violates the most fundamental federalism and colorblind principles of the Constitution.

When the Supreme Court does decide its next Voting Rights Act case, here's hoping that the Justices, or at least a majority of them, or at least someone writing a brief in the case, will have read Abigail Thernstrom's wonderful book.

Endnotes

1 Useful histories of the passage of the Fifteenth Amendment can be found in Alexander Keyssar, The Right to Vote 93-104 (2000), and The Heritage Guide to the Constitution 409-11 (Edwin Meese III et al. eds., 2005). Neither suggests, however, that the amendment means or was intended to mean anything more or less than what its text actually says.

2 For an argument that Section 203 of the Voting Rights Act, which requires some jurisdictions to print ballots and other election materials in foreign languages, is likewise objectionable and unconstitutional, see Roger Clegg & Linda Chavez, *An Analysis of the Reauthorized Sections 5 and 203 of the Voting Rights Act of 1965: Bad Policy and Unconstitutional*, 5 Geo. J.L. & Pub. Pol'y 561, 575-80 (2007).

3 My criticisms of the disparate-impact approach in civil-rights enforcement generally are set out in Disparate Impact in the Private Sector: A Theory Going Haywire (National Legal Center for the Public Interest 2001), *available at* http://www.aei.org/paper/100116, which elaborates on *The Bad Law of "Disparate Impact,"* Pub. Int. 79 (Winter 2009), *available at* http://www.nationalaffairs.com/public_interest/detail/the-bad-law-of-disparate-impact.

Let me add that, even under a disparate impact/effects/results approach, the defendant can prevail if it can show a sufficiently strong reason for the challenged practice. Thus, for example, I've argued that the disenfranchisement of felons ought to be lawful under Section 2 of the Voting Rights Act, even if Section 2 applies and even if it has racially disproportionate results. *See, e.g.,* Roger Clegg et al., *The Case Against Felon Voting*, 2 U. St. Thomas J.L. & Pub. Pol'y 1, 12 (2008). But the pressure to abandon criteria with racially disproportionate results, or to overlay them with quotas, remains.

4 League of United Latin American Citizens v. Perry, 548 U.S. 399, 511 (2006) (Roberts, C.J., concurring in part and dissenting in part). Among the Supreme Court's anti-racial-gerrymandering pronouncements, see especially *Shaw v. Reno*, 509 U.S. 630 (1993), and *Miller v. Johnson*, 515 U.S. 300 (1995). Regarding the bad side-effects of racial gerrymandering, see generally Roger Clegg & Linda Chavez, *supra* note 2 (citing, inter alia, Christopher M. Burke, The Appearance of Equality: Racial Gerrymandering, Redistricting, and the Supreme Court 32-33 (1999); and Katharine Inglis Butler, *Racial Fairness and Traditional Districting Standards: Observations on the Impact of the Voting Rights Act on Geographic Representation*, 57 S.C. L. Rev. 749, 780-81 (2006)). *See also* Jim Sleeper, Liberal Racism 43-66 (1997); Sheryll D. Cashin, *Democracy, Race, and Multiculturalism in the Twenty-First Century: Will the Voting Rights Act Ever Be Obsolete?*, 22 Wash. U. J.L. & Pol'y 71, 90 (2006).

5 129 S. Ct. 2658 (2009).

6 129 S. Ct. 2504 (2009).

We're Not Dead Yet.[1] Book Review: The Vanishing American Lawyer

By Thomas D. Morgan

*Reviewed by Allison R. Hayward**

Is the practice of law a profession? For most practicing lawyers, the last time they heard that question was from the podium of their ABA-mandated Professional Responsibility class. But this is but one of many fundamental questions asked by Thomas Morgan, Oppenheim Professor of Antitrust and Trade Regulations at the George Washington University Law School and leading light of legal ethics scholarship. In *The Vanishing American Lawyer*, Morgan takes a fresh and markedly heterodox posture on questions regarding professionalism, practice, and legal education.

The hallmarks of a profession include the mastery of knowledge beyond a client's ability to grasp, a duty to serve public as well as private interests, and discipline by one's peers. But as Morgan observes, changes in the practice of law have transformed many lawyers into scriveners, whose conduct is best regulated under principal-agent standards. Pause for a moment—what's professional about lawyering a real estate closing? Morgan criticizes the establishment Bar for clinging to "professionalism" and failing to face reality.

Reality is this: most lawyers perform tasks to fulfill narrow specific client demands, without regard to whatever other interests there may be. Lawyers are thus more akin to business consultants than to professionals. Lawyers for the most part do not function above the fray and do not exercise independent judgment about the merits of a client's goals. In fact, given the disaggregation and specialization of modern private law practice, it would be hard to imagine it otherwise. Today's successful lawyer is not the generalist of yesterday, but an expert who has mastered an especially thorny area of practice. That specialist can tell you everything about the taxation of international pharmaceuticals, or the ins and outs of reinsurance contracts. But it will be the in-house counsel—an employee—who oversees the company's legal portfolio.

While the reality of law practice today demands specialization and mastery of the arcane, legal education hasn't responded. Morgan calls for experimentation and variety in legal education. But Morgan also notes that with the ABA standing at each law school's door, enforcing blanket standards, few law schools would care to innovate. Similarly, the outsized influence of the U.S. News rankings discourages any dean from trying something novel, for fear of a hit in the rankings.

Morgan argues that law schools need to do a better job of training specialists. This means crafting a curriculum that focuses on skills and offers substantive experience in a field. But Morgan does not endorse the recommendations of what he

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calls "the always hovering Carnegie Foundation." Carnegie has endorsed law school clinical programs as an essential element in a model curriculum. But clinics are a very inefficient and expensive means for delivering skills training, and as Morgan notes, clinics may themselves be based on outdated notions of what lawyers really do. Even better? Working in the field. Morgan's insight would seem to suggest reworking legal education along the lines of business education, where the student comes to the degree program having already worked in the field of specialization. Barring that, law schools might place greater emphasis on externships, or joint degree programs that graduate a student who is prepared to give useful advice for specific client needs.

Today, attorneys acquire specializations by serving as apprentices. Junior associates in law firms learn a specialty at the direction of partners and senior associates. But this model is failing. Clients (or their in-house counsel) resent paying professional fees for someone's apprentice. Consequently, the partner will write off the apprentice's time. But a firm can't make money that way—unless the junior associate works very, very hard to compensate. Hence the birth of the 2400, 2600, even 3000 hour billable year. Anybody who stops to do the math can appreciate how ridiculous these requirements are. As Morgan observes, a reasonable work schedule, which allowed for a vacation, weekends, and time for networking and professional development, would yield about 1300 billable hours. Associates either work themselves to death, cheat, or escape. Oddly, one of Morgan's suggestions is to strengthen rules that restrict young lawyer mobility. I believe that only makes sense if corresponding changes to legal education happen.

The establishment Bar has been quiet about the ethical implications of this system. Certainly the Model Rules and their state counterparts require attorneys to perform with competence and diligence. For 3000 hours? Unlikely. Here, too, the legal "profession" has yielded autonomy to clients and to their malpractice insurers. Lawyers now are less subject to outmoded ethical standards enforced by their peers, but more subject to performance standards set by the firm's malpractice insurers and threats of litigation from unhappy clients. Again, this reinforces the client-centric character of modern legal practice, and the role of the lawyer as "agent" rather than "professional."

Morgan predicts that the future will still have a place for the trial lawyer, so Clarence Darrow is safe for now. The future will also have a place for the lawyer-specialist. Law firms will still make sense as a means for aggregating specialists who can offer a range of services. Morgan doesn't mention whether relaxing imputed conflicts restrictions would be a good or useful development, but that may be the trend. Morgan does argue for relaxing the fee-splitting rules, so attorneys can practice with non-attorney experts. Clerks should do routine and high volume work, and to the extent rules restricting the unauthorized practice of law impede their use, the bar should evolve and accommodate.

Thomas D. Morgan's The Vanishing American Lawyer *is published by Oxford University Press.*

Morgan's American lawyer is not so much "vanishing" but "transforming." (A better title for the book might have been "The Transformation of American Lawyers," except Oxford already publishes Morton Horwitz's *The Transformation of American Law*.) What is vanishing is the professional characteristics that law practice once had. Not all those characteristics were admirable. Many state bars restricted competition, set minimum prices, and forbade advertising all in the name of peer-enforcement of "ethics."

The most troubling aspects Morgan identifies are within legal education. Many students entering law school lack experience or focus. Law school has become the default graduate education for students who don't know what they want to do with themselves. Thus they are unparticular customers and grasp at national ratings to tell them where they should attend. Their law school's curriculum will likely be indistinct, divided between "skills" training often taught by adjuncts and term faculty, lecture classes that may be offering substantive material or "think like a lawyer" interrogation, depending on the professor's priorities, and for a few, expensive inefficient clinics.

After three years of this education, students still spend thousands more on bar review instruction to pass an exam and earn the right to practice law. Once (hopefully) employed, students begin to acquire specific expertise. Legal education doesn't seem to have much to do with training lawyers. One wonders whether the present situation is sustainable.

Endnotes

1 Monty Python and the Holy Grail (1975).