

# **The Humanities in Preparation for Legal Practice**

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## **Introduction**

When a law school which has historically focused on preparing postgraduate law students for business-related practice is faced with an institutional mandate to provide coursework in the humanities, its faculty and administrators must decide how best to design a curriculum that meets both of these objectives. In undertaking this decision, they must first consider the purposes behind requiring prospective lawyers to take humanities courses. Then, within the broad scope of the humanities, faculty and administration must determine which specific courses or subjects will best serve to prepare students for their futures, not only as practicing lawyers, but as public citizens. They must also address issues of perception among students and other stakeholders, who might be somewhat skeptical of the need for the humanities in the academic formation of a practicing lawyer.

## **Background**

For nearly forty years, IE Law School in Madrid, Spain has provided postgraduate degree programs in law and taxation, with an emphasis on representing the business or corporate client. The law school was founded in 1973 as the law department of what was then known as the Instituto de Empresa Business School. Since 2007, IE has become a full-fledged private university with seven separate schools, including IE Law School. Around the same time, IE Business School took the lead in requiring humanities coursework as part of its graduate degree programs, and this model has been extended to the other schools of IE University. One of the main proponents of teaching the humanities in graduate business programs is IE University's President and Business School Dean, Dr. Santiago Iñiguez de Onzoño:

"We believe that by teaching modern art, for example, we nurture such skills as perception and observation, typical of artists and architects, which may help the traditionally action-oriented manager be more reflective while assessing risk. Courses on foreign cultures may help them lead cross-cultural teams better in global companies. Modules on critical thinking may be of use to question unethical decisions imposed by their bosses in the future. Indeed, it is time to bring all the benefits of classical education to business schools."<sup>1</sup>

In IE Law School, the question therefore arises as to whether prospective lawyers have similar needs as their business school colleagues in terms of curricular content in the humanities. In addition, the law school faces the challenge of overcoming a perception that the humanities are not very important in preparing a law student for professional practice.

## **The Challenge of Perception**

Research conducted at IE Law School shows that law school stakeholders are ambivalent about the importance of the humanities as part of the intellectual tool kit of a successful practitioner.<sup>2</sup> This research involved a survey asking participants to rank a list of different types of

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<sup>1</sup>Santiago Iñiguez de Onzoño, *Business School Rx: Humanities*, Businessweek, 14 February 2011. Available at [http://www.businessweek.com/bschools/content/feb2011/bs20110210\\_718571.htm](http://www.businessweek.com/bschools/content/feb2011/bs20110210_718571.htm), visited 16 February 2011.

<sup>2</sup>Marisa Méndez & Gregory J. Marsden, *Seeking the Right Skills for Successful Business Lawyers*, paper presented at Global Legal Skills Conference IV (June 6, 2009) (unpublished manuscript on file with author).

legal knowledge and skills, from most to least important for a business lawyer in the first few years of practice.<sup>3</sup> Two items on this list were of particular relevance for our inquiry:

- Humanities (appreciation of art and literature)
- Rhetoric; logical and persuasive arguments<sup>4</sup>

When survey responses were plotted in graphic form, it became immediately apparent that participants considered that rhetoric, the ability to make logical and persuasive arguments, was substantially more important to a practicing lawyer than an appreciation of art and literature.<sup>5</sup> The chart shows alumni responses as a red line, while those from the human resources professionals, the above chart, alumni responses are represented by a blue line. The closer the respective line is to the outermost concentric circle, the greater the perceived importance of that particular item.<sup>6</sup>



Both lines dip closest to the center for Humanities, described in the survey as ‘an appreciation of art and literature’, thus indicating that both groups considered this the least important of all listed items.<sup>7</sup> However, none of the responses ranked Humanities lower than 3 on a 5-point scale, indicating a neutral response, or in other words that the respondent perceived this item as neither a help nor a hindrance to the effective practice of law.<sup>8</sup> In contrast, Rhetoric, described as ‘logical and persuasive arguments’, was ranked substantially higher by both groups.

This ambivalence on the part of two stakeholder groups leads into consideration of the law school’s purpose or mission as an institute for professional education, and the goal or objective sought from including humanities in its curriculum. Only when these points are addressed can the

<sup>3</sup> *Id.* This research was conducted in academic year 2008-2009 and involved an e-mail survey targeted at two stakeholder groups. One group was composed of human resources managers in the top forty Spanish law firms. The second group was made up of 171 IE Law School alumni with up to 5 years of professional experience. Response rates were 50% and 23%, respectively.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

law school faculty and administration begin to orient the study of humanities towards achieving these goals.

### **The law school and professionalism**

In contrast to other graduate schools, a law school is inspired, defined and informed by its mission to prepare students for practice. Law schools are necessarily “professional schools designed to turn out practicing lawyers who are thoroughly enmeshed in the enterprise of law and who must be trained to make traditional legal arguments about traditional legal materials before judges and other legal decision-makers.”<sup>9</sup> Although this mission is criticized within the legal academy as anti-intellectual and apt to reduce legal education to mere vocational training,<sup>10</sup> the vast majority of law students graduate and go on to practice law.<sup>11</sup> Given the trend for law schools to increasingly offer courses which “focus either on other disciplines, such as economics, literature, and philosophy, or on ‘techniques for critically evaluating legal doctrines’”<sup>12</sup> and the finite resources available to the school itself, professionalism must serve not only as the defining characteristic of the law school, but also as a guiding principle in establishing its curriculum.

### **Humanities as a part of professionalism**

As with the entire curriculum, the teaching of the humanities in law school must necessarily be subject to the guiding principle of professionalism. The twofold nature of the humanities is reflected in the statement of goals set forth on Columbia Law School’s website for its law and humanities courses:

“The first and more technical goal is to strengthen the forms of thought and writing that students bring to legal subjects through the study of rhetoric, criticism, grammar and argument. This aspect of the subject focuses on the general nature of language and how to use it more effectively in a legal context. The second goal is to widen a student's horizons on legal subjects through the use of history, imaginative works of literature and moral philosophy.”<sup>13</sup>

Proponents of the latter goal often claim that teaching humanities in the law school curriculum has a humanizing or morally uplifting effect on future lawyers.<sup>14</sup> In particular, literature and theater are claimed to be one of the “most effective ways to teach empathy and compassion and to help students to strengthen their empathic and compassionate natures.”<sup>15</sup> However, their engagement with and acceptance by practitioners is a matter of greater uncertainty, with one law and literature commentator acknowledging that his field’s “greatest shortcoming... has been its failure to reach and engage the ordinary practicing lawyer.”<sup>16</sup>

The IE survey and writings of other scholars show that the humanities have a greater impact on readiness for the practice of law if they are considered from the perspective of the more technical goal referenced in the Columbia mission statement.

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<sup>9</sup> Jack M. Balkin, *Law and the Humanities: An Uneasy Relationship*, 18 Yale J. L. & Human 155, 166 (2006).

<sup>10</sup> Leonard J. Long, *Resisting Anti-Intellectualism and Promoting Legal Literacy*, 34 S. Ill. U. L. J. 1, 2 (2009).

<sup>11</sup> Brent E. Newton, *Preaching What They Don't Practice: Why Law Faculties' Preoccupation with Impractical Scholarship and Devaluation of Practical Competencies Obstruct Reform in the Legal Academy*, 62 S.C. L. Rev. 105 (2010).

<sup>12</sup> William R. Trail and William D. Underwood, *The Decline of Professional Legal Training and a Proposal for its Revitalization in Professional Law Schools*, 48 Baylor L. Rev. 201, 216 (1996), citing Lewis D. Solomon, Perspectives on Curriculum Reform in Law Schools: A Critical Assessment, 24 U. Tol. L. Rev. 1, 6 (1992).

<sup>13</sup> Available at [http://www.law.columbia.edu/llmgrad\\_studies/courses/humanities](http://www.law.columbia.edu/llmgrad_studies/courses/humanities), last visited 9 March 2011.

<sup>14</sup> Jennifer Bard, et al., *Three Ways of Looking at a Health Law and Literature Class*, 1 Drexel L. Rev. 512, 527 (2009).

<sup>15</sup> Kristin B. Gerdy, *Clients, Empathy and Compassion: Introducing First-Year Students to the "Heart" of Lawyering*, 87 Neb. L. Rev. 1, 38-39 (2008).

<sup>16</sup> Daniel J. Kornstein, *A Practicing Lawyer Looks Back on Law and Literature*, 10 Cardozo Stud. L. & Literature 117, 118 (1998).

“Lawyers essentially do three things in representing clients: they think, they speak, and they write. Thinking like a lawyer requires accurate application of rules to resolve problems. This law application process is generally referred to as problem solving or legal analysis and reasoning. Thinking clearly and analytically is thus part of being a competent lawyer. A competent lawyer must also communicate these thoughts clearly and persuasively. Clear speaking and writing, like clear thinking, are thus core lawyering skills.”<sup>17</sup>

This brings us to the role of the humanities, and particularly the place for classical liberal arts such as grammar, logic, rhetoric and dialectic in the law school curriculum. “Simply put, lawyers are rhetors. They make arguments to convince other people. They deal in persuasion.”<sup>18</sup> Under the criteria of professionalism, the most direct and immediate benefit that students will gain from their study of the humanities in law school is related primarily to sharpening their reasoning and communication skills, in the facets of thinking, speaking and writing, as described above.

### **In and beyond the practice of law**

Although we consider that our graduates are public citizens, and hope that they will grow into this role throughout their careers, we must not forget that their most immediate need is to become successful practitioners of the law. Students who will have to make their living in the law “cannot afford to spend law school learning only to be statespersons, philosophers, or law professors.”<sup>19</sup>

Therefore, we must concentrate on providing them with the intellectual tools they will need for success in and beyond the practice of law. Fortunately, the tools are the same in both cases. The ability to reason critically and to clearly and persuasively communicate their ideas will serve our graduates well, whether in practice or as public citizens and leaders within their society.

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<sup>17</sup> William R. Trail and William D. Underwood, *The Decline of Professional Legal Training and a Proposal for its Revitalization in Professional Law Schools*, 48 Baylor L. Rev. 201, 227 (1996).

<sup>18</sup> Balkin, *supra* at 177.

<sup>19</sup> *Id.* at 225.