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The Double Life of Law Schools

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THE DOUBLE LIFE OF LAW SCHOOLS

Ian Holloway PhD, QC[†] & Steven I. Friedland^{††}

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INTRODUCTION

The law school of 2025 will soon appear around the corner. An increasingly asked question is what will legal education look like at that time? Will it look like the Langdellian model of the past 120 years—

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centered on the coverage of appellate case reports, leavened by a modest degree of experiences, and some tweaks? Or will its shape transmogrify, becoming a blend of technology, Carnegie, and a redesigned marketplace?

Our view is that by the year 2025, law school will indeed be dramatically different. But how different depends on who wins the war between traditional education, tracing back to the days of Langdell in the 1870s,¹ and repositioned drivers influencing legal education today from inside and out. In a word, we are living in a time of struggle—struggle for control of the soul of legal education.

Until recently, law schools lived a very comfortable double life that straddled two worlds—the world of academia and the world of law practice. This double life was made possible by the Langdellian revolution in the late nineteenth century; rejecting the apprenticeship system and adopting a model based on the teaching of appellate cases.²

The double life can be described as part grand university and part Hessian craft guild. The grand university identity takes on a similar hue as a graduate liberal arts endeavor—offering a good background for its emphasis on critical thinking, whether students practice law or not. The Hessian craft guild, by contrast, trains students to learn the details of the skilled practitioner—to welcome clients into a specific domain.

This firmly rooted double life of law schools was skewed towards academia. As the oft-repeated saying goes, law schools taught people how to “think like lawyers,”³ but not how to actually be lawyers.⁴ In this regard, legal education appeared to be a professional training

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1. See, e.g., C.C. LANGDELL, A SELECTION OF CASES ON THE LAW OF CONTRACTS vi (1871) (explaining that “the only way of mastering [the law] is by studying the cases in which it is embodied.”).
 2. *Id.*
 3. For a discussion of what “thinking like a lawyer” means, see FREDERICK SCHAUER, THINKING LIKE A LAWYER: A NEW INTRODUCTION TO LEGAL REASONING (Harvard U. Press 2009); see also Richard K. Neumann, Jr., *A Preliminary Inquiry into the Art of Critique*, 40 HASTINGS L. J. 725, 728–29 (1989) (“The term ‘Socratic’ often is used misleadingly to identify a style of classroom teaching in which a professor interrogates students. As actually practiced in the classroom, however, this method is not Socratic at all: the accurate term would be ‘Langdellian’ or even ‘Protagorean.’ Langdell’s technique coincides with the pedagogical technique of Protagoras, the leading Sophist and Socrates’ rival . . . [who used] a method Socrates scorned.”).
 4. Susan R. Schick, *Creating Lawyers: The Law School Experience*, 13 COMPLEAT LAW. 46, 49 (1996).

ground that at least implicitly distanced itself from the practical preparation required to succeed within specific domains.⁵

The system worked well when the profession acted as a finishing school for graduating law students—in effect, running apprenticeship programs for new lawyers. All parties benefitted from the implicit partnership. Graduates were, for the most part, far from “practice ready.” The finishing-school system created greater demand for law school admissions when jobs were plentiful and provided exuberantly high starting salaries.⁶ It even benefitted many law professors working within the university confines to be able to devote more time to scholarship and service, burdened by teaching just a few classes each year.⁷

Even those students who did not have the opportunity to receive this additional professional training—and instead struck out on their own as solo practitioners—retained several advantages. Solo practitioners had access to their often better-trained former classmates working for government bodies, private firms, nonprofits, directly for business, or in other capacities. Thus, the finishing school occurred in a variety of ways.⁸

The traditional drivers of legal education were situated around a stable demand for lawyers. Those students who performed well in school could count on finding a full-time job that paid a satisfactory amount. The established model drew increasing numbers of applications to law school, with a high of over 170,000 applicants taking the LSAT in 2009.⁹

With the great recession of 2008–2010, however, cracks in the traditional double life began to appear. First, while 2009 served as a high-water mark in LSAT test-takers,¹⁰ a recalibration of the legal marketplace was occurring. Clients were no longer willing to pay whatever fees

5. Other professional domains, such as the medical arena, teach students to become competent practitioners and emphasize practical training.
6. David Lat, *The \$160K-Plus Club: Which Law Firms Pay the Biggest Starting Salaries?*, ABOVE LAW (Oct. 22, 2012, 3:07 PM), <http://abovethelaw.com/2012/10/the-160k-plus-club-which-law-firms-pay-the-biggest-starting-salaries/> [<https://perma.cc/4U5M-EV6F>].
7. David Lat, *How Much Does Your Law Professor Make? UVA Law Edition*, ABOVE LAW (Apr. 23, 2013, 6:06 PM), <http://abovethelaw.com/2013/04/how-much-does-your-law-professor-make-uva-law-edition/> [<https://perma.cc/A463-SW68>].
8. Adam J. Post, *Legal Networking Advice for New Solos*, GPSOLO, Spring 2009, https://www.americanbar.org/newsletter/publications/law_trends_news_practice_area_e_newsletter_home/younglawyers_post.html#a_about [<https://perma.cc/UZ9P-8PVE>].
9. *See Total LSATs Administered—Counts & Percent Increases by Admin & Year*, LSAC, <http://www.lsac.org/lisacresources/data/lisats-administered> [<https://perma.cc/5833-ABQ9>] (last visited Oct. 15, 2017).
10. *Id.*

were set by lawyers, and online form purveyors and Internet legal education blog commentators became fixtures in the lawyering domain. Many micro-broadcasters focused on the value of a legal education—digging under the general assumption that a legal education provided a good use of one’s time and resources. These additional fixtures sent tremors through the comfortable double life. Since then, legal education has been in a state of flux.

Especially in the United States, the tensions underlying this double life have been exacerbated in recent years by market forces—students are still applying in strikingly lower numbers to enter law school, clients are demanding changed fee structures, and the Internet is providing access to form purveyors and legal services across states and countries.¹¹ At the same time, the old legal education pipeline, from law school to big firms, to in-house, and to other jobs, has been significantly unbalanced.¹²

Accompanying the degradation of the legal education pipeline has been the demise of the complementary “finishing school” partnership with the legal profession—that law schools teach students to think, and lawyers teach students how to actually practice law. This training agreement essentially collapsed during the great recession of 2008–2010, when lawyers and law firms could no longer devote the resources to polish students over a period of time.¹³ With fewer students applying to schools and jobs much less plentiful, demonstrating the value of a legal education became paramount.¹⁴ The drivers of change became reframing tools, causing law schools to commence vertical and horizontal remapping of the entire education in a way that had not occurred for decades. Critical evaluation of the Langdellian education form grew exponentially.

This Article posits that for the legal education of 2025 to once again thrive, it will have to reframe itself. The drivers of change—particularly

11. Change often arises only when forced. *See, e.g.*, Victor Fleischer, *The Shift Toward Law School Specialization*, N.Y. TIMES: DEALBOOK (Oct. 25, 2012), <http://dealbook.nytimes.com/2012/10/25/the-shift-toward-law-school-specialization/> [https://perma.cc/WM3S-DSMT]; *see also* Natalie Kitroeff, *Law School Applications Set to Hit 15-Year Low*, BLOOMBERG (Mar. 19, 2015), <http://www.bloomberg.com/news/articles/2015-03-19/law-school-applications-will-hit-their-lowest-point-in-15-years> [https://perma.cc/WC37-5E68].

12. *See generally* Fleischer, *supra* note 11.

13. David Segal, *What They Don’t Teach Law Students: Lawyering*, N.Y. TIMES (Nov. 19, 2011), <http://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html> [https://perma.cc/8G82-P7FT].

14. *See generally* Kitroeff, *supra* note 11 (discussing the lesser number of law school student applicants); Judith Welch Wegner, *The Value of Legal Education*, 24 NOTTINGHAM L. J. 112 (2015).

the law services marketplace and the changing nature of clients and legal work—will require faculty and administrators to reconsider outcomes, values, and objectives of the enterprise. In many ways, any resulting configuration ought to have more connections with the outside world, becoming more like that of a business or medical school than a liberal arts curriculum, and greater integration of its individual courses. For example, there should be a reinvigorated focus on connections between lawyering, clients, and legal education, including the recognition that most students who attend law school intend to practice some form of law. The education also should connect with new realities—that lawyers today reach solutions collaboratively, often in teams; that lawyers manage projects and utilize a variety of skill sets, all within a service profession requiring expertise in different but specialized knowledge domains; and that access to legal services is still an issue for many persons living in the United States. Given the utilization of these new drivers and the connections illuminated between lawyering and law school, the underlying theory-practice tensions also should shift. In essence, law schools likely will start producing more measurable outcomes—outcomes focusing on transforming novices into nimble experts with multiple skill sets. In 2025, the change in legal education might be significant, but it also needs to be significantly improved, given the volatile nature of the times.¹⁵

I. BACKGROUND

A. *The Traditional Langdellian Ordering*

“You come in here with a skull full of mush and you leave thinking like a lawyer.”¹⁶ —*Professor Kingsfield, The Paper Chase*

Traditional legal education has deep roots. The academicization of the training can be traced back to the 1870s with the adoption of the casebook, particularly Christopher Columbus Langdell’s Contracts casebook in 1871.¹⁷ The casebook, stocked with appellate court opinions, facilitated entry into the grand university setting where contemplative learning of the law occurred in an academic classroom, many steps removed from the prior, individualized apprenticeship approach.¹⁸

15. We are not the first to recognize the need for significant change in legal education. *See, e.g.*, WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007).

16. THE PAPER CHASE (20th Century Fox Film Corp. 1973).

17. LANGDELL, *supra* note 1.

18. Casebooks are still driving the academic organization of many courses today, with coverage of the materials in a text book used as the backbone

The inclusion in the academy also succeeded because the organization of courses around substantive law topics and critical thinking allowed a large number of students to be taught based solely on the readings in books and in a single, large classroom without any special equipment. Substance-driven core courses¹⁹ traced the rules of law derived mostly from the common law system, and professors used question-and-answer Socratic dialogues to tease out the meaning of the rules and how they applied in specific contexts.²⁰

Analysis of the law within this system usually was organized around discrete legal principles and how those principles were constructed, modified, or applied, rather than around lawyering and its key relationships. The substantive law framework permitted a systematic and analytical structure, from basic courses to advanced ones. Certain substantive core courses were considered inviolable for minimal competency, although there was no mining of the relationship between courses or sequencing of years.²¹ While course demarcations were to some extent artificial,²² like lines dividing nations, they permitted legal training to evoke a similitude and resemblance to programs in other academic disciplines.

The traditional canvas of edited appellate cases became the staple of the first year of law school and, if only by virtue of primacy, also became the template for teaching the most basic and important lawyering skill—cognitive thinking.²³ Even though the message concerning priorities generally was imparted only implicitly,²⁴ students became very

of a course serving as a natural and significant inflection point in the objectives of teachers.

19. In keeping with a graduate curriculum, law school curricula were categorized by substantive law areas such as Contracts, Torts, Evidence, Civil Procedure, Property, and Constitutional Law.
20. The academic reliance on appellate opinions had a variety of virtues. The use of appellate case reports allowed the analysis to be freed from any one context, whether it was a trial, an appeal, raw facts, or lawyering strategies and tactics.
21. These subjects have formed part of the core of legal education for many decades, reinforced by a Multistate bar examination that tests all of these subjects. *See 2018 MBE Subject Matter Outline*, NAT'L CONF. B. EXAMINERS, <http://www.ncbex.org/pdfviewer/?file=%2Fdmsdocument%2F201> [<https://perma.cc/34CL-STH9>] (last visited Jan. 4, 2018).
22. Some areas, such as defamation, nuisance, and takings, could fall within several of the traditional courses.
23. The likely intent was to reach the higher orders of cognitive thinking, such as issue spotting, problem solving, and even synthesis.
24. Alternatively, the message could have become so ingrained precisely because it was communicated implicitly as the subject of the prevailing practice of the legal education culture.

comfortable with analyzing cases through a pedagogy loosely described as the Socratic Method.²⁵ Alternative methods, such as experiential education, where students were given an experience and then were ushered through subsequent directed reflection and extrapolation components,²⁶ were offered in a meaningful way only later in the students' law school careers, and then usually as electives. Experiential learning, for example, generally was cabined within the curriculum in certain courses, such as externships, clinics, and drafting classes,²⁷ and often served as an optional elective for students who just as easily could choose to receive all of their training in the practice of law following graduation from law school.

The longevity of appellate case report analysis as the central vehicle for law school learning can be attributed in part to its breadth and versatility.²⁸ This versatility allowed students, young and old,²⁹ in Miami³⁰ and Missoula³¹ and all places in-between, to study from identical cases and books and get equivalent educations.³² The appellate

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25. This dialogical method has been employed in varying forms in legal education, in classes of widely disparate sizes. *See, e.g., Socratic Method*, BLACK'S LAW DICTIONARY (10th ed. 2014).
 26. *See, e.g., David Kolb*, U. LEICESTER, <http://www2.le.ac.uk/departments/gradschool/training/eresources/teaching/theories/kolb> [<https://perma.cc/7YBR-725J>] (last visited Oct. 14, 2017).
 27. Existing experiential learning courses include: a contracts or wills drafting course, a tax course, an immigration or legal aid clinic, a course on interviewing, counseling and negotiation, and courses on trial advocacy and pre-trial practice.
 28. This lack of contextual limitation has allowed legal education to take on the imprimatur of "a good background to have," regardless of whether a student intended to practice law. In a broad sense, then, legal education became, for some people, a graduate education of liberal arts in the law.
 29. Law schools were populated by students often right out of their university training, but also by those who returned to school years or decades later.
 30. Miami, Florida is the home of several law schools, including the University of Miami School of Law, St. Thomas School of Law, and Florida International University College of Law.
 31. The only law school in Montana, the University of Montana School of Law, is located in Missoula.
 32. The versatility of appellate case report analysis allowed instructors to teach in their own distinctive ways about the same cases, permitting great deviations in how cases were taught and framing interpretation as a craft and not a science. Instructors could differ in depth, breadth and emphasis, spending as much or as little time on a case as they saw fit. Some professors will adjust their approaches to a case based on its location and detail in a casebook; other cases are taught because they have become part of the pantheon of "greatest hits," regardless of their location in the casebook. Some cases traditionally appear at the beginning of casebooks, such as

opinion also avoided the messiness involved with individual users deriving and organizing different facts by which to analyze problems.³³

The virtue of appellate case report analysis cuts in different ways, however. The versatility of the appellate opinion has been so entrenched precisely because it has been so disconnected from local, granular, real-world contexts.³⁴ Since a case report can be outfitted for educational duty rapidly and without any particular educational or judicial orientation, it really rests firmly within none of them; in essence, the opinions lie within a “context of no context.”³⁵ Thus, while an entire class of 100 or more students could be readily taught from a single, edited casebook, the enriching, complex and nuanced experiential contexts students will face upon graduation are generally and inopportunately omitted.

B. *The Change-Agents of Legal Education Today—Destabilizing the Double Life of Law Schools*

Perhaps the most significant driver destabilizing the double life of legal education today has been the economics of supply and de-

Marbury v. Madison, 5 U.S. (Cranch 1) 137 (1803), in *Constitutional Law* and *Pierson v. Post*, 3 Cai. R. 175 (N.Y. Sup. Ct. 1805), in *Property Law*.

33. The universal nature of appellate opinions transcended the local or regional customs that make knowledge “local.” See, e.g., CLIFFORD GEERTZ, *LOCAL KNOWLEDGE: FURTHER ESSAYS IN INTERPRETIVE ANTHROPOLOGY* 6 (3d ed. 2000).
34. See generally *id.* (alluding to the notion of local knowledge and its importance).
35. See generally GEORGE W. S. TROW, *WITHIN THE CONTEXT OF NO CONTEXT* (1981). The use of appellate cases parallels the contextual transformation wrought by television, which created contexts at whim, and brought the transformation to people who did not have to leave their own living rooms. As George W. S. Trow observed in his seminal book, *Within the Context of No Context*, “[t]he work of television is to establish false contexts and to chronicle the unraveling of existing contexts; finally to establish the context of no-context and to chronicle it.” *Id.* at 51. Trow argued that this refiguring allowed television to establish a new context: “As television goes into panic, the truth of what it is will rise to the surface. *CBS and You*. It makes it clear. Nothing else exists. Just CBS and you. No city. No state. All those places where the series take place: *It’s Boulder! It’s Chicago! It’s Indianapolis: Hoosiers!* All those places are *lies*.” *Id.* at 53. Trow claimed that “television will re-form around the idea that television itself is a context to which television will grant an access.” *Id.* at 51. In effect, Trow described the conflation of culture, aesthetic, and rhetoric as significantly influencing our world view. This conceptualization also can be extended to traditional appellate case report analysis, which provides an appellate context that is highly versatile.

mand³⁶—a deleterious disruptor of the student-to-lawyer pipeline.³⁷ It has upended the plentiful supply of law students on the one end,³⁸ and the stable marketplace for lawyers and legal services on the other.³⁹

Other drivers have further loosened the old barnacles of legal education orthodoxy. These drivers include advancing technology, globalization, and the creeping expansion of learning science and experiential education.

Driver #1: The Marketplace—Recession, Globalization, and Changing Demand for Lawyers

Unexpected market forces propelled traditional legal education into uncertainty shortly after the turn of the twenty-first century. The market forces impacted the seemingly unstoppable components of the pipeline for legal education—the expectation of steadily increasing number of applicants,⁴⁰ the availability of panoply of high-paying jobs,⁴¹ and the longstanding training partnership with the profession.⁴² These forces included globalization, the 2008–2010 recession, a marked de-

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36. Adam Cohen, Opinion, *With the Downturn, It's Time to Rethink the Legal Profession*, N.Y. TIMES (Apr. 1, 2009), http://www.nytimes.com/2009/04/02/opinion/02thu4.html?_r=0 [https://perma.cc/HH62-GXSL] (describing how economic recession has led to mass layoffs and decreases in associate salaries).
37. *See id.* (discussing that, in response to the effects of an economic downturn, law school graduates are more likely to pursue non-legal careers).
38. Many law schools increased their sizes significantly in the growing economy around the turn of the twenty-first century. This was welcome news to universities, which often siphoned off a large percentage of the tuition revenues. *See* Samantha Karas, *Law Schools See Rise in Applicants for First Time in Years*, DAILY TARGUM (Oct. 6, 2015, 11:46 PM), <http://www.dailytargum.com/article/2015/10/laws-schools-see-rise-in-applicants-for-first-time-in-years-survey-says> [https://perma.cc/N2J9-MS5].
39. *See* Cohen, *supra* note 36 (detailing the mass layoffs and salary cuts implemented by major law firms).
40. This expectation was based on the continuing rise of applicants in the beginning of the new millennium. *See supra* note 38 and accompanying text.
41. Jobs at large law firms would pay high salaries and substantial bonuses before the recession. In recent years, some firms began to reinstate the higher salaries. Other firms often followed suit. *See, e.g.*, Staci Zaretsky, *Salary Wars Scorecard: Which Firms Have Announced Raises?*, ABOVE LAW (June 13, 2016, 10:38 AM), <https://abovethelaw.com/2016/06/salary-wars-scorecard-which-firms-have-announced-raises/> [https://perma.cc/KW97-LG4M] (stating that after Cravath raised its starting salary to \$180,000 in 2016, dozens of firms quickly followed suit).
42. *See, e.g.*, BRIAN TAMANAHA, FAILING LAW SCHOOLS (2012).

crease in traditional high-paying jobs, and expanded awareness of perceived problems through the blogosphere.⁴³

Globalization created new competition that marginalized or rendered irrelevant location.⁴⁴ Lawyers from China, India, and other geographically distant countries could now compete with American lawyers on international projects and different kinds of lawyering tasks with the benefit of the Internet and technology. The great recession of the early twenty-first century also adversely impacted the job market for lawyers.⁴⁵ While jobs were affected in just about all sectors of the economy, the traditional conception of “big law,” which involved large firms’ ability to set high hourly fees while using newer associates for the bulk of the work, became an unsustainable economic model.⁴⁶ Flat fees, competition, and clients looking to cut legal costs became much more common.⁴⁷

The changed economic calculus for legal jobs had a ripple effect on other inflection points. The impact on jobs adversely affected the initial decision to apply to law school.⁴⁸ As access to the legal profession nar-

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43. See Press Release, Nat’l Ass’n for Law Placement, Class of 2011 Law School Grads Face Worst Law School Job Market Yet—Less than Half Find Jobs in Private Practice (June 7, 2012), <http://www.nalp.org/uploads/Classof2011SelectedFindings.pdf> [<https://perma.cc/8FVP-2UMN>] (describing “a very distressed job market”); see also Gus Lubin, *10 Huge Firm Collapses of the Decade*, BUS. INSIDER (Dec. 8, 2009, 7:30 AM), <http://www.businessinsider.com/decades-biggest-law-firm-collapses-2009-12?op=1> [<https://perma.cc/AT5S-SL9J>] (describing the causes of the collapse of ten large firms).
44. This globalization was accelerated by advancing communications technologies, especially the Internet.
45. The recession severely impacted the legal profession. Several firms imploded and many graduating law students could not find full-time employment within the profession. See Press Release, Nat’l Assoc. for Law Placement, *supra* note 43 (describing the entry-level job market for law school graduates during the recession as “brutal”); see also Lubin, *supra* note 43 (stating that the recession resulted in some law firms “withering due to lost revenue.”).
46. Several large and venerable law firms collapsed or merged because of financial pressures in this period of time. See, e.g., Noam Scheiber, *The Last Days of Big Law*, NEW REPUBLIC (July 21, 2013), <https://newrepublic.com/article/113941/big-law-firms-trouble-when-money-dries> [<https://perma.cc/9TM7-ARLW>] (noting that “twelve major firms with more than 1,000 partners between them have collapsed entirely” as a result of the recession).
47. *Id.*
48. See generally Editorial, *Legal Education Reform*, N.Y. TIMES (Nov. 26, 2011), http://www.nytimes.com/2011/11/26/opinion/legal-education-reform.html?_r=0 [<https://perma.cc/8AX4-VP88>] (opining on the lower number of applications and discussing how economic factors contributed to the decision to apply to law school).

rowed, so did applications for the more than 50,000 spots for entering law students.⁴⁹

The law school mystique also suffered some serious setbacks, especially the notion that a legal education would be a good back-ground to have, even if one did not intend to practice law.⁵⁰ The cost-benefit analysis of three years of legal education—without a job to pay off loans and provide a secure, if not handsome, income on the other end—started to flash a yellow cautionary light to many potential applicants and observers, particularly in the blogosphere.⁵¹ Even the former President of the United States, a Harvard-trained lawyer, weighed in with the thought that legal education could be accomplished in two years, not three.⁵² The comfortable duality of a home in academia and craft guild was disintegrating rapidly.

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49. See generally Peter Schworm, *Waning Ranks at Law Schools: Institutions Fear Recession's Effect Could be Lasting*, BOS. GLOBE (July 6, 2014), <https://www.bostonglobe.com/metro/2014/07/05/law-school-enrollment-fails-rebound-after-recession-local-colleges-make-cuts/fr7dYqwBsrOeXPbS9ibqtN/story.html> [<https://perma.cc/LQ2B-JNMD>] (describing the continual post-recession decline in law school enrollment figures). See also Elizabeth Olson & David Segal, *A Steep Slide in Law School Enrollment Accelerates*, N.Y. TIMES: DEALBOOK (Dec. 17, 2014, 7:04 AM), <http://dealbook.nytimes.com/2014/12/17/law-school-enrollment-falls-to-lowest-level-since-1987/> [<https://perma.cc/MLZ5-JKUX>] (noting that the number of enrolled full and part-time law students decreased 30 percent from 2010 to 2014).
50. See Jim Saksa, “*You Can Do Anything With a Law Degree*”, SLATE (May 14, 2014, 10:31 AM), http://www.slate.com/articles/life/culturebox/2014/05/you_can_do_anything_with_a_law_degree_no_no_you_cannot.html [<https://perma.cc/3SHX-LVJT>] (stating that the cost of law school is not worth paying in light of the lack of legal and non-legal job opportunities). But see Renee Sylvestre-Williams, *Nine Jobs You Can Do with a Law Degree*, FORBES (Nov. 22, 2012, 9:34 AM), <http://www.forbes.com/sites/reneesylvestrewilliams/2012/11/22/nine-jobs-you-can-do-with-a-law-degree/#3590ad1a3e02> [<https://perma.cc/APT5-3UTM>] (listing non-legal jobs where skills obtained from a law degree can be useful).
51. Blogs such as *Above the Law* and others routinely questioned traditional assumptions about the value of a legal education. See, e.g., Elie Mystal, *Professor Reduced to Arguing for the Psychic Benefit of Law School*, ABOVE LAW (Sept. 28, 2015, 3:35 PM), <http://abovethelaw.com/2015/09/professor-reduced-to-arguing-for-the-psychic-benefit-of-law-school/> [<https://perma.cc/PG3J-6LUN>] (criticizing the purported value of a three-year law degree).
52. See Peter Lattman, *Obama Says Law School Should Be Two, Not Three Years*, N.Y. TIMES: DEALBOOK (Aug. 23, 2013, 5:31 PM), <http://dealbook.nytimes.com/2013/08/23/obama-says-law-school-should-be-two-years-not-three/> [<https://perma.cc/A32P-M3G8>] (opining that legal education could be more affordable and beneficial if the third year was spent getting legal work experience, rather than learning in a classroom); See also Dylan Matthews, *Obama Thinks Law School Should Be Two Years. The British Think It Should Be One*, WASH. POST (Aug. 27, 2013),

Driver #2: The Collapse of the Partnership with the Profession

The partnership with the profession created a form of junior lawyer who in reality was a paid lawyer-in-training.⁵³ In an implicit agreement, the newly-minted attorney would be trained and provide the firm or entity multiple years of hard work.⁵⁴ The law firms, government entities, and non-government organizations all knew that either on-the-job training was required of new hires or “learning by doing” would occur instead.

The partnership model, which endured for generations, succeeded on many levels. Lawyers obtained jobs. Many lawyers succeeded and had secure and high-prestige jobs as partners. Law schools thrived under this model, focusing on their role as a member of the university. Law professor jobs were sought by many, and received by many in the expanding universe of law schools. The law schools compartmentalized their faculties even further, with clinical professors, writing professors, and research professors all becoming differentiated branches within the same institution.⁵⁵

The breakdown of the partnership model began with the increased influence of outside market forces. In no uncertain terms, the lack of jobs, the changing nature of the jobs available, and the reduced number of high-paying jobs all contributed to the rapid decline in the job market.⁵⁶

The outcomes of legal education have changed with the crumbling of the law school–legal profession partnership. The questioning of the Landellian traditions brings both the opportunity and the responsibility to address which outcomes a legal education ought to attain and

<https://www.washingtonpost.com/blogs/wonkblog/wp/2013/08/27/obama-thinks-law-school-should-be-two-years-the-british-think-it-should-be-one> [https://perma.cc/552S-CEZT].

53. See generally *What is the Career Path of a Lawyer?*, BECOME-A-LAWYER.COM, <http://www.become-a-lawyer.com/career-path-of-a-lawyer.html> [https://perma.cc/EC9X-H3X9] (last visited Oct. 12, 2017) (explaining that newly-licensed lawyers often spend time sitting “second chair” to more seasoned lawyers while they learn the “day-to-day tasks of ‘lawyering’”). See also Chris Hargreaves, *Junior Lawyers: Like Training Pigeons*, ATTORNEY WORK (June 17, 2014), <http://www.attorneyatwork.com/junior-lawyers-like-training-pigeons/> [https://perma.cc/YT78-XW4X].
54. See generally, Jordan Furlong, *The Agile Lawyer Will Rise as Permanent, Full-time, Salaried Employment Vanishes*, LEGAL REBELS: NEW NORMAL (Jan. 30, 2014, 2:45 PM), http://www.abajournal.com/legalrebels/article/the_rise_of_the_agile_lawyer [https://perma.cc/P3SC-4ULU].
55. The silo approach is a salient part of the traditional model.
56. See Olson, *supra* note 49.

why. The questions stimulate the chance to construct an organizing principle for legal education for the new generation of lawyers. A salient part of this redesign involves the role of the profession in training students.⁵⁷ It may well be that the profession continues to serve as a finishing school for students, just in a very different way.

Driver #3: Advancing Technology

Advances in technology have opened the door for legal education change. It is unclear, though, how and when changes will occur. For example, the completion of a wide variety of ministerial legal tasks by paralegals and even clients is one change that has commenced already. The chipping away at the edges of the profession have occurred in part because of the Internet and the opportunity to obtain forms,⁵⁸ shop for lawyers and deals online, and become educated about legal issues for free, without leaving the comfort of one's home or the ability to house a voluminous law library.⁵⁹

The current generation of students is accustomed to learning in a mobile environment on digital devices. The learning components extend outside of formal classes with "flipped" classrooms, meaning the first exposure to information used in a class occurs prior to the actual classroom experience.⁶⁰ The mobility of students fits nicely with the ramped up number of distance learning courses, deployed in a wide variety of universities and settings. The digital devices include laptops and even cell phones, where apps allow students to be polled anonymously, take quizzes, and respond to questions on their cell phones in

57. See Hargreaves, *supra* note 53 (discussing common complaints about the current law school–legal profession partnership model, including students' lack of experience and firms' lack of good on-the-job training).

58. Form purveyors, in particular, had great success in selling their wares over the Internet. See, e.g., LEGAL ZOOM, <https://www.legalzoom.com> [<https://perma.cc/P55F-SWE3>] (last visited Oct. 12, 2017).

59. See MP McQueen, *A New Look for Law Libraries: Fewer Books, More Tech*, AM. LAW. (June 29, 2015), <http://www.americanlawyer.com/id=1202730101715/A-New-Look-for-Law-Libraries-Fewer-Books-More-Tech?slreturn=20160028234347> [<https://perma.cc/45QS-7JSG>]. See generally Dan Pinnington, *The Future of American Law in a Global Village*, LAW PRAC. MAG., July–Aug. 2014, http://www.americanbar.org/publications/law_practice_magazine/2014/july-august/the-future-of-american-law-in-a-global-village.html [<https://perma.cc/QMD3-KARX>].

60. See Cynthia J. Brame, *Flipping the Classroom*, VAND. U. CTR. FOR TEACHING (2013) <https://s3.amazonaws.com/vu-wp0/wp-content/uploads/sites/59/2017/06/08123735/Flipping-the-Classroom1.pdf> [<https://perma.cc/3X4Q-4A2U>].

and outside of class.⁶¹ The potential for flexible ‘non-linear’ learning is significant.

Driver #4: Brain Science and the Science of Learning

The justifications for the Socratic Method⁶² are many, and these often fall in line with the science of learning. Mostly, however, legal education has been based on ‘anecdata’—anecdotal experience—not empirical studies, vetted and assessed by outside reviewers. It is not surprising, then, that the discipline of legal education generally has not been open to or ready to embrace competing pedagogical theories and approaches. The market disruptions, however, along with other forces, such as the report of the Carnegie Foundation,⁶³ have brought an increased willingness to try different methodologies⁶⁴ and utilize approaches in other educational domains, such as medicine and engineering, to advance the law school process.⁶⁵

The science of learning could be used to cast a long shadow over how legal education is conducted. In essence, the baseline understanding can be reversed with a presumption that all of legal education could be based on the latest brain science and cognitive learning theory. In a typical legal education setting, for example, an expert instructor usually teaches novice learners. The goal is to imbue the novices with skills and knowledge which allow them to become experts as well—not just in learning, but in retention of knowledge and skill in applying that knowledge. Yet it is axiomatic that people learn in different ways within specific domains. Some people learn better experientially or by focusing on the “big picture;” others learn better listening to lecture and with the sequential details.⁶⁶ Domains can mean different subjects or skills.

61. See, e.g., *Student’s Guide to TWEN*, WESTLAW (2010), <http://lscontent.westlaw.com/images/content/TWENStudGuide10.pdf> [<https://perma.cc/BG2M-Z7ZM>]; see also *Welcome to the New Classroom*, TOP HAT, <https://tophat.com/> [<https://perma.cc/3AWB-R99H>] (last visited Oct. 18, 2017).

62. This method has many variants and no agreed upon definition. See *Socratic Method*, *supra* note 25.

63. See SULLIVAN, *supra* note 15, at 19 (encouraging the development of “more effective programs of legal education” at all levels).

64. See, e.g., Ron M. Aizen, *Four Ways to Better 1L Assessments*, 54 DUKE L.J. 765, 783–84 (2004).

65. If new rhetoric is adopted as well, the Langdellian orthodoxy may eventually turn out to be a “collapsing dominant”—a transitory methodology. TROW, *supra* note 35, at 12.

66. M.H. Sam Jacobson, *How Law Students Absorb Information: Determining Modality in Learning Style*, 8 J. LEGAL WRITING INST. 175, 180 (2002). See generally Hillary Burgess, *Deepening the Discourse Using the Legal*

One way to observe how critical analysis can involve differing skills is to utilize Bloom's learning taxonomy.⁶⁷

1. Bloom's Learning Taxonomy

Bloom's learning taxonomy, while more than a half-century old,⁶⁸ remains a relevant tool with which to frame the different types of cognitive thinking skills taught in law school and shows how a mindful approach to the science of learning can improve the educational product.⁶⁹ Bloom posited that thinking included knowledge as a base, and then moved up to comprehension, application, analysis, synthesis, and evaluation.⁷⁰ This progression creates an important sequence in several ways. It shows that simply lumping "thinking" as a single entity is incorrect; thinking has several component parts that are distinct and identifiable. Moreover, a revised version indicated that all of these skills involved action⁷¹—knowing involved the "transfer" of information,⁷² comprehension meant applying that knowledge in a way that indicated deeper familiarity,⁷³ analysis and synthesis were actions already, and judgment involved prioritizing and decision-making.⁷⁴

It is clear that with the focus in legal education on analytical thinking, particularly "thinking like a lawyer,"⁷⁵ the application of that thinking to actual practice had to occur somewhere else, outside of the classroom walls. While students could opt to take externships and clinics, where they would practice under the supervision of a lawyer or professor, most of the training occurred through post-graduation supervision by a wide variety and large number of practicing lawyers. Instead, using Bloom's taxonomy, a more structured and regulated action-oriented training could occur.

Mind's Eye: Lessons from Neuroscience and Psychology That Optimize Law School Learning, 29 QUINNIPIAC L. REV. 1 (2011).

67. See BENJAMIN S. BLOOM, TAXONOMY OF EDUCATIONAL OBJECTIVES: HANDBOOK 1: COGNITIVE DOMAIN 1-2 (D. McKay Company, Inc. ed., 1974).

68. Dr. Bloom published his paper on the learning taxonomy in 1956. *Id.*

69. *See id.*

70. *See id.* at 18.

71. A TAXONOMY FOR LEARNING, TEACHING, AND ASSESSING 4-5 (Lorin W. Anderson et al. eds., 2001).

72. *Id.* at 63.

73. *See id.* at 67-68.

74. *See id.* at 83-84.

75. *See* SCHAUER, *supra* note 3.

2. Assessment

While assessment is sometimes conflated with grading and graded exercises, the two are not the same.⁷⁶ Assessment is a critical part of the learning process.⁷⁷ Experts routinely self-assess and self-monitor, tracking their own performance. In this way, assessment is used as a tool to promote learning outcomes and other ancillary benefits, such as holding teachers and students accountable during and in furtherance of the process. Assessment also allows people to become more aware of their performance level, as well as what ought to be improved, and how to improve it.⁷⁸ Athletes and musicians use assessment constantly,⁷⁹ and even the average, quotidian person tracks workouts or time-on-tasks in general. Reality food shows, in which contestants compete against each other to make superior dishes, also provide terrific glimpses of the modes and value of assessment, using rubrics that include relevant factors such as taste, appearance, consistency, and presentation as guiding criteria.

Assessments have been furthered by the advancement of technology. These advances have allowed for the development of technology such as the Fitbit, Garmin, and other devices⁸⁰ which make tracking an individual's performance easier. In traditional legal education,

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76. See Olympia Duhart, *It's Not For a Grade: The Rewards and Risks of Low-Risk Assessment in the High-Stakes Law School Classroom*, 7 ELON L. REV. 491, 493–94 (2015) (differentiating between high-risk and “low-risk” formative assessments in classes); see also *What is the Difference Between Assessment and Grading?*, CARNEGIE MELLON U.: EBERLY CTR., <https://www.cmu.edu/teaching/assessment/basics/grading-assessment.html> [<https://perma.cc/Y6VZ-GY73>] (last visited Oct. 20, 2017) (stating that grading evaluates “students’ learning and performance” whereas assessment “improve[s] student learning.”).
77. See Duhart, *supra* note 76, at 497–98 (stating that formative assessments throughout the semester provide students and professors with feedback that will help students learn better).
78. See *id.* at 492–94 (discussing the importance of frequent assessment); see also Rogelio A. Lasso, *Is Our Students Learning? Using Assessments to Measure and Improve Law School Learning and Performance*, 15 BARRY L. REV. 73, 75 (2010).
79. See e.g., *Lindsey Vonn Partners with Hyperice to Drive Science and Innovation in Injury Recovery Technology*, BUS. WIRE (May 7, 2014, 8:00 AM), <http://www.businesswire.com/news/home/20140507005673/en/Lindsey-Vonn-Partners-Hyperice-Drive-Science-Innovation> [<https://perma.cc/5DBX-U9TL>] (explaining how Lindsey Vonn—an Olympic and World Cup skier—planned to prioritize performance tracking as part of her recovery process from two knee injuries).
80. There are numerous applications that can be downloaded onto devices as well, some that pertain directly to the law and some that relate to self-management or learning generally.

only summative assessment—in the form of a final examination—is the common assessment mechanism. While formative assessment is gaining in popularity, this area remains considerably underdeveloped. To improve outcomes, professors and institutions should guide students through performance-tracking and offer multiple assessment opportunities in every course.

3. Experiential Education

Experiential learning provides a versatile bridge between school and law practice. Rather than simply learning from experience, which can be done without a formal education model,⁸¹ this tool directs learning from controlled experiences, often, but not exclusively, outside of the classroom. A field trip, a simulation, and even role-playing all qualify as forms of experiential education. Under David Kolb's theoretical model, this type of learning has four components: (1) the experience, (2) reflection on that experience, (3) abstraction of the experience to theorize about it, and (4) application of the theoretical constructs to new areas.⁸² While schools often included clinics and some externships, this area of learning is expanding,⁸³ both in terms of number of students who are given experiential opportunities outside of the classroom, and even inside doctrinal courses.⁸⁴ Another sign of its expansion is that there are an increasing number of associate deans of experiential learning.⁸⁵

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81. All experience in some way provides teachable moments; these experiences simply do not direct or funnel the learning to promote relevancy.
 82. David Kolb's experiential education model has been replicated and utilized for decades. *See, e.g., David Kolb, supra note 26* (describing the four stages of Kolb's "experiential learning model"—concrete experience, reflective observation, abstract conceptualization, and active experimentation).
 83. Many schools are expanding clinical offerings, from wills, to juvenile, to elder law, to taxation, among other specialty areas.
 84. Heather Coleman, *Experiential Learning: A Growing Trend in Legal Education*, DOCKET (June 24, 2015), <http://www.dbadocket.org/young-lawyers/experiential-learning-a-growing-trend-in-legal-education/> [<https://perma.cc/DM8G-T56C>]; *see also* Deborah Maranville, *Infusing Passion and Context Into the Traditional Law Curriculum Through Experiential Learning*, 51 J. LEGAL EDUC. 51, 52 (2001).
 85. *See* Binny Miller, *Cultural Brokers in the Changing Landscape of Legal Education: Associate Deans for Experiential Education*, 2 TOURO L. CTR. J. EXPERIENTIAL LEARNING 98, 105 (2017); *see also* Robert Dinerstein, *New Wine and New Bottles*, SYLLABUS, Winter 2012–2013, http://www.americanbar.org/publications/syllabus_home/volume_44_2012-2013/winter_2012-2013/experiential_legaleducation.html [<https://perma.cc/78MZ-TAQC>].

II. THE MERGING DOUBLE LIFE OF LAW SCHOOLS IN 2025: CREATING NIMBLE EXPERTS THROUGH A PLURALISTIC BLEND OF THEORY AND PRACTICE

As the drivers of change continue to disrupt traditional law school orthodoxy, the double life will continue to merge, if not blend. An organizing principle for legal education in the year 2025 may well rest on a new pluralism instead of a single signature methodology, such as the Socratic method, or even a singular skill, such as analytical thinking.⁸⁶ The education instead could be structured around teaching students a variety of skill sets, enabling them to achieve the three pillars of professional competency—to think, act, and perform as experts in their selected fields.⁸⁷ This new pluralism would coalesce around interweaved blending—instead of separating—skills, values, and substantive law. The blending principle pays fealty to outcomes both broad and narrow—the breadth brought on by globalization, and the different kinds of lawyering skill sets in the modern world,⁸⁸ such as group influence, cross-cultural understandings,⁸⁹ technology, and the narrowness of specialty limits. Cross-cultural understandings, for example, would appear to be a necessary ingredient for influential lawyers in 2025 and providing a connection between shared experience and diverse backgrounds in the age of globalization. The complementary principle that legal theory sits within various contexts provides the lens needed to create lawyers with advanced skills. Thus, training lawyers means training those who can lead through their actions, not position; who are adaptive to change; who are valuable team members; who possess project-oriented management skills; and who can influence others around them, no matter what their status, in a positive fashion.

86. See ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 5–8 (2007) http://www.cleaweb.org/Resources/Documents/best_practices-full.pdf [<https://perma.cc/5QBY-LDBF>].

87. See Lee S. Shulman, *Signature Pedagogies in the Professions*, 134 DAEDALUS 52 (2006), <http://www.mitpressjournals.org/doi/pdf/10.1162/0011526054622015> [<https://perma.cc/7CM2-PJUK>].

88. See Wayne S. Hyatt, *A Lawyer's Lament: Law Schools and the Profession of Law*, 60 VAND. L. REV. 385, 393–98 (2007) (identifying four missing essential skill sets: professionalism and integrity, the ability to read and understand people, the ability to solve problems, and an understanding of the multidisciplinary nature of transactions).

89. See generally Serena Patel, *Cultural Competency Training: Preparing Law Students for Practice in Our Multicultural World*, 62 UCLA L. REV. DISC. 140, 140 (2014).

A. Reimagining the Theory-Practice Divide

The abandonment of the traditional theory-practice dichotomy provides an inflection point for how the blending of theory and practice offers a substantial reorganization of the core themes of a legal education. While some might criticize a significantly reworked legal education as merely a vocational school, or, conversely, as taught by professors insufficiently experienced to provide the necessary practical training, both of these criticisms miss the mark. Legal education in some ways has been the only professional preparation where turning out competent practitioners has not been held in the highest regard.⁹⁰ Advancing proficiently skilled graduates does not detract from the role of advancing critical thinking and legal theory; it simply blends these objectives with a broader panoply of skills necessary for effective lawyering. Further, law schools are professional preparation domains which are precisely the place where such training should occur. To conflate the teaching of skills with vocationalizing legal education missed the importance of skills and how they are attached to theory and public policy. Imagine, if you will, a dental school that proudly proclaimed, “We teach people to think like dentists!”

The duty of a professor to teach not only “grand theory” but “local frames of awareness”⁹¹ will differentiate the new approach from traditional legal education by multiple degrees. This reconceptualization is not intended to be unrealistic, though. If one were expecting a professor of contract law to start teaching students how to carry out a corporate financing transaction from soup to nuts, that would be one thing. But that sort of extremely narrow applied skill is not the sort of feature a blended curriculum demands. Rather, the students of 2025 will need skills of a more generic nature, ones that can be carried across professional domains. As the sociologists remind us, our students today are almost certainly to have more than one career during their working lives.⁹² When considered in that context, the prospect of systematically incorporating skills becomes a little less frightening.

Of course, it can be argued that the current members of the Academy are neither trained nor interested in teaching the skills needed by students to succeed as lawyers in 2025. But consider the counter argument using the world of medical training: would a medical school take the position that it ought not teach the use of diagnostic imaging in Oncology because the professors do not know how to do it? Of course

90. Would medical schools not intend to turn out the best practitioners? *See, e.g.*, *Regents of Univ. of Mich. v. Ewing*, 474 U.S. 214, 216 (1985).

91. GEERTZ, *supra* note 33, at 6.

92. *See, e.g.*, STEPHEN FINEMAN ET AL., *ORGANIZING AND ORGANIZATIONS* 304 (3d ed. 2005).

not—we would demand that the medical academy learn how to use the latest techniques. Why, then, should we not expect the same of the legal academy? Is there some type of professional duty to adapt ourselves to meet the needs of the legal system as it will be, not as it was when we ourselves learned the law?

As seen from a distance, the prevailing hierarchy has placed theory over practice, reaffirming theoretical scholarship intended for other professors and not generally practicing lawyers.⁹³ The prevailing publication hierarchy places theoretical, non-empirical writing in law reviews run by students—not peers—who have yet to sit for a bar examination or engage in the unsupervised practice of law at the top. This hierarchy is part of the problem, not the solution.

Reflecting on the existing hierarchy of theory over practice does not in any way suggest that law schools should be training people who are simply technicians. But the contention here is that first, theory and practice are generally concomitant, and students should have as much access to learning about and understanding practice as well as theory from the majority of their professors. In essence, knowing the theory of the law without knowing how the law operates is, for most law students, a poor bargain.⁹⁴

Perhaps the most significant part of the argument of this Article is that in the lawyering domain, it is a false dichotomy to distinguish between theory and skills. Most of us would say that good lawyers—the very best lawyers—are people who can reason from first principles, and then can actually do things with those principles to assist people. That is what these proposed reforms are intended to do: to better equip law students to use their knowledge of legal principle to help those who might benefit from that knowledge.

Consequently, a new approach in 2025 is not only preferable, but likely welcomed by most legal education constituencies. Some of the primary features of a new legal education organizing principle based on this practice-theory confluence follow.

B. Central Features of a Pluralistic, Unitary, and Blended Legal Education

1. A Pervasive Use of Learning Science

While legal education revolved around the Socratic Method pedagogy for more than a century as its primary educational tool, modern learning theory is predicated on broader and more varied principles. While these principles need not replace the successful questioning

93. Few things have as odd a timbre to people outside the academy than to hear a law professor suggesting that his or her province is theory, with the implicit suggestion that to know how the law actually works is a lesser endeavor.

94. See, e.g., TAMANAHA, *supra* note 42, at 172.

method that exists in most law school classrooms, the “outside” methods can complement existing ones—especially with an emphasis on outcomes and multiple skill sets. To start, it ought to be recognized that students learn differently, based on approaches and levels of engagement that impact the rate of learning. For example, it should be recognized that teachers can only create learning environments and opportunities to learn, not force students to learn, or, perhaps more importantly, retain, organize, and retrieve knowledge. Further, students learn differently—one size does not fit all. Some students learn best while mobile, some motivated by competition, some using the big picture as a course ‘GPS,’ some doing problems, some in a visual manner, some through experiential programs, etc. Other students benefit more from different pedagogical approaches. This does not mean catering to students—derided as “spoon-feeding” by some—is appropriate. What this says is that to teach most effectively—if learning depth and breadth are the measures—then teaching to the whole class requires the employment of different methods and science-based brain and learning theory. The rationales for heavily stocking learning science methods in the teacher’s toolbox are many. Educational pathways have been rigorously examined and debated in the field of learning science, with the development of data through studies and observations. This information has been used to assist learners in a wide variety of endeavors, from grade school, to post-graduate education, to adult life-long learners. Using learning science as a canvas for legal education transforms the assumptions, process and environment for the students from “anecdotal” to a firmer foundation.

As an initial observation, if one grounds the enterprise on learning science, it becomes apparent that teaching is not identical to learning. In fact, teachers only can influence learning, not force it to occur. Given this salient principle, institutions will be tasked with organizing the best learning environments for their students, not simply serve as fountains of expertise that might not connect with recipient students. Instead, professors will be tasked with creating learning-centered courses and including different types of pedagogies to promote learning for all. This path away from the “sink-or-swim” notion has several consequences. First, professors might argue about invasions of their “academic freedom,” but wrongly so; “academic freedom” protections should not be conflated with course “ownership.” A professor who is assigned to teach a course does not have the power to unilaterally and arbitrarily select its outcomes or goals. An institution is entitled to choose outcomes consonant with A.B.A. and university rules. This conceptualization does not mean limits on academic content generally are appropriate, just sometimes shaping delivery. Also, creating and fostering quality learning environments will be critical to the success of legal education. The important learning environments include knowledge-based, learner-based, assessment-based, and community-

based environments.⁹⁵ Further, experience should be used as part of the learning process throughout the education.

2. Greater Deployment of Experiential Education

The new pluralism would gravitate toward experiential education, both because students will learn in a deeper, more engaged manner, and this approach bridges the academic-practice divide better than a diet of purely Socratic dialogue. Experiential education will be well-defined, however, and include directed experiences with specific outcomes and designed inquires. As David Kolb found in 1984, good experiential education includes a cycle in four stages—first, the experience, followed by reflection on that experience, abstraction of that experience to theory, and then application of the theory to new situations.⁹⁶ While the role of experiential education is still primarily located within clinics, externships and practice courses such as Trial Advocacy, there is no reason it cannot become a staple of traditional doctrinal courses, particularly those in the second semester of the first year or during the second year. For example, experience readily combines with Evidence, which occupies the vessel of the trial. When viewed this way, Evidence and Trial Advocacy are simply two parts of the same experience. Contract drafting is a useful way to both demonstrate competency and learn concepts. Writing a complaint, arguing a motion, and conducting Voir Dire of a jury panel are performances relevant to the civil trial lawyer.

While the traditionalist might wonder about sacrificing coverage for depth, this approach offers gains in a way that compensates for the loss of doctrinal reach. Using learning theory, it is not what students are taught, but what they learn that counts. If the doctrinal classes teach students only a part of what they need, is it worth it to continue, even without a competitive alternative?

In addition, teachers can deepen students' understanding of material in a way that aligns with skill development, not competes with it. Most of us remember a paper course or moot court where the intensity of the experience led to long term retention of the experience, much more so than the ordinary exam-based course, where cramming of material was soon let go after the exam.

Despite the internal justifications for staying the course with legal education orthodoxy, the new demands of the marketplace simply do not allow the march of the last century to continue. Instead, the old thinking about experiential education can be replaced by a nuanced and complex set of related methodologies that could be retrofitted in many different contexts, from learning doctrine to learning about how lawyers use skills in real-world settings.

95. See, e.g., HOW PEOPLE LEARN: BRAIN, MIND, EXPERIENCE, AND SCHOOL 133–49 (John D. Bransford et al. eds., expanded ed. 2000).

96. David Kolb, *supra* note 26.

3. Emphasis on Long-Term Memory Retention

Schools likely will embrace a broader view of teaching law, not just focusing on doctrine or problem solving, but on how to store and retain substantive knowledge for the long-term as well. The idea of creating long-term memory change will impact how instructors teach. If the focus is on retention of information, it is less important to cover broad swaths of information at breakneck speeds. A slower pace would also allow more space for reflection, abstraction and even repetition.

This orientation affects not only pedagogy but assessment, since the prevalent singular summative final exam model leads to poor retention when students study furiously for several days before the one main test and then purge the knowledge from their minds at the end of the exam. Abraham Lincoln once remarked that he was a slow learner but retained what he learned for a long time—“I am slow to learn and slow to forget what I have learned.”⁹⁷ What is easy to overlook is that it is not useful to learn and then forget; using information later and again in a course, law school sequence or law practice are all important outcomes that develop expertise.

4. Mindful Outcomes Utilizing Diagnostic and Formative Assessment

Diagnostic and formative assessment often seemed somewhat out-of-place in the world of legal education orthodoxy, where an aggregated end of the course assessment consisting of a final essay examination was traditional. With the adoption of new A.B.A. standards, particularly Standard 302, focused on outcomes, the legal education model is shifting away from an input regime and toward an output enterprise.⁹⁸

A conceptualization of regularized inspections and evaluations to ensure outcomes means more opportunities for diagnostic and formative assessment. It is not assessment as an end in itself that matters, but rather its opportunity to provide students with greater quality and quantity of feedback for improvement of student skills and the learning process overall. This improvement idea conforms to many other professional, secondary and university models, but will substantially modify the typical use of law school evaluation as only a post-course assessment tool, one that is not used as an integral part of the learning process.

Performance-tracking⁹⁹ is part of the concept. The skill sets are measurable entities that can be charted and tracked by the person

97. DANIEL COYLE, *THE TALENT CODE* 85 (2009).

98. See STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCH. § 302 (AM. B. ASS'N 2017) (requiring law schools to develop “learning outcomes” to achieve minimum competency in various skill sets).

99. Performance-tracking is commonly used in sports training and allows for a more scientific assessment of preparedness. See *supra* note 79 and accompanying text.

whose skills are relevant. Performance-tracking, which occurs with athletes, musicians and others can be used to chart progress and improvement of students as well.

The increased use of diagnostic and formative assessment also shifts the paradigm away from a teaching-centered enterprise to a learning-centered one. It is what the students learn from the course—and how they retain it over time—that matters, not what is taught.

5. Shifting Assessments of Teaching

Along these lines, the evaluation of teaching would shift as well. Instead of the questionnaire at the end of a course asking primarily about student perceptions of teaching,¹⁰⁰ which is relevant but often of marginal use for improving learning, the focus of future evaluations will be more pragmatic to maximize their utility. The evaluations would occur at temporally propitious times, when they could be used in the course, including formative in-progress mini-assessments. These assessments have the advantage of potentially allowing the improvement of learning as the course proceeds.¹⁰¹

The newer evaluations can take the form of direct questions—what are the most difficult, interesting and surprising things you have learned in this unit?—or even substantive questions about what is being taught to determine the actual extent of learning,¹⁰² not just perceptions about it.¹⁰³ With significantly revised evaluations, different pictures of whether a teacher is effective can be painted, especially in concert with the larger program.

6. Teaching Skill Sets Within Substantive Domains, Not Just Doctrines

While courses have had doctrinal labels affixed to them for decades, such as Property, Contracts, Torts and Evidence, students will focus more on learning a variety of skill sets within each course than currently. Some of the skill sets are applicable across the board, such

100. These questionnaires occur online or on paper. In many schools, students are not required to fill out evaluations, but are afforded an opportunity to do so.

101. The filling out of optional teaching evaluations after the fact often does not assist in advancing the learning process of a course because they are too late to be implemented in the particular course.

102. Questions can be devised in conjunction with someone versed in statistics and polling. It would seem that this data would be useful in determining whether and how to move forward to make the course offerings more beneficial to the students' learning process.

103. Typical evaluations reflect student opinions about a professor. Similarly, the typical evaluations do not disclose the particular way the professor approached a class or whether and how the professor devoted time to student learning.

as case or statutory analysis. Other skill sets, though, will be domain specific, such as negotiating real estate contracts or applying the best interests of the child test in a family law child custody situation.

Each course would have goals or outcomes that use the foundational substantive knowledge as a vehicle to other ends. The applications of Torts, Contracts and Criminal Law, for example, would occur through regular and intentional writing, negotiation, and collaborative techniques. Thus, Contracts could be oriented toward contract drafting and labeled as such. Criminal Law could become a statutory interpretation course. Evidence could become an applied trial advocacy class. Criminal Procedure could explore, in an intentional way, motion writing and negotiation through motions to suppress and plea-bargaining, as could Civil Procedure. Both procedure courses could combine learning about a statute with statutory application.

These shifts would be reflected in a dramatically changed lexicon. The labeling of courses by substance would no longer suffice as a way of providing notice of the scope and purpose of the course.

7. Revising the Partnership with the Profession: Legal Education as a Transition Program

The new education will be defined by a sequencing and progression of learning segments, not independent courses. This progression is about transition, from novice to expert, and from shallow to deeper skills. The sequential model is important on several levels. Students who enter as novices need a roadmap and feedback on how to progress to higher levels of skills.

Benchmarks and deliverables will be needed to provide these guideposts—not just grades in substantive courses. Benchmarks for skills can be offered through rubrics—measuring devices—where faculty and students alike can observe goals by course and year of school. For example, at the end of the first year of law school, students can be expected to achieve familiarity and satisfactory understanding of certain areas of substantive law so that they can do things—spot legal issues, solve problems, draw up basic legal documents, and synthesize material—applicable in the volatile global marketplace. The realities of the current law practice and the evolving skills needed to succeed in those domains will require a close and improved partnership with the profession that is not merely an implicit understanding. Instead, overt and consistent communication between bar associations and law schools, between the community at-large and lawyers, between law graduates and law school administrations, will be important to adapt legal education curricula as the reality of J.D.-required jobs change.

8. Systematic Solution Oriented Analysis

A business proprietor once described his concerns about his lawyer this way: “I don’t need someone to tell me what my problems are. I

already know what they are, even if he can use more flowery language to describe them. What I need is someone to tell me what the possible solutions are. That's what I need."¹⁰⁴

In some respects, this is the single greatest indictment of the current form of legal education—that no law school teaches solution-oriented thinking in a systematic way.¹⁰⁵ No doubt, there are individual courses in individual law schools in which the skill is taught.¹⁰⁶ But a matter of programmatic structure, solution-oriented analysis is absent from the Canadian and United States' system of legal education. So what law schools need to do is incorporate solution-oriented thinking into the J.D. curriculum.¹⁰⁷ This might mean more “raw” simulations, with facts discovered, arranged and presented in argument. The simulations can be extended, over multiple classes or the whole course, and not simply “one-offs” within an individual class.¹⁰⁸

There are many other vehicles as well. Some would be relatively resource-intensive—compulsory clinics or “case studies” courses, for example. Yet others would not be very difficult or costly at all to adapt structurally to our way of doing things. The Australians and New Zealanders, for example, have modified the Oxbridge system of tutorials to sit alongside the more North American approach to lectures.¹⁰⁹ As a

104. Ian Holloway, *A Canadian Law School Curriculum for This Age*, 51 ALTA. L. REV. 787, 793 (2014).

105. To teach skills, it is not enough to read or think critically. It is just as important to engage in complex and nuanced problem solving. In law school, the problems often emerge around cases and hypotheticals, where the facts tend to be self-revealed in the statements of them in the cases. Yet, it is important for students as future professionals to learn that facts are important and discovery and arrangement of them are valuable skills.

106. One example is the University of Western Ontario's “Case Studies in Business Law” course, taught by Richard McLaren. See *Academic Calendar 2016*, WESTERN UNIVERSITY, <http://www.westerncalendar.uwo.ca/2017/pg514.html> [https://perma.cc/2G9V-N7LL] (last visited Nov. 5, 2017). Clinical courses often do this, as well. But most law students in Canada still do not complete clinical courses which are formally evaluated for academic credit. See *Guide to Canadian Law Schools*, LSAC, <https://www.lsac.org/jd/choosing-a-law-school/canadian/legal-education-canada> [https://perma.cc/H3SC-KTS8] (last visited Nov. 5, 2017).

107. While this idea of critical thought is aligned with Langdell, it must go further in the law school of 2025, creating graduates who know how to offer solutions to real-world problems.

108. See, e.g., IAALS Legal Institute, *Professor Roberto Corrada Labor Law Class at DU*, YOUTUBE (Aug. 10, 2011), <https://www.youtube.com/watch?v=YQt-AJMqmK> [https://perma.cc/N26X-Z22W].

109. The residential college model that originated in Great Britain has been adapted to schools and universities in other countries, such as Australia and

result, the typical antipodean law graduate, while generally younger, will have had much more experience at solving legal problems than his or her North American counterpart.

9. Professional Decision-Making of the Highest Order

Twenty years ago, Anthony Kronman,¹¹⁰ who would go on to become dean at the Yale Law School, published a book entitled, *The Lost Lawyer: Failing Ideals of the Legal Profession*.¹¹¹ Kronman's vision was of the lawyer as statesman, someone "possessed of great practical wisdom and exceptional persuasive powers, devoted to the public good but keenly aware of the limitations of human beings and their political arrangements."¹¹² The problem, he argued, was that as a profession, lawyers have lost their way because they lost their professional lodestone of public spiritedness.¹¹³

At the time, some critics suggested that Kronman's view was a highly-idealized, even highly-romanticized, picture of the legal profession.¹¹⁴ Regardless, few could gainsay Kronman's analysis of the tremendously important leadership role that lawyers play in society. We all know of the highest-profile instances of this—Abraham Lincoln's presidency¹¹⁵ and Thurgood Marshall's advocacy in *Brown v. Board of Education*.¹¹⁶ Sir John A. Macdonald's leadership at Charlottetown in 1864 and F.R. Scott's representation of Frank Roncarelli in his appeal against Maurice Duplessis¹¹⁷ are two Canadian counterparts.

New Zealand. See *Residential Colleges Worldwide*, COLLEGIATE WAY, <http://collegiateway.org/colleges/> (last visited Oct. 16, 2017) [<https://perma.cc/AXH6-4SQC>].

110. See *Anthony T. Kronman*, YALE L. SCH., <https://law.yale.edu/anthony-t-kronman> [<https://perma.cc/P2ER-UESN>] (last visited Oct. 16, 2017).

111. ANTHONY KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* (1993).

112. *Id.* at 12.

113. This specialized notion of professionalism embodies ethical behavior and more—it can be measured by a variety of collaborative competencies—since a leader by nature is influencing others, even if appearing to operate alone.

114. See, e.g., Anthony V. Alfieri, *Denaturalizing the Lawyer-Statesman*, 93 MICH. L. REV. 1204, 1229–30 (1995) (reviewing ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* (1993)).

115. Lincoln was the 16th president, from 1861–1865. *Abraham Lincoln*, WHITE HOUSE, <https://www.whitehouse.gov/1600/presidents/abrahamlincoln> [<https://perma.cc/557A-PY43>] (last visited Oct. 17, 2017).

116. 347 U.S. 483 (1954).

117. *Roncarelli v. Duplessis*, [1959] S.C.R. 121 (Can.).

But even on a much more humble, workaday-level, every good lawyer provides leadership skills to his or her clients.¹¹⁸ Questions of whether an accused should accept a plea offer, an accident victim accept a settlement offer, or a company a takeover bid are all questions within the everyday compass of a lawyer's vocation. None have a simple yes or no legal answer.¹¹⁹ Instead, in all of the questions, the client depends on the lawyer's guidance and advice to help make the best choice of the realistic alternatives. In each case, the lawyer is fulfilling the role of what Americans would describe as counselor.¹²⁰ Put another way, the real value that the lawyer is adding is not the lawyer's knowledge of the law, but rather the lawyer's leadership skill. The client needs the lawyer to help lead him or her to the best possible outcome. Substantive legal knowledge simply serves as the lens through which to focus that leadership, and those different outcomes. It is the means, rather than the end, that matters.

Peter Drucker famously described the difference between management and leadership.¹²¹ He explained that management involves doing things right, while leadership involves doing the right things.¹²² When expressed this way, it is easy to see the role that leadership education should play in the law school curriculum. If we view our mission as producing ethical lawyers,¹²³ regardless of their area of practice, then it behooves us to acknowledge the duty to prepare our students to behave as something more than value-agnostic hired guns. The lawyer-statesman should surely be our ideal—not Neil Mink, the lawyer for Tony Soprano in the television show, “The Sopranos.”¹²⁴

10. Emphasizing Collaborative and Cross-Cultural Competencies

Many lawyers today work in groups, and even those who are sole practitioners have teams, including legal and administrative support.

118. This idea of leadership posits that leading involves guidance and stewardship in resolving problems.

119. These questions all involve judgment, a higher-order cognitive skill often attained through a combination of experience and knowledge.

120. This fits with the description of lawyers as counselors at law.

121. See STEPHEN R. COVEY, *THE 7 HABITS OF HIGHLY EFFECTIVE PEOPLE* 56 (1988) (quoting Peter Drucker).

122. *Id.*

123. The notion of an ethical lawyer can be viewed as someone who knows the minimums to pass muster, or those who act with integrity, referring to higher standards. The latter version is the value-oriented practitioner we have in mind.

124. The six season series about a New Jersey mobster's family ran on HBO from 1999–2007. See *The Sopranos*, IMDB, <http://www.imdb.com/title/tt0141842/> [<https://perma.cc/T9DV-7KZT>] (last visited Jan. 2, 2018).

Teamwork necessitates collaborative competencies. While these have sometimes been disparaged as “soft” skills, it is this group of skills that can be the most impactful of all. Teams offer opportunities for different perspectives and cross-cultural understandings, as well as maximizing job functions and expertise. If a team is run ineffectively, such as with a lack of clarity about roles or objectives, the ripple effect can be large.

Knowledge about the substantive law matters in the new age of legal education, but it is a predicate to critical skill, not an end in itself. The ends involve skill sets that orient around relationships, such as those with clients, judges, witnesses, other lawyers, and the community, project management, advocacy, clarity of communication, and writing.

Cross-cultural competencies¹²⁵ do not just involve sensibilities, but also are important to lawyering success. Understanding and implementing approaches to persons of different cultures is important to a changing world. If lawyers do not understand different perspectives, then they might not represent clients from different cultures as well as they could—or deal with judges, witnesses, and members of the community from different cultures as well.

11. Recognizing Everything is Global Today

One of the authors of this Article spoke some years ago to a member of a three-person law firm in northwestern Ontario, Canada.¹²⁶ This lawyer was then in his 50s, and had graduated from law school in the 1970s. He had spent his whole career as a small firm lawyer in the North. When asked what sort of law his firm practiced, the expected answer, of course, was a general practice—wills and estates, residential real estate, minor criminal defense, and that sort of thing. So I was taken aback when he said, quite seriously in tone, that he and his two partners practiced international law. I clearly looked puzzled at this response, for he explained that they represented loggers who exported trees to mills in Minnesota, and building suppliers who imported finished lumber back into Canada. They also represented hunters and fishers from the U.S. who had camps and lodges in Canada. He said they regularly interacted with the customs and immigration services of both countries, and that he was as familiar with the terms of NAFTA as any lawyer in a big firm in Toronto.

This exchange reflected that no matter where you are physically located, globalization is real. Indeed, the issue that is defining almost everything today is the economic transformation that is known as globalization. Every time we shop at Wal-Mart, or reflect on the regional department stores that no longer exist, we see globalization in

125. These are the skills needed to adapt to environments involving different cultures, customs, and practices.

126. Ontario, Canada borders the State of Minnesota and several of the Great Lakes.

action. And just as the small firm lawyer in northwestern Ontario had interests that transcended national borders, so too will our law students. These students will benefit from an education presenting a cosmopolitan and border-transcending education.

12. Above All, Pivot: Ready to Adapt and Change

To create this new legal education of 2025, above all, there will be a need for the institutions to be ready to adapt and change in response to a volatile legal environment¹²⁷ and globalized world. While technology has created device-driven cultures, for example, legal education has struggled to determine where it fits. While many students now at least learn how to do research online, they do not learn how to partner with technology on a broader scale, from creating and using social media effectively, to improving communication with clients. Teachers have begun using technology in classes, such as flipping classrooms, where the first exposures to material occurs prior to the class, but the process is still largely linear, based on hard copy texts and fixed class times. Larger partnerships are waiting. These partnerships can be used to have courses where students can take modules at flexible times and even remotely, creating differing delivery systems that individualize the courses, provide extra problems and opportunities to learn subject matter, and accommodate mobile learners in the digital age.¹²⁸ The one constant likely will be the attempt to create nimble and adaptive lawyers who can provide services to clients, including the many people who cannot afford legal services or have had trouble accessing those services.

The law school of the future will blend many elements in creating value for students, the profession, and, most importantly, for clients.

CONCLUSION

Legal education in 2025 likely will be substantially different than the traditional “double life” model of the past. The twin law school lives of the Academy and Law Practice will need to blend—or at least meet more often. If law schools are grounded in what we now know about how adults learn, as well as what we see in the evolution of the market for legal services, the adaptations would result in a more effective and rewarding legal education, linking law students more closely to successful performance in a volatile and globalized marketplace. Merely retouching some of the peripheral accessories of the Langdellian era will not suffice; the core engine needs an overhaul to

127. See Cohen, *supra* note 36 (discussing the impact of the 2008 economic downturn on legal education).

128. See, e.g., Deborah Moss Curtis, *Beg, Borrow, or Steal: Ten Lessons Law Schools Can Learn From Other Educational Programs in Evaluating Their Curriculum*, 48 U.S.F.L. REV. 349, 361–62 (2014).

survive and thrive. An organizing principle for such change ought to meet both market demands and learning theory requisites; it will blend theory and practice to create nimble and adaptive legal experts with various skill sets. The variety of skill sets that a lawyer will need to be able to adapt to new environments recognizes that the lawyer should carry a more expansive tool box than the one designed for the singular critical thinking of legal education orthodoxy. These skill sets start with a deep understanding of substantive knowledge, but span different orders of cognitive thinking to include solution-oriented approaches, project management skills, collaborative competencies, writing and communication ability, and an ingrained understanding of leadership and professionalism. The reality is that the incorporation of the type of skills described in this article would accomplish several things at once: it would make law school more rigorous; it would make the education more relevant; and it would make the course experience more rewarding and enduring. How can anyone argue with that?