he adds.

While the past influences the present and future, change is inevitable and necessary, Conway says. "Fifty years from now, I would hope that we find different and distinctive pathways for legal education." And that will demand collaboration throughout the legal community, she adds.

"We need to make sure that we have our bases covered—practice areas, experiential education, career opportunities," she says, "and we have a weblike system between judges and lawyers and legal educators to help us cover that ground."

Conway adds that everyone has to be actively involved in legal education and protecting the rule of law. "We can't cede our responsibilities."

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