

Market Creep: “Product Talk” in Legal Education

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Background / Introduction

- Background
 - Prior “field” work
 - Proprietary law schools, neoliberalism, access to justice
 - *Law Mart: Justice, Access, and For-Profit Law Schools*, 2017
 - Reform commentator interviews
 - “Most influential”
 - “Market”, “product” as solution or condition of possibility of solution
 - Neoliberal capture?
 - > Further evidence how widespread, and theoretical implications?

Framework

- Political economy
 - markets
 - commodification
- Economic anthropology
 - fieldwork; symbols and practices
 - alternative forms of exchange
- Linguistic anthropology
 - “speech events”
 - ideology

Method?

- Backdrop: participant observation
- Here: Hermeneutic approach
 - Web searches
 - “product”, “market”, “law school”, “legal education” within 10, 15 words
 - Pub dates post-2000
 - Extracts with context
 - 50 gathered
 - Excluded meanings unrelated to commodification
 - Kept negative uses
 - 30 presented, organized

Examples

- Speech Events
 - Institutions : law schools, primary or secondary publication
 - Journalists
 - Traditional
 - New media
 - Students/Activists
 - Prospective
 - Current
 - Graduated
 - Academics
 - Faculty
 - Administrators

Examples

- Institutions : Law Schools

- Students as Consumers

- “[W]e can integrate the strengths of law school and the arts & sciences . . . Such integration can produce a better *product* for our students.” (William and Mary)
 - “Adding new degree programs is like a company diversifying its *product* lines. If demand for one sags, you’ve still got alternative sources of revenue coming in . . .” (University of Dayton)
 - “The school has been recruiting aggressively but also has a great *product* to offer and is attracting students from all over the country . . .” (Mitchell Hamline)

- Employers as Consumers

- “The employer benefits from the *product* of a Fordham Law education—a professional ready, willing, and able to hit the ground running and make immediate contributions. . .” (Fordham)
 - “Two of my last four law clerks have been Campbell Law graduates, and these two particular students are first-class. . . . I know that the *product* that Campbell Law is turning out right now is world-class.” (Campbell)
 - “The *market* for legal education’s *product*, law graduates, has diminished. And now, for the first time in decades, the *market* for legal education has diminished.” (Chapman)

Examples

- Journalists
 - “[T]here’s no business like the business of law school. The basic rules of a *market* economy — even golden oldies, like a link between supply and demand — just don’t apply.” (David Segal, *NYT*, 2011)
 - “Law School Is Buyers’ Market, With Top Students in Demand” (Elizabeth Olson, *NYT*, 2014)
 - “Is a school’s promotional material like advertising for any other *product*? Or should institutions of higher learning be held to a higher standard?” (Noah Feldman, *Bloomberg* 2016)
 - “[S]chools have been developing degree programs specifically for non-lawyers. If we use crude terms and call law school a "*product*," then the legal education "industry" has "innovated," responded to the "*market*," and developed a new "*product*." (Derek Muller, *Excess of Democracy*, 2013)

Examples

- Students / Activists
 - “Overall, elite schools won’t look much different than today’s law school. . . Nevertheless, they will feel different because the educational *product* will be more skills-oriented.” (Kyle McEntee, *Law School Café*, 2013)
 - “[S]he thinks they're fudging some data in the sense that only the top people are reporting their salaries to Cal Western and of course every school uses "propaganda" I mean they are selling a *product* - legal education and its not cheap. They have to make it seem respected etc.” (User: Wtracing, *Law School Discussion*, 2008)
 - “The private sector could solve this problem if government would stop messing with the situation by flooding the legal education *market* with money.” (User: HappyAlumnus, *College Confidential*, 2015)

Examples

- Academics

- “[Schools] were skeptical of the usefulness of the case method, opting instead to rely on other forms of delivery of legal instruction such as reading courses, lectures on jurisprudence, and work in legal-aid practice. Law schools thus provided different “*products*” from which those aspiring to be lawyers could choose.” (Paul Caron, *Texas Law Review*, 2004)
- “If we are going to protect students, new lawyers, employers, clients, and the legal system itself, we need to unleash *market* forces in legal education. . . . Open *markets* are the most efficient way to channel information from *consumers* to *producers* ” (Deborah Merritt, *Georgetown Journal of Legal Ethics*, 2012)
- “I don't think there's a crisis in legal education. . . Some *products* are doing worse than other *products*. That doesn't mean there's a crisis in that *market*. If a certain brand of car isn't selling as well as other cars, that doesn't mean there's a crisis in the auto industry.” (Erwin Chemerinsky, interview with author, 2015)

Implications (cont'd)

- Commodification
 - “Fictitious commodification”
 - Polanyi, Fraser: Care, social reproduction treated as “input” would lead to crisis.
 - Law teaching & learning as social reproduction?
 - Commodification potential *cause* vs. solution to “crisis”?
 - “Human capital” (1960s/70s)
 - Rankings (1987)

Problems

- Method to analyze meaning
- Sample size
- Social Media
- Prescriptive solutions