

At the Intersection of Curricular and Pedagogical Choices in Legal Education: Collision or Harmonious Merger?

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The Carnegie Report's¹ assessment of the strengths and weaknesses of contemporary legal education in the United States and Canada suggests that it is inappropriate to consider law schools' curricular choices and pedagogical choices as involving independent questions to be answered in isolation from one another. Rather, curricular choices should inform and be informed by pedagogical considerations, and pedagogical choices should inform and be informed by curricular considerations. What is it that we hope law school graduates will be able to do? How do we hope they will do what they do? These are the questions that must be asked. Our answers will lead us to approach law school as a holistic experience in which curriculum and pedagogy are harmonized to produce a set of clearly identified desired outcomes for law students and the clients, employers, and societies they will serve.

The agenda for the 2011 IALS Annual Meeting includes separate plenary programs focusing on law school curriculum and law school pedagogy. This arrangement suggests that curriculum and pedagogy are completely separate topics that should be addressed independently. This indeed has been the traditional approach to strategic planning for legal education. However, the publication in 2007 of the Carnegie Foundation's study of contemporary legal education in the United States and Canada² has stimulated a new wave of thought that suggests the separate consideration of curriculum and pedagogy is counterproductive to the central mission of legal education: to prepare lawyers for the responsible practice of law – in the broadest sense of that concept.

After assessing the strengths and weaknesses of contemporary legal education as it is currently delivered in North America, the Carnegie Report offered two overarching recommendations: (1) preparation for the practice of law should be understood to involve three distinct, but related, "apprenticeships" – cognitive, practical, and ethical-social³ – and (2) the three apprenticeships should be administered in an 'integrated' manner.⁴ A fully integrated approach to legal education requires that curricular choices should inform and be informed by pedagogical considerations and that pedagogical choices should inform and be informed by curricular considerations.

Even this is not sufficient. The Carnegie Report's proposal for an integrated approach to legal education was recommended with special awareness of the ethical-social apprenticeship, which is required to help law students develop a confident and constructive sense of professional identity and purpose. The ideal concept of professional identity and purpose entails a deep commitment to the core values of the legal profession:⁵ representing clients with competence, diligence, and undivided loyalty; empowering clients to make fully informed decisions; promoting the rule of law; and seeking to improve the legal system and access to legal services. If law students

¹ WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) [hereinafter CARNEGIE REPORT].

² *Id.*

³ *Id.* at 27-28.

⁴ *Id.* at 194-97.

⁵ *Id.* at 52-53.

are to internalize these values, they must be exposed to them in meaningful ways and begin to assimilate them during their law school years.⁶

Legal educators around the world share the hope that the work of our graduates (and the professional associations they will form) will facilitate continuing improvement of law and legal institutions in our respective nations. Our graduates should have the capacity and will to contribute to society in many ways besides their engagement in the practice of law. It is likely that they will be disproportionately represented in positions of leadership and influence in government, business, and policy centers. If students leave our law schools with sound training and inspired aspirations, the totality of their careers offers the promise of strengthening the rule of law, thereby promoting stability, security, economic progress, and harmonious international relations throughout the world.

To address all of these worthy goals of legal education, knowledge, skills, and professional identity and purpose should *all* be considered simultaneously when legal educators engage in strategic planning for their academic institutions. Whatever the knowledge and skills we hope law school graduates will acquire, and whatever our view of the professional identity and purpose we hope they will develop while in our schools (and thereafter⁷), our thinking about these attributes of a responsible law school graduate should not be compartmentalized too rigidly.

To implement the integrated model of legal education that it advocates, the Carnegie Report encourages law schools to provide students with more lawyering experiences under the supervision of the law schools. This may be through clinics, externships, or simulations.⁸ While many law schools in the United States have long offered a variety of experiential learning opportunities as part of their curricula,⁹ the publication of the Carnegie Report seems clearly to have led more law schools to broaden their experiential course offerings.¹⁰

Because the traditional, non-experiential model of legal education is so entrenched in our law schools, many of these experiential learning opportunities have been introduced as *additions* to the curriculum, rather than being *integrated* into the curriculum. This is in large part because most of the faculty who currently share in the governance of American and Canadian law schools were educated at a time when only a small part of their own law school education consisted of experiential learning. If they *were* offered experiential courses, they stood apart from the core of the curriculum. As a result, today's professoriate is composed largely of faculty who were not exposed to experiential legal education, and many legal academics are disinclined or ill-equipped (or both) to offer it to their students.

⁶ Professional identity continues to form *after* one's graduation from law school, and one's post-graduation professional experiences influence professional identity quite strongly. See, Lawrence K. Hellman, *Carnegie's Missing Step: Prescribing Lawyer Retraining*, in REAFFIRMING LEGAL ETHICS: TAKING STOCK AND NEW IDEAS 130-34, (Reid Mortensen et al. eds., 2010).

⁷ *Id.* See also, Lawrence K. Hellman, *The Effects of Law Office Work on the Formation of Professional Values: Observation, Explanation, Optimization*, 4 GEO. J. LEGAL ETHICS 537(1991).

⁸ CARNEGIE REPORT, *supra*, at 115.

⁹ Most often, the experiential courses are only available as upper class electives. Even then, only a fraction of law students take these courses.

¹⁰ See, Katherine Mangan, *Law Schools Revamp Their Curricula to Teach Practical Skills*, The Chronicle of Higher Education (Feb. 27, 2011). See also, Nancy H. Rogers, *Law Schools to Discuss Possible Major Changes*, The National Law Journal, (Sept. 11, 2007), available at <http://www.law.com/jsp/article.jsp?id=1189450985191> (last visited Sept. 17 2009); Katherine Mangan, *Legal Educators Rethink How Lawyers Are Trained*, The Chronicle of Higher Education (Jan. 11, 2008) <http://chronicle.com/weekly/v54/i18.18a01201.htm>; Vesna Jaksic, *School's Third-Year Program Overhauled to Teach Practice of Law*, National Law Journal, (Mar. 13, 2008), available at <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1205322356908>; Washington & Lee University curriculum announcement, <http://law.wlu.edu/THIRDEYEAR/> (last visited March 16, 2009); Stanford University curriculum announcement, <http://www.law.stanford.edu/news/pr/47/A%20C3%A2%E2%82%AC%C5%933D%C3%A2%E2%82%AC%C2%9D%20Stanford%20Law%220Law%20School%20Announces%20New%20Model%20for%20Legal%20Education/> (last visited Sept. 7, 2009); Michelle Lore, *Balancing Law School Curriculums: Report on State of Legal Education Causes Stir Among Academics*, Minnesota Lawyer, Oct. 29, 2007, 2007 WLNR 21464305; Symposium: *The Opportunity for Legal Education*, 59 MERCER L. REV. 821 (2007); *Rethinking Legal Education for the 21st Century*, 59 MERCER L. REV. 821 (2007); Jonathan D. Glater, *Training Law Students for Real-Life Careers*, N.Y. Times, Oct. 31, 2007, at 9.

Most American law school professors are similarly underexposed and unmotivated with respect to the development of professional identity and purpose. Even though all American law schools are required to offer a course on the professional responsibilities of lawyers, and many have added short orientation programs addressing professional identity and purpose, the subject matter of professional responsibility is usually cabined in a stand-alone course offered in isolation from the remainder of the curriculum.

Clinical courses offer the most promising opportunities to truly integrate the teaching and learning of knowledge, skills, and values. But clinical courses are expensive to offer, and they require faculty members with different sorts of professional experiences and goals than those of the bulk of the tenured law school professoriate – at least in the United States.

What to do?

Institutional change is difficult, especially in educational institutions that are old and entrenched.¹¹ But institutional *evolution* is less difficult; indeed, it is unavoidable.¹² Those engaged in strategic planning within law schools should acknowledge that the ideal law school curriculum is one that thoroughly integrates the learning of knowledge, skills, and professional values in every course and throughout the entire law school experience – including in planned activities *outside* the classroom.

It is unrealistic to expect today's faculty members to re-make themselves. But every professor in every course – whether it be doctrinal, simulation-based, or experiential (clinic or externship) – should be incentivized to look for opportunities to integrate skills and professional values into their teaching plans. Early and often in the law school experience, the multiple goals of legal education should be put front and center, so that all faculty and all students understand what they are trying to achieve.

We hope that law school graduates will represent their clients competently while also working to promote and improve the rule of law. We hope they will conduct themselves ethically and wisely in all professional endeavors. Therefore, whether we are considering curricular content and sequencing or the optimal pedagogical approach for a particular course or the curriculum as a whole, remembering the multiple goals of legal education will lead to better decisions and a better legal profession.

¹¹ Perhaps ironically, the adoption of truly integrative curricula may be more easily achieved in nations where legal education is less well established.

¹² Cf. CHARLES DARWIN, ON THE ORIGIN OF SPECIES (1859).