

# A Program in Legislation

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This essay urges that Legislation be conceived of not just as a single course, but as a set of curricular and extracurricular offerings that collectively constitute an integrated program of instruction. The three of us teach at The Ohio State University's Moritz College of Law, which may serve as a model of such a program. Since 1995, Moritz has required Legislation as a part of the first-year curriculum. We also have a variety of upper-level offerings and extracurricular activities that help students develop a practical understanding of the legislative process. This essay makes the case for an integrated program of instruction, including both an introductory course in the first year and experiential learning opportunities in the second and third years.

In Part I, we address the first-year Legislation course. A major advantage of such a course is that it introduces students to non-litigation career paths. Although legal education traditionally focuses on litigation, that is but one of many things that our students wind up doing with their law degrees. Some students realize early in law school that a career in the courtroom is not their cup of tea. Many of them will work in and around the legislative process at some point in their careers. A first-year course in Legislation exposes these students to law-related jobs—as policy advocates, lobbyists, legislative aides, and legislators—that many wouldn't otherwise have considered and might not even have realized existed. The course is useful for other students as well. Even those whose practices focus mainly on litigation or transactional work must have some understanding of the legislative process if they are to advise and represent their clients capably. Roughly half of Moritz's first-year Legislation course consists of statutory interpretation, but beyond that there is considerable variation in what those teaching the course include, consistent

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with different instructors' interests and objectives. Part I of this essay presents the case for two different models of the other half of Legislation: administrative law (the Leg-Reg model), and law of the political process.

In Part II, we advocate for the inclusion of additional Legislation offerings in the upper-level curriculum, focusing on courses that help students develop a practical understanding of the realities of the legislative process. After providing a 10,000-foot view of the Moritz legislation curriculum and making the case for experiential learning opportunities, we focus on four offerings that have such a component: (1) the Moritz Legislation Clinic, which launched in 2000; (2) the Moritz Washington, D.C., Summer Program, which started in 2002; (3) the National Security Law and Process Simulation, which is in its second year; and (4) the Congressional Clerkship Initiative, which has been in the works since at least 2008. Such offerings are in keeping with the widely recognized need to move toward a more integrated and coherent curriculum,<sup>1</sup> as well as the need to develop lawyering skills in second and third years.<sup>2</sup> The essay concludes with some thoughts on the ripple effects of a comprehensive law school program on employment prospects for our law students.

### I. The First-Year Legislation Course

We take as a given that statutory interpretation will be a central component of the first-year Legislation course.<sup>3</sup> In the versions of the course we teach, this constitutes roughly half the course. Because statutory interpretation is a widely accepted staple of Legislation, we will not canvass the reasons for its inclusion in a first-year course here. One could, in fact, devote an entire three-credit course to statutory interpretation. There are certainly plenty of worthwhile statutory interpretation cases, and enough material in all of the leading casebooks, to consume a full semester. None of us, however, takes that approach. We all believe there is more to Legislation than just statutory interpretation, as explained below. In addition, we suspect that devoting an entire three-credit course to statutory interpretation would leave students complaining of repetition, with the opportunity costs of not introducing students to more material in the first year particularly high.

In the remainder of this part, we introduce two alternative approaches that might be taken to the other half a Legislation course: the administrative law approach, and the law of the political process approach. While we use

1. WILLIAM M SULLIVAN, ET AL., CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 147 (2007) [hereinafter CARNEGIE REPORT].
2. ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION 12 (2007), available at [http://www.cleaweb.org/Resources/Documents/best\\_practices-full.pdf](http://www.cleaweb.org/Resources/Documents/best_practices-full.pdf).
3. We refer to this course as the first-year Legislation course, but the arguments apply to any introductory Legislation course offered outside the first-year curriculum. In her contribution to this symposium, Abbe Gluck canvasses empirically the effect of the first-year course on the rest of the law school curriculum. Abbe R. Gluck, *The Ripple Effect of "Leg-Reg" on the Study of Legislation & Administrative Law in the Law School Curriculum*, 65 J. LEGAL EDUC. 121 (2015).

the word “alternative,” it bears emphasis that it is possible to include some of both portions in a first-year course—as all three of us do. Each approach might therefore be considered as consisting of modules, some or all of which may be included alongside statutory interpretation.

*A. The Case for Administrative Law (The Leg-Reg Model)*

Over a half-century ago in the pages of this *Journal*, Harrop Freeman made the case for teaching administrative law in the first year. In weighing the pros and cons, he concluded that “Administrative Law offered the greatest promise for linking the political and legal approach,” and that there was no “more pressing issue before those who hope to practice law in the near future than the working out of the relationship between administrative agencies and the courts.”<sup>4</sup> These conclusions have been echoed over the years. Richard Stewart, for instance, has remarked that “statutes and administrative implementation of statutes are a central part of our law, our politics, and the practice of law.”<sup>5</sup>

The case for introducing students to administrative law in the first year has only strengthened since 1957, for a number of reasons. First, to borrow a line from Gary Lawson, there has been a further rise and rise of the modern administrative state.<sup>6</sup> The Code of Federal Regulations exceeds 175,000 pages, including tens of thousands of rules.<sup>7</sup> In 2013 alone, federal agencies filled nearly 80,000 pages of the Federal Register with adopted rules, proposed rules, and notices.<sup>8</sup> By contrast, the 113th Congress enacted (over nineteen months) just one hundred forty-four public laws for a total of 1,750 pages in the Statutes at Large.<sup>9</sup> To be sure, quantity is not necessarily equivalent to importance. Still, these numbers reinforce Thomas Sargentich’s decade-old observation regarding the “social pervasiveness” of agency regulation and enforcement: “[A]dministrative law is absolutely central to life in the United States. Students

4. Harrop A. Freeman, *Administrative Law in the First-Year Curriculum*, 10 J. LEGAL EDUC. 225, 227, 231 (1957-1958).
5. Richard B. Stewart, *On the “Administrative and Regulatory State” Course at N.Y.U. Law*, 7 N.Y.U. J. LEGIS. & PUB. POL’Y 39, 39 (2004). Kevin Stack’s symposium contribution looks back at the first administrative law courses from the late 1890s and early 1990s to draw out lessons for today’s first-year leg-reg course. Kevin M. Stack, *Lessons from the Turn of the Twentieth Century for First-Year Courses on Legislation and Regulation*, 65 J. LEGAL EDUC. 28 (2015).
6. Gary Lawson, *The Rise and Rise of the Administrative State*, 107 HARV. L. REV. 1231 (1993-1994).
7. CLYDE WAYNE CREWS JR., COMPETITIVE ENTER. INST, TEN THOUSAND COMMANDMENTS: AN ANNUAL SNAPSHOT OF THE FEDERAL REGULATORY STATE 20-21 & figs.13-14 (2014) (reporting total pages in 2013 as 175,496), available at <http://cei.org/sites/default/files/Wayne%20Crews%20-%20Ten%20Thousand%20Commandments%202014.pdf>.
8. See 78 Fed. Reg. 80,462 (Dec. 31, 2013) (last page from 2013); see also CREWS, *supra* note 7, at 61 (noting that 1,151 of the 80,462 pages were blank).
9. Pub. L. No. 113-1, 127 Stat. 3 (Jan. 6, 2013), through Pub. L. No. 113-144, 128 Stat. 1751, 1752 (Aug. 1, 2014).

frequently express surprise at the fact that as a quantitative matter, agencies generate more law than legislatures and courts taken together.”<sup>10</sup>

Second, in the current challenging market for aspiring lawyers, law schools have begun to focus more intensely on three educational outcomes: jobs, jobs, and jobs. Whether such outcomes may be achieved by preparing “practice-ready lawyers” generally or training lawyers for particular legal jobs that are in greater demand, teaching administrative law (and statutory interpretation) early and often is sound advice. As the American Bar Association (ABA) recently observed, “The MacCrate, Carnegie, and Best Practices Reports, as well as the bench and bar, urge law schools to move from a focus primarily on legal doctrine and theory to include more of an emphasis on programs that prepare students for the profession”—“modify[ing] or expand[ing] the curriculum to prepare students for the global, regulatory world we live in.”<sup>11</sup> Because most lawmaking (and much lawyering) occurs at the administrative level, any definition of “practice ready” should include a proficient understanding of administrative law.

Indeed, the practical utility of administrative law extends beyond the government sector or legal organizations that specialize in challenging administrative actions. In a recent Harvard Law School survey of one hundred twenty-four practicing attorneys at major law firms, for example, Administrative Law scored as the fourth-most-useful course for law firm associates among courses outside of the corporate law curriculum.<sup>12</sup> It is thus not surprising that ten states test administrative law as an essay subject on the bar exam<sup>13</sup>—with

10. Thomas O. Sargentich, *Teaching and Learning Administrative Law*, 38 BRANDEIS L.J. 393, 403 (2000).
11. COMMITTEE ON PROFESSIONAL EDUCATIONAL CONTINUUM, AM. BAR ASS’N, TWENTY YEARS AFTER THE MACCRATE REPORT: A REVIEW OF THE CURRENT STATE OF THE LEGAL EDUCATION CONTINUUM AND THE CHALLENGES FACING THE ACADEMY, BAR, AND JUDICIARY 7 (Mar. 20, 2013), available at [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/june2013councilmeeting/2013\\_open\\_session\\_e\\_report\\_prof\\_educ\\_continuum\\_committee.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/june2013councilmeeting/2013_open_session_e_report_prof_educ_continuum_committee.authcheckdam.pdf).
12. John C. Coates, IV, et al., *What Courses Should Law Students Take? Lessons from Harvard’s BigLaw Survey*, 64 J. LEGAL EDUC. 443, 443, 454 (2015). Respondents were asked to “indicate how useful it would be to an associate to have taken these elective courses” with 1 = Not at all Useful; 3 = Somewhat Useful; 5=Extremely Useful.” *Id.* at 454. Administrative Law scored 3.44 among all lawyers for fourth highest and 3.87 among attorneys in the litigation practice area for third highest outside of the corporate law curriculum. *Id.* at 449.
13. Those states are Connecticut, Illinois, Indiana, Kentucky, Mississippi, New Mexico, New York, Oklahoma, Oregon, and Vermont. See BARBRI website, <http://www.barbri.com/courseInfo/barReviewCourse.html> (last visited July 14, 2014) (providing this information on a state-by-state basis). In 2008, 14 states tested administrative law as an essay exam topic, see Ethan J. Leib, *Adding Legislation Courses to the First-Year Curriculum*, 58 J. LEGAL EDUC. 166, 177 (2008), but that number has decreased—with Illinois and New York adding and Colorado, Minnesota, Missouri, Utah, Washington, and Wyoming dropping—in large part because a number of states have adopted the multistate essay examination (“MEE”), which does not cover administrative law as a separate topic. See National Conference of Bar Examiners,

New York being the latest entrant<sup>14</sup>—and administrative law is “creeping” into the constitutional law questions on the bar exam.<sup>15</sup>

Moreover, although there is a lack of empirical data on the number of lawyer jobs that require or advantage training in administrative law, we do have data for one important subset: government employment. In recent years, one in ten law school graduates worked for the government nine months after graduation; if judicial clerkships are included, the number rises to nearly one in five.<sup>16</sup> And the government sector is one that should continue to grow.<sup>17</sup> It should thus come as no surprise that at least twenty-seven of the thirty-seven law schools that require a course on statutory interpretation in the first year expressly include a regulation or administrative law component in that course.<sup>18</sup>

Including administrative law in the first-year Legislation course is not without challenges. The most pressing is likely the same one Professor Freeman identified a half-century ago: “the most persistently voiced [criticism] by students and faculty is that the course embraces too much material.”<sup>19</sup>

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MEE FAQs, <http://www.ncbex.org/about-ncbe-exams/mee/mee-faqs/> (last visited July 14, 2014).

14. Website of N.Y. State Bd. of Bar Exam'rs, <http://www.nybarexam.org/thebar/thebar.htm> (last visited April 29, 2015) (“Administrative Law will be added effective with the February 2015 exam.”).
15. Email from Michael Power, managing director, Kaplan Bar Review, to Christopher J. Walker (July 14, 2014) (on file with authors) (“One of the trends in recent years...is the creeping inclusion of administrative law into the Con Law question. If one were to look at the multiple choice questions and the essay questions over the past five years, you would see a trend towards including admin issues (rulemaking vs. legislative powers; due process; judicial review and so on).”).
16. See ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, 2013 LAW GRADUATE EMPLOYMENT DATA, [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/2013\\_law\\_graduate\\_employment\\_data.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2013_law_graduate_employment_data.authcheckdam.pdf); accord NALP, CLASS OF 2011 NATIONAL SUMMARY REPORT, [http://www.nalp.org/uploads/NatlSummChart\\_Classof2011.pdf](http://www.nalp.org/uploads/NatlSummChart_Classof2011.pdf) (11.9% government and 9.3% judicial clerk for 2011); NALP, CLASS OF 2012 NATIONAL SUMMARY REPORT, <http://www.nalp.org/uploads/NationalSummaryChart2012.pdf> (12.1% government and 8.9% judicial clerk for 2012).
17. See, e.g., JAMES T. O'REILLY, AM. BAR ASS'N, CAREERS IN ADMINISTRATIVE LAW & REGULATORY PRACTICE 48 (2010) (observing that “24,000 additional federal legal positions are to be filled in the next few years, many from retirements of baby boomers” and projecting that “perhaps another 50,000-60,000 private sector positions in administrative law function”).
18. Edward Richards keeps a running list of the first-year Legislation courses, available at [http://biotech.law.lsu.edu/cases/adlaw/1st\\_year\\_regulatory\\_requirements.docx](http://biotech.law.lsu.edu/cases/adlaw/1st_year_regulatory_requirements.docx). As the list indicates, another 10 schools have an optional first-year Legislation or Regulation course. Moreover, in his symposium contribution, Jim Brudney provides similar statistics regarding the rise of the first-year legislation course. James J. Brudney, *Legislation and Regulation in the Core Curriculum: A Virtue or a Necessity?*, 65 J. LEGAL EDUC. 3 (2015); see also Gluck, *supra* note 3, at 124-128 (2015) (presenting findings of her survey of first-year legislation professors).
19. Freeman, *supra* note 4, at 229.

This sentiment has been echoed over the years,<sup>20</sup> and it carries additional weight when administrative law is taught as just one component of a three-credit Legislation course. On the other hand, a number of casebooks are now available—or will be available shortly—that are designed for first-year Leg-Reg courses. As these casebooks suggest, the key to keeping the course manageable is to tailor the administrative law portion of the course to introduce the key concepts that complement and reinforce the statutory interpretation material.

Consider how one of us (Walker) approaches this integration. Using the Manning-Stephenson casebook,<sup>21</sup> the first half of the course (fourteen class sessions of seventy-five minutes) covers statutory interpretation and legislative process. The second half turns to administrative law. In Class No. 15, the students grapple with the illusory nature of the traditional three-branch view of American government along the following lines: Congress creates the laws, the executive enforces the laws, and the courts interpret Congress' laws and adjudicate whether Executive action violated those laws (or the Constitution). The reality of the modern administrative state, however, is that federal agencies perform a variety of all three functions: they make laws through regulation, they execute the laws as directed by Congress and often supervised by the president, and they adjudicate certain claims under those laws. Indeed, Congress has delegated so much regulatory authority to federal agencies that the bulk of lawmaking takes place not in Congress (or courts), but in federal agencies.

The next eight sessions focus on how the three branches attempt to control or oversee such broad delegation of lawmaking authority. Class Nos. 16 and 17 address congressional control—the first on the toothless nondelegation doctrine and more useful nondelegation canon,<sup>22</sup> and the second on the failed attempt at a legislative veto and other means of congressional control (appropriations, committee oversight, inspectors general, etc.). Class Nos. 18 and 19 turn to presidential control—the first on appointment and removal

20. See, e.g., Thomas O. Sargentich, *Teaching and Learning Administrative Law*, 38 BRANDEIS L.J. 393, 396 (1999-2000) (noting “the barrier to the course’s reception created by the field’s extraordinary breadth and the resulting difficulty of reducing it to a vivid image or two of empirical reality”); accord Leib, *supra* note 13, at 185 (noting that “underlying substantive law shifts around so much that students invariably tend to feel that they are skipping around from topic to topic” and “can give students this disorienting sensation”).
21. JOHN F. MANNING & MATTHEW C. STEPHENSON, LEGISLATION AND REGULATION (2d ed. 2013). In their symposium contribution, John Manning and Matthew Stephenson also map out their approach to the regulation component of the Leg-Reg course. John F. Manning & Matthew Stephenson, *Legislation & Regulation and Reform of the First Year*, 65 J. LEGAL EDUC. 45, 60-69 (2015).
22. To cover this material in one 75-minute class is beyond ambitious; the key is to focus on the big picture and introductory nature of the treatment. Professor Walker only assigns two cases for reading—*Whitman v. American Trucking Ass’ns*, 531 U.S. 457 (2001), and *Industrial Union Department, AFL-CIO v. American Petroleum Institute*, 448 U.S. 607 (1980)—and covers the other main cases through lecture.

powers,<sup>23</sup> and the second on presidential oversight via the Office of Information and Regulatory Affairs. A fifth spillover session helps cover the material in these four sessions; but even with that additional session the treatment of the topics is obviously limited. The focus, again, is not on mastering the nuances of these constitutional doctrines and administrative law practices—those can be learned in upper-level courses—but on introducing the students to the ways in which Congress and the president supervise and exert pressure on federal agencies.

Along those lines, the next three class sessions cover the Administrative Procedure Act (APA). Class No. 21 introduces how the APA establishes both the default procedures agencies must follow when implementing the legal mandates Congress provides them and the default standards federal courts must use when reviewing agency action. Class No. 22 takes a closer look at the agency procedures in rulemaking and adjudication. With only one session dedicated to agency procedures under the APA, one cannot spend too much time on the intricacies of rulemaking. But a couple cases are particularly worth covering. *United States v. Florida East Coast Railway*,<sup>24</sup> for example, not only illustrates the distinction between formal and informal rulemaking (and the concept of a paper hearing), but also returns the students to statutory interpretation by grappling with the meaning of “on the record after opportunity for agency hearing.”<sup>25</sup> And *SEC v. Chenery Corp.*<sup>26</sup> demonstrates the evolution of agency lawmaking from formal rulemaking to informal rulemaking to even formal adjudication. *Chenery* also helps establish the foundation for understanding judicial review of agency statutory interpretations—the subject of the final five class sessions. Class No. 23 then focuses on the APA’s default judicial-review provisions, including the arbitrary-and-capricious standard of review. It is useful here to introduce the concept of standards of review—an important topic that may not be covered in other first-year courses—and how judicial review differs in the context of administrative law as opposed to civil or criminal law.

The final five sessions return to statutory interpretation, this time in the context of judicial review of agency statutory interpretations. Class No. 24 introduces the *Chevron* two-step approach, under which a court must defer to an agency’s interpretation of a statute it administers if, at step one, the court finds “the statute is silent or ambiguous” and then, at step two, determines that the agency’s reading is a “permissible construction of the statute.”<sup>27</sup> The next three sessions pose questions about the relationship between *Chevron* and

23. Again, one cannot do justice to appointment and removal doctrines in one 75-minute class. Professor Walker assigns two cases for reading—*Morrison v. Olson*, 487 U.S. 654 (1988) and *Free Enterprise Fund v. Public Company Accounting Oversight Board*, 561 U.S. 477 (2010)—and covers by lecture the main cases preceding those.
24. 410 U.S. 224 (1973).
25. 5 U.S.C. § 553(c).
26. 332 U.S. 194 (1947).
27. *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984).

the tools of statutory interpretation: How does *Chevron* interact with semantic canons and textual tools of interpretation? How do non-textual, purpose-based tools of interpretation and *Chevron* interact? How do substantive canons and *Chevron* interact? As the questions suggest, these cases and materials provide an excellent refresher on the first half of the course and help students understand how judicial review differs when an agency has already advanced a statutory interpretation. The final class surveys the tools an agency possesses to replay the *Chevron* deference game in the event a court invalidates the agency's first interpretation of an ambiguous statute it administers, including a brief introduction to *Mead*, *Skidmore*, *Brand X*, governmental intracircuit nonacquiescence, and the ordinary remand rule.<sup>28</sup> These five sessions on *Chevron* reinforce the overarching theme of the second half of the course: efforts by the three branches (here, the judiciary) to impose some boundaries on agency lawmaking powers.

To be sure, even with a disciplined thematic focus, this is a lot of material to cover in fourteen seventy-five-minute class sessions, and students may also struggle with the breadth of substantive areas covered in the cases and materials used to illustrate the administrative law principles. No doubt these pedagogical challenges are not unique to this first-year course. But pedagogical best practices such as careful road-mapping, student reargument of cases in class, substantive review questions, and problems and examples can all help make the material more digestible.

One teaching tool stands out as particularly effective in a Legislation course: the use of classroom polling technology. During the statutory interpretation part of the course, students seem to engage more fully with the material when the statutory text is introduced followed by a brief overview of the facts of the case, and then the students are asked to use clickers to vote as judges as to the proper interpretation of the statute. To assist in class discussion, the vote can be more than a binary yes/no to include the main reasons for the vote (textualist or purposivist tools, etc.). Or those rationales can be explored in a follow-up poll question. In the administrative law portion of the course, the polling can be further enhanced by asking the students first which interpretation they would embrace if they were the head of the agency, then which interpretation they would choose if they were a judge interpreting the statute absent an agency interpretation, and finally what they would do as a judge reviewing the agency's interpretation of the statute. This pedagogical tool not only engages the students more fully with the substantive material and process of statutory interpretation, but also helps them better understand the importance of standards of review and the reasons courts defer to agency statutory interpretations.

When taught effectively, the Leg-Reg model of Legislation can be done in a way first-year students enjoy. Indeed, after Harvard Law School's maiden voyage with Leg-Reg in the first year, then-Dean Kagan remarked that the

28. These topics are discussed in a 16-page essay, Christopher J. Walker, *How to Win the Deference Lottery*; see also 91 TEX. L. REV. 73 (2012), which is the assigned reading for that class session.



new course “was the most favorably evaluated of any course in the first-year program last year.”<sup>29</sup>

### *B. The Case for Law of the Political Process*

Although the Leg-Reg model has become increasingly prominent in recent years, there are other approaches to the other half of the first-year Legislation course. The most common is the inclusion of the law of the political process alongside statutory interpretation. Two of us (Rudesill and Tokaji) incorporate the law of the political process in our first-year Legislation course.<sup>30</sup>

We use the term “law of the political process” broadly to encompass the rules governing both the selection of legislators and the deliberations of legislative bodies. So defined, the law of the political process includes:

- procedural rules of legislative bodies;
- representation and districting (including minority vote dilution);
- qualifications for legislative office;
- ballot access;
- campaign finance;
- corruption (including bribery);
- lobbying;
- rules structuring deliberation (including single subject rules and line-item veto);
- legislative immunities;
- due process of lawmaking;
- legislative drafting;
- qualifications for legislative office; and
- direct democracy.

As this list suggests, a broad range of subjects falls within the scope of law of the political process. Covering all of them is practically impossible in a three-credit course, so instructors choosing to include political-process material in Legislation will have to make some difficult choices about what to include and

29. Elena Kagan, *The Harvard Law School Revisited*, 11 GREEN BAG 2D 475, 478 (2008); see also Manning & Stephenson, *supra* note 21, at 47-51 (2015) (chronicling the development of Harvard’s first-year Leg-Reg course).

30. It is possible to include some administrative law along with law of the political process. In fact, both Professors Rudesill and Tokaji include an introduction to administrative law—albeit one that is less comprehensive than Professor Walker’s approach discussed in Part I.A. The same is true of including some law of the political process in the Leg-Reg model, as Professor Walker provides a brief introduction to a number of these topics with substantial focus on legislative process during the statutory interpretation half of his course.

what to leave out. We address different emphases within this general approach at the end of this part.

Before exploring these complexities, a preliminary question must be answered: Why include the law of the political process in an introductory course on Legislation? Many students will be asking this very question, especially if the course is required in the first year. The argument for including statutory interpretation is relatively straightforward, as set forth above. It is less obvious—especially to first-year law students—why they should be compelled to understand the law governing the political process. There are, however, compelling reasons for including some of this body of law alongside statutory interpretation in an introductory Legislation course. We emphasize four of them.

The first and most basic reason for including the law of the political process in an introductory Legislation course is that competent lawyers must understand not just what the law is but also *how law gets made*.<sup>31</sup> While most other first-year courses focus on a body of substantive legal doctrine (like Torts, Contracts, or Constitutional Law), Legislation is mostly about process. That includes the process through which courts and administrative agencies interpret statutes. It also includes the process through which statutes are enacted into law.<sup>32</sup> Understanding this process requires a working knowledge of the rules governing the selection of legislators and deliberations of legislative bodies. These rules determine both *how law gets made* and *what law gets made*. If politics is the art of the possible,<sup>33</sup> then studying the law of the political process helps students learn what is possible and what is not within the U.S. political system. So conceived, the political-process module of Legislation—like the administrative law module outlined in Part I.A—grounds students in the real-world dynamics of lawmaking. It also introduces them to how legal rules distribute political power.

The second argument for pairing political-process law with statutory interpretation is more conceptual: These twin components of Legislation explore two dimensions of the *relationship between legislative bodies and courts*. That relationship is a major theme of Legislation, both the introductory course and upper-level offerings. One dimension of this relationship is how courts interpret statutes. Another dimension is judicial regulation of the political process. That includes the process by which legislators are elected, such as laws concerning

31. This, indeed, is how one might answer another question frequently in the minds, and occasionally on the lips, of first-year Legislation students: What's this course about? Skepticism of why they should be required to take this course is not infrequently implied by the tone in which this question is asked, in our experience.

32. A similar argument can be made for including an administrative law component in an introductory Legislation course. The law of the political process teaches students how statutes are made, while administrative law teaches them how rules and regulations are made.

33. See JONATHAN STEINBERG, *BISMARCK: A LIFE* 472 (2011) (quoting Otto von Bismarck as saying "politics [i]s the art of the possible").

ballot access and voting rights, as well as the rules governing the deliberations of legislative bodies. Put another way, Legislation encompasses the *inputs* of the legislative process (the law of the political process) as well as the *outputs* of that process (statutory interpretation). And it encompasses constitutional law (like the First and Fourteenth Amendments) as well as statutory law (such as the Federal Election Campaign Act (FECA), Bipartisan Campaign Reform Act (BCRA), and Voting Rights Act). Although some might balk at exposing students to constitutional law before they have completed a full-semester course on the subject,<sup>34</sup> we have found teaching students the limited constitutional law needed for Legislation entirely manageable. And it is necessary to teach both statutory interpretation (e.g., avoidance and federalism canons) as well as political process.<sup>35</sup> Through their interpretations of both statutes and the Constitution, courts play an important role in structuring political power.

A third reason for incorporating a political-process module into Legislation is that it offers an excellent opportunity for thinking about the *competing values* inherent in democracy. It therefore addresses a key shortcoming of contemporary legal education, according to some of its critics. While law school is widely acknowledged to be effective in honing analytic skills, a common complaint is that it doesn't help students develop values they will need upon graduation. As the Carnegie Report put it: "In their all-consuming first year, students are told to set aside their desire for justice. . . . The fact that moral concerns are reintroduced only haphazardly conveys a cynical impression of law that is rarely intended."<sup>36</sup> Studying the law of the political process allows for a direct confrontation with fundamental, sometimes conflicting values underlying democracy. In the realm of campaign finance, for example, that includes the conflict between expressive liberty on the one hand and anti-corruption or equality concerns on the other. Other political-process topics—such as redistricting, ballot access, bribery, legislative immunities, and direct democracy—raise comparable value conflicts that may stimulate provocative classroom discussions, while helping students grapple with fundamental questions about the democratic process.

The fourth and final reason for including the law of the political process is the most practical: *many lawyers work in and around the legislative process*. As discussed in Part I.A, today's law students are—quite understandably—highly focused on finding a job after graduation. A handful of our students will work as legislative aides. A few of them will run for local, state, or federal office at some point in their careers. Many more will be employed elsewhere in the public sector, as lawyers or in non-legal jobs for which knowledge of the legislative process is critical. Indeed, one in ten will be employed in the government sector nine

34. See Leib, *supra* note 13, at 184.

35. The same is true in the Leg-Reg model as discussed in Part I.A, where an introduction to constitutional structures and separation of powers is necessary for understanding the modern regulatory state.

36. CARNEGIE REPORT, *supra* note 1, at 6.

months after graduation, even if judicial clerks are excluded.<sup>37</sup> Still others will be employed in either the for-profit or nonprofit sector.

Wherever they wind up working, our students are likely to have clients who are affected by pending legislation. Many of our students will be called upon to advocate for or against particular bills at some point in their careers. To do this effectively, they will need a solid understanding of the political process. Understanding the political process is critical because many of our students—perhaps most of them—will find themselves working in or around the legislative process at some point in their careers, even if few of them become full-time lobbyists or legislators. Law students must therefore develop a working knowledge of the rules governing the political process. That includes, of course, a basic understanding of how a bill becomes law (e.g., introduction, committee consideration, floor debates, filibuster, presentment). It also includes the process through which legislators are elected, as that process affects the incentives legislators face once in office.

As the above discussion suggests, the political-process module of Legislation has both a theoretical and practical component. This addresses another common complaint about legal education: its failure to prepare students for the real-world practice of law. According to the Carnegie Report: “Legal education should seek to unite the two sides of legal knowledge: formal knowledge and experience of practice.”<sup>38</sup> Studying the law of the political process is especially well-suited to fulfill this objective. It allows students to grapple with both complex legal doctrine and real-world practical problems. Understanding bribery and lobbying laws, for example, helps illuminate the impact (real or perceived) of money upon legislative deliberations—including the incentives it creates for sitting or aspiring legislators. Similarly, examination of the statutory and constitutional rules governing redistricting illuminates the way in which district maps affect legislators’ incentives and, accordingly, affect legislative deliberations. Including the law of the political process in Legislation therefore helps bridge the oft-lamented gap between theory and practice.

Those interested in including a political-process module in Legislation have several casebooks from which to choose. One possibility is the Eskridge-Frickey-Garrett-Brudney casebook,<sup>39</sup> which two of us (Rudesill and Tokaji) use. Chapter 1 of that casebook provides a primer on the legislative process, while Chapters 2 through 5 address various other aspects of political-process law (including representation and redistricting, qualifications, campaign finance,

37. See *supra* note 16 and accompanying text.

38. CARNEGIE REPORT, *supra* note 1, at 8; *accord* STUCKEY, *supra* note 2, at 1 (emphasizing need to “effectively prepare students for practice”); Karen Tokarz et al., *Legal Education at a Crossroads: Innovation, Integration, and Pluralism Required!*, 43 WASH. U. J.L & POL’Y 11, 14 (2014) (urging “practice-based, experiential education”).

39. WILLIAM S. ESKRIDGE, JR., PHILIP P. FRICKEY, ELIZABETH GARRETT & JAMES J. BRUDNEY, *CASES AND MATERIALS ON LEGISLATION AND REGULATION: STATUTES AND THE CREATION OF PUBLIC POLICY* (5th ed. 2014).

bribery, lobbying, rules facilitating deliberation, legislative immunities, legislative drafting, and the budget process), while the remaining chapters deal with statutory interpretation and administrative law. The Mikva-Lane casebook<sup>40</sup> is very well-suited to a course that addresses the law of the political process. It has the most comprehensive discussion of political-process law, with Chapters 1 through 10 mostly devoted to these topics, and the remaining three chapters to statutory interpretation. The Popkin casebook<sup>41</sup> is also worth considering, with Chapters 2 through 15 devoted to statutory interpretation and Chapters 16 through 18 to the law of the political process. As strong as the Manning-Stephenson casebook<sup>42</sup> is on statutory interpretation and administrative law, it does not include the law of the political process (outside of material on the legislative process traditionally covered when teaching statutory interpretation).

What about the sequencing of material? Those pairing political-process law with statutory interpretation in Legislation must decide which should go first. As the above summary of casebook contents suggests, political-process law may be taught either before or after statutory interpretation, and there are arguments for both orderings. We think it's worth being explicit with students that these two major units of the course have very different aims. Although both focus on the relationship between legislative bodies and courts, they address two different concerns. While the statutory interpretation unit arms students with a set of tools for discerning the meaning of laws, the political-process unit teaches them how law is made.

One option is to cover political-process law before statutory interpretation (as the Eskridge-Frickey-Garrett-Brudney and Mikva-Lane casebooks do). There is a temporal logic to this approach, as it allows students to follow the legislative process from beginning to end—starting with the law governing districts (like one person, one vote and the Voting Rights Act), and proceeding through the rules governing campaign finance (FECA and BCRA) and legislative deliberations (like the Lobbying Disclosure Act, single-subject rules, line-item veto, and drafting), before proceeding to statutory interpretation.

Another option is to flip the order, covering statutory interpretation before political-process law. This is the sequence in which two of us (Rudesill and Tokaji) currently teach the material. We first introduce the steps in the legislative process, then cover statutory interpretation (including a brief introduction to administrative law), before turning to the law of the political process. One advantage of this sequence is that it covers the material of most obvious relevance to first-year law students first, thus reducing any resistance to the course as a whole. Another advantage is that students come to political-process law armed with tools of statutory interpretation. This helps them

40. ABNER J. MIKVA & ERIC LANE, LEGISLATIVE PROCESS (3d ed. 2009).

41. WILLIAM D. POPKIN, MATERIALS ON LEGISLATION: POLITICAL LANGUAGE AND THE POLITICAL PROCESS (5th ed. 2009).

42. MANNING & STEPHENSON, *supra* note 21.

make sense of relatively complex statutory schemes studied in the political-process unit, such as the federal statutes regulating voting rights, campaign finance, and lobbying. It also allows them to continue to hone their statutory interpretation skills.

We close this part with some thoughts on what political-process topics instructors might choose to include in an introductory Legislation course. As the above discussion suggests, there are many topics within the general heading of political-process law, not all of which can feasibly be covered in half of a three-credit course. Some discussion of the basic rules governing the legislative process—how a bill becomes law—is essential, in our view.<sup>43</sup> Though one might assume students come to the course with a basic knowledge of this process, that has not been our experience. That is especially, though not exclusively, true of students educated outside the United States. Beyond that, however, there are a multiplicity of choices.

One way of thinking about the problem is to separate those processes that involve the *legislative* process from those that involve the *electoral* process. Such a division might be drawn from the creation of the Election Law Section within the American Association of Law School (AALS) earlier this year. There is considerable overlap between the topics covered in Election Law and Legislation—and not coincidentally, there are many Election Law experts who teach Legislation. The new Election Law Section addresses some topics that were formerly within the purview of the AALS Section on Legislation and Law of the Political Process.<sup>44</sup> Prior to AALS approval, the two sections agreed to the division of topics between them as depicted in the table below.

Although it's possible to limit coverage to either the legislative process (left-column topics) or the electoral process (right-column topics), that would not be our recommendation. We see these topics as intertwined, notwithstanding the AALS division. The law of campaign finance, for example, is very closely linked with corruption and lobbying laws—all these subjects address the relationship between money and governance. One of us (Tokaji) includes the following material in the political-process unit: right to vote, representation and districting, corruption, campaign finance, lobbying, and direct democracy.<sup>45</sup> The other (Rudesill) leaves out the material on corruption, lobbying, and direct democracy, but includes legislative drafting. These materials provide

43. Deborah Widiss's contribution to this symposium provides a terrific overview of how to teach the legislative-process component, including terrific tips on how to teach legislative process in an experiential-learning environment. Deborah A. Widiss, *Making Sausage: What, Why and How to Teach about Legislative Process in a Legislation or Leg-Reg Course*, 65 J. LEGAL EDUC. 96, 98-107, 110-120 (2015).
44. The AALS Section on Legislation and Law of the Political Process assumed this name in 2007. Before that, it was known solely as the Legislation Section.
45. Professor Tokaji has taught all the other topics in the left column (including legislative drafting, due process of lawmaking, legislative immunities, and qualifications) at some point in previous versions of the course, in which political-process materials consumed about two-thirds of the course. He now omits this material, to achieve roughly a 50/50 division between statutory interpretation (including administrative interpretation) and political-process law.

students with sufficient foundation to understand how the rules—including those governing both the electoral and legislative process—shape legislative deliberations.

<b>Division of Topics Between AALS Section</b>	
<b>Legislation</b>	<b>Election Law</b>
Agency Interpretation	Ballot Access
Corruption (including Bribery)	Campaign Finance
Direct Democracy (Ballot Propositions, Recalls)	Campaign Speech
Due Process of Lawmaking	Election Administration
Implementation of Statutes	Minority Representation (including Voting Rights Act)
Legislative Drafting	Political Parties
Legislative Immunities	Remedies for Election Problems
Legislative Process	Representation and Districting
Lobbying	The Right to Vote
Qualifications for Serving in Regulatory Process	
Statutory Interpretation (including Canons)	

## II. Legislation Beyond the First-Year Curriculum

A law school could end its legislative curriculum after a first-year required course or an elective introductory Legislation course. We believe, however, that additional curricular and extracurricular opportunities are warranted. Our curriculum at The Ohio State University Moritz College of Law reflects that belief. Like most law schools, Moritz offers a wide variety of offerings for students interested in substantive courses with an emphasis on statutory interpretation,<sup>46</sup> electives with a particular focus on administrative law and regulation,<sup>47</sup> and advanced courses on the law of the political process.<sup>48</sup> In this essay, however, we focus on one subset of offerings in this area: courses that provide students with greater hands-on experience with the legislative process.

46. Such courses at Moritz with a statutory interpretation focus vary in substantive coverage and include: Copyright Law; Disability Discrimination; Employment Discrimination Law; Federal Income Tax; Health Law; Introduction to Intellectual Property; Labor Law; Patent Law; and Trademark.
47. Such courses at Moritz with a regulatory focus include: Administrative Law; Antitrust Law; Banking Law; Education Law; Employment Law; Energy Law; Environmental Law; Food and Drug Law Seminar; Law and Economics Seminar; Privacy; Public Health Law; Public Utilities Seminar; Regulatory Compliance; Securities Regulation; Sentencing Law & Policy; and Tax Policy Seminar.
48. Advanced courses in political process at Moritz include: Disputed Elections Seminar; Election Law; Law & the Presidency Seminar; Law & Social Movement Seminar; Marijuana Law, Policy & Reform Seminar; Money & Politics Seminar; State and Local Government Law; and State Constitutional Law.

We begin in Part II.A with a brief explanation of why experiential learning is particularly appropriate for students who wish to develop a more nuanced understanding of the legislative process. In Part II.B, we describe four exemplary offerings at Moritz with a major experiential-learning element: (1) the Moritz Legislation Clinic, which launched in 2000; (2) the Moritz Washington, D.C., Summer Program, which started in 2002; (3) the National Security Law and Process Simulation, which is in its second year; and (4) the Legislative Clerkship Initiative, which has been in the works since at least 2008.

### *A. The Case for Experiential Legislative Offerings*

As noted above, the law school legislation curriculum could conceivably stop with a single introductory Legislation course and a menu of more traditional upper-level courses that touch on statutory interpretation, regulation, and political process.<sup>49</sup> But several considerations reinforce our belief in—and our institution’s commitment to—complementing conventional law school courses with curricular offerings in legislation that have an experiential component.

First, all lawyers need to understand legislative process in a real-world way that is difficult to convey in a traditional law school course, much less in an introductory Legislation course. All lawyers will at some point in their careers construe a statute (local, state, or federal) or advocate for statutory change, tasks at which a lawyer will be far more adept if he or she understands how complex legislative process really works. As noted above, the Moritz first-year Legislation course, for example, covers all phases of the lawmaking process, from inputs (political process law) to outputs (statutory interpretation) and implementation (administrative law). Beyond surveying “veto-gates” along paths to enactment, the course provides comparatively little in-depth coverage of how legislatures actually write law and create legislative history.

Offerings beyond the first-year Legislation course can focus more intently on the procedural rules of formal legislative process, which are just as important but also different from administrative or judicial rules and processes—and not covered in detail in the typical first-year course.<sup>50</sup> Advanced offerings can also focus on informal legislative process, which generally is not covered at all in the introductory Legislation course and can be learned well only through experiential learning. The vast majority of legislative process occurs behind the scenes as the members of legislatures, their staff (including lawyers and non-lawyers), and those advocating for legislation (in and out of government) discuss policy, politics, and legislative strategy and work on draft statutory and report text. Often, formal process moments such as committee markups, floor votes, or conference committee meetings largely ratify results produced informally.

49. See *supra* notes 46-48 and accompanying text (listing such courses offered at Moritz).

50. But are just as important as court or administrative formal rules. See Victoria F. Nourse, *A Decision Theory of Statutory Interpretation: Legislative History by the Rules*, 122 YALE L.J. 70 (2012-2013).



Personality—meaning individuals, their motives, and the texture of their relationships with others—therefore matters enormously as legislative history is generated and legislative outcomes are created. Learning how to place personalities in process context and how to engage with them is best accomplished not in a lecture course of seventy students but in a small, closely mentored and intensively trained group of students, for example in a clinic, on the job in the seat of government, in a realistic simulation, or on a legislative advocacy team.

Finally, doing legislative work as part of law practice requires facility with thinking about what the law could or should be, not simply what it is. For a litigator or agency lawyer, making a good argument about legislative intent or purpose is aided tremendously by firsthand familiarity with how legislators think. So too is the work of the lawyer doing legislative advocacy, where making the right argument at the right moment—combining law, process, policy, political, and personality factors—can make or break an effort to get legislators who do not have to listen to agree to take action (or to not).<sup>51</sup>

In short, a first-year Legislation course does not have space for extended, deep exploration of legislative lawmaking, nor training for it. The same is true of the balance of the law school curriculum. Doctrinal courses are indispensable, but lawyers are best prepared for legislative work in settings that allow them to learn by doing. Accordingly, experiential learning is a hallmark of Moritz's upper-level legislative learning opportunities discussed in the following part.

### *B. The Moritz Legislative Experiential-Learning Offerings*

With this background on the importance of experiential learning in the legislation curriculum, we turn to four examples of such offerings that have been developed at Moritz over the past fifteen years.

#### 1. The Moritz Legislation Clinic

Founded in 2000 as the brainchild of Jim Brudney and nurtured over the years by Steve Huefner, Terri Enns, Doug Berman, and Dakota Rudesill, the Moritz Legislation Clinic provides a front-row view of the legislative process in the state of Ohio as students work directly with legislative leaders and their staffs on matters pending or anticipated to arise before the Ohio House and Senate. Before turning to the specifics of the legislation clinic, it is important to underscore the synergies between clinical education and the legislative process—especially because Moritz is one of the very few law schools to offer a clinic focused on legislation.<sup>52</sup>

51. The First Amendment guarantees the people the right to speak and to petition government for redress of grievances, but federal legislators do not have to listen or respond. *Minn. Bd. for Cmty. Colleges v. Knight*, 465 U.S. 271, 283-87 (1984).
52. There are other legislative clinic models. Students in the 10-credit, single-semester Federal Legislative and Administrative Clinic at Georgetown Law, founded by Chai Feldblum and directed by one of us (Rudesill) in 2010-13, advise and represent nonprofit clients with legislative and regulatory agendas. For more information on Georgetown's clinic, visit <http://>

Over the long history of clinical legal education in the United States, clinics have demonstrated that giving students primary responsibility for professional work for real clients and principals produces tremendous learning in core lawyer skills including role assumption, client service, planning, research, analysis, written and oral communication, and practicing professional responsibility.<sup>53</sup> Rarely in law school is the clinic matched in terms of immersion in the provision of legal services, intensity of faculty supervision, frequency and depth of feedback and evaluation, and encouragement of student reflection. The ABA consequently requires clinical offerings (or similar live-client or real-life practice opportunities) as a condition of accreditation.<sup>54</sup>

A clinic is an excellent way to teach legislation for the reasons mentioned above, and similarly legislation is a terrific focus for a clinic. First, there is the public interest: The centrality of legislative process to lawmaking at every level of government has created enormous need for legislatively trained lawyers, yet the overwhelming focus of the legal community in recent decades on litigation and transactional work. The profession and its clients need to understand more fully that there are more instruments in the lawyer's tool kit than litigation. Second, there is student learning: Legislators, staff, agency officials, and lobbyists are notoriously demanding clients, principals, and colleagues, placing a premium on growth in professionalism. A related pedagogical point is transferability: The substantive knowledge of legislation and legislative processes that students acquire may be specific, but the core lawyer skills a legislation clinic builds are transferable to any practice setting. Finally, there are job opportunities: Alumni of the Moritz Legislation Clinic are scattered throughout federal, state, and local government, including at the state level in the Ohio House of Representatives, as caucus legal counsel, and as the director of a county board of elections. Many of them found those jobs during the clinic or developed the networks and skills necessary to be competitive for those jobs while learning by doing in the clinic environment.

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[www.law.georgetown.edu/academics/academic-programs/clinical-programs/our-clinics/FLAC/](http://www.law.georgetown.edu/academics/academic-programs/clinical-programs/our-clinics/FLAC/). Students in the fourteen-credit, single-semester Congressional and Administrative Law Externship Clinic at Washington University School of Law have an experience at the federal level in Washington, D.C., analogous to that of students in Moritz's clinic or D.C. program—interning in government while attending classes during a semester in the nation's capital. For more information on Washington University's legislation clinic, visit <http://law.wustl.edu/clinicaled/pages.aspx?id=6831> (last visited April 29, 2015).

53. See PHILIP G. SCHRAG & MICHAEL MELTSNER, REFLECTIONS ON CLINICAL LEGAL EDUCATION 9 (1998); Wallace J. Mlyniec, *Where to Begin? Training New Teachers in the Art of Clinical Pedagogy*, 18 CLINICAL L. REV. 505 (2013); Chai Feldblum, *The Art of Legislative Lawyering and the Six Circles Theory of Advocacy*, 34 MCGEORGE L. REV. 785 (2003).
54. ABA Standard 302(b) requires that a law school “offer substantial opportunities for...live-client or other real-life practice experiences,” which Interpretation 302-5 clarifies “may be accomplished through clinics or field placements.” 2013-2014 ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 21-22 (2013).

The Moritz Legislation Clinic is a single-semester, four-credit course for twelve students in their second or third year, team taught by two professors.<sup>55</sup> It was founded in 2000, and to date over 300 students have completed a semester in the clinic. The clinic focuses on the Ohio General Assembly: Students are placed for the semester with a member, caucus, or nonpartisan organization such as the Legislative Service Commission of the Joint Committee on Agency Rule Review, and often in the office of the governor or another executive branch agency in a position in which the students do legislative work. Under an arrangement with the Legislature that requires strict confidentiality, clinic faculty review the work product of clinic students before it is finalized. Approximately ten to twelve hours per week of work at the Ohio Statehouse is combined with twice-weekly seminar sessions focused on Ohio's legislative process, key substantive and election-law issues, and matters of professional lawyering development and responsibility. The legislation clinic also builds legislative skills through an intensive legislative committee simulation, in which students role-play members. Legislators and other insiders frequently visit the seminar, which is supplemented by regular student journaling and reflection.

Focusing the legislation clinic on the state Legislature has proved tremendously valuable. The first-year Legislation course reflects the general federal focus of American legal academic curricula, and learning about the distinct state-level legislative process underscores the diversity of state lawmaking processes, federalism, and the role of the states as laboratories of democracy. It is also appropriate for the state's flagship public law school (as part of a land-grant university) to serve the state of Ohio and its people. With limited staffing—committees in the Ohio General Assembly do not have their own staff, for example—the clinic students are able to make a meaningful contribution in short order.

Two challenges associated with this clinic model are worth mention, both of which have proved manageable and in fact beneficial. One is teaching while also maintaining the confidentiality that enables the clinic faculty to review student work product before it goes to their supervisors in the Legislature. The students have admirably maintained the trust between the clinic and the Legislature, but the protection of confidential information requires extremely attentive monitoring by students and faculty—and guarantees valuable learning-by-doing moments every semester. A second challenge—and opportunity—has been provided by Ohio's legislative term limits, which first began to displace seasoned legislators in 2000 (the year in the legislation clinic commenced operation). Accelerated turnover in members has made retaining institutional memory generally, and member familiarity with the Legislature-clinic relationship in particular, more challenging. Here again, the workable solution has been attentiveness by clinic students and faculty to the needs of members. Meanwhile, the significance of the work provided by students under

55. For more information on the clinic, visit the Moritz Legislation Clinic website, <http://moritzlaw.osu.edu/clinics/legislation-clinic/> (last visited April 29, 2015).

the supervision of faculty with long-term familiarity with the Legislature has only increased.

## 2. The Moritz Washington, D.C., Summer Program

Launched in 2002 by Peter Swire and now co-directed by two of us (Rudesill and Walker), the Moritz Washington, D.C., Summer Program—like the legislation clinic—has both practical and classroom elements. Students work in legislative or executive branch offices or for nonprofits in Washington for approximately thirty-five hours per week, complemented by evening seminars and lunchtime field trips focusing on key lawyering topics.<sup>56</sup> The two programs differ in the federal focus of the D.C. program versus the state focus of the legislation clinic, the somewhat broader governmental and nonprofit focus of the D.C. program, and the fact that D.C. program faculty do not review the students' work product. Moreover, the D.C. program includes both a three-credit externship component and a two-credit ethics seminar.<sup>57</sup>

Many students with legislative or public-law interests participate in both the clinic and the D.C. program. In the language of the Carnegie Report, it allows students to combine learning by formal knowledge and practical experience.<sup>58</sup> In the D.C. program seminar, the substantive focus is ethics. The course is titled *The Ethics of Washington Lawyering* and provides considerable insight into ethical challenges encountered by lawyers in the nation's capital. The course satisfies the law school curriculum's ethics requirement and helps prepare students for the Multistate Professional Responsibility Examination. The professors emphasize how the ethical principles covered are transferable to any practice setting. Washington is an especially dramatic stage on which to learn about ethical dilemmas and the lawyer's responsibility to address them, but the principles travel geographically, jurisdictionally, and institutionally.

The two professors team-teach the course, taking turns traveling to Washington for evening seminar sessions, workday field trips, and meetings with students. Although both have contacts throughout Washington and enjoy working with colleagues across the political spectrum, in a city that has "blue" and "red" teams, the course leverages the professors' respective deep contacts in those party-affiliated circles. Their differing professional backgrounds are complementary as well: Professor Rudesill has focused on national security in his work for the U.S. Senate, the intelligence community,

56. For more information, visit the Moritz Washington, D.C., Summer Program website, <http://moritzlaw.osu.edu/washington-dc-summer-program/> (last visited April 29, 2015).

57. Students reflect on their externship and seminar experiences in discussions and in two papers that form a majority of their grade. The paper for the three-credit externship course focuses on an issue the students encounter during their externship. The paper for the two-credit ethics course focuses on an ethics issue raised by their work experiences or in relation to the topics covered in the seminar. Students propose topics to the professors in advance, explore and refine them through outlining and work-shopping with fellow students both in and out of class, and present their externship-related papers at the end of the course.

58. CARNEGIE REPORT, *supra* note 1, at 8.

a D.C. think tank, and a law firm. Professor Walker, by contrast, worked on the Justice Department's Civil Appellate Staff, where he defended federal agencies in a variety of contexts, practiced law at a D.C. firm as a trial and appellate litigator, and clerked on the Supreme Court.

During the academic year, the professors meet with the students to help them identify the students' interests in law and policy and then use their contacts and Washington knowledge to help place the students in substantive externships. The professors then complement that job placement assistance by designing and implementing a course that provides via readings, guest speakers, and site visits a survey of opportunities for lawyers in Washington and considers attendant ethical issues and challenges. Individual sessions this past summer focused on lawyering and ethics issues in several settings: congressional offices; lobbying groups; advocacy coalitions; trade and business associations; media; law firms; executive branch legal advisor and general counsel offices; the judiciary; and the Justice Department litigation divisions. Discussions returned frequently to the centrality of statutes and the dynamic roles of all three branches in lawmaking. Guest speakers included Senator Sherrod Brown (D-Ohio), Senate staff (lawyer and non-lawyer), a senior independent lobbyist, the former legal advisor to the National Security Council and current chief judge of the Court of Appeals for the Armed Forces, current Supreme Court law clerks, lawyers working at law firms and the Justice Department, a lawyer working in the media, a lawyer from the U.S. Chamber of Commerce, and the assistant secretary of the Air Force. The class visited the Capitol, Pentagon, Supreme Court, and the Chamber—just to name a few.

Since the D.C. program's first summer class in 2003, over two hundred students have participated with externship placements in over seventy different government offices in all three branches of the federal government (as well as the D.C. government) and in nearly seventy different nongovernmental organizations, including nonprofits, think tanks, public-interest firms and organizations, trade associations, lobbying groups, and so forth.<sup>59</sup> Many of these students secured permanent jobs in Washington—either at organizations where they interned or other organizations based on their networking efforts during the summer. Since the D.C. program's inception, the number of Moritz alumni in Washington has increased dramatically, and many of those alumni serve as valuable mentors to the students enrolled in the D.C. program each summer.

### 3. The Ohio State National Security Simulation

Students have a further opportunity to deepen their legislative knowledge in connection with Moritz's National Security Law and Process course, which is taught by one of us (Rudesill).<sup>60</sup> The course teaches students the national

59. A complete list of students and externship placements in the D.C. program is available at <http://moritzlaw.osu.edu/washington-dc-summer-program/externships/> (last visited April 29, 2015).

60. The simulation builds on military exercises and two other national security simulations

security legal authorities and trains them in the processes they will use during The Ohio State National Security Simulation, an immersive, intensive two-day annual exercise that serves *inter alia* as the course's final examination.<sup>61</sup>

The Ohio State National Security Simulation positions law, public policy, intelligence, military, and journalism students in their respective roles in and out of government, and in so doing builds the core professional skill of role assumption. By placing law students in the shoes of lawyers advising both lawyer and non-lawyer decision-makers and colleagues as a series of stressful, complicated, interlocking crises unfold in real time, the simulation gives law students the experience of law as applied. The students learn to practice with integrity despite pressures of time, personality, confidentiality, and consequence. They develop lawyer/non-lawyer communication skills. They learn to adapt and persevere as the facts, policy, and law change. And they engage in written and oral briefing that must be simultaneously precise and concise.

The course builds briefing skills during the semester through the class daily brief (CDB), a daily written and oral briefing prepared by a team of two students, focused on recent developments in national security law, legislation, and international affairs, and delivered to a simulated demanding senior leader.<sup>62</sup> The course also encourages analysis of issues at the intersection of law

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Professor Rudesill has participated in designing and running in prior years: the policy-focused crisis simulation of the Studies in Grand Strategy course at Yale University (*see* The Brady-Johnson Program in Grand Strategy and Studies in Grand Strategy Graduate Seminar, <http://iss.yale.edu/grand-strategy-program>), and the law-focused simulation of the National Security Crisis Law course at Georgetown Law (*see* Laura K. Donohue, *National Security Pedagogy: The Role of Simulations*, 6 J. NAT. SEC. L. & POL'Y 489 (2012)). The Yale simulation is about policy and policymakers, while the Georgetown simulation is about law and lawyers. Recognizing that these otherwise fantastic simulations present an incomplete model of decision-making and practice, and that law students will benefit from playing their role as legal, policy, intelligence, and media players interact, the Moritz simulation is an effort to depict in context the actual functioning of the three branches in the national security space. Note that national security is merely the substantive grist for the mill. One could run a similar simulation with public health, agriculture, or any other area of law and policy as its focus.

61. More information, and photographs and a documentary video from the November 2014 simulation, are available here: <http://www.moritzlaw.osu.edu/briefing-room/national-security-simulation/> (last visited April 29, 2015).
62. Professor Rudesill discusses the CDB in more depth and analyzes seven semesters of student-performance data in a work in progress. This CDB briefing exercise has also been identified as a pedagogical best practice by one of its frequent recipients. *See* James E. Baker, *Process, Practice, and Principle: Teaching National Security Law and Knowledge that Matters Most*, 27 GEO. J. LEGAL ETHICS 163, 175 (2014) ("The exercise accomplishes four teaching goals. First, it emphasizes the importance of written and oral nuance. Second, it trains students to sift through and condense voluminous, complex information into concise policy, intelligence, and legal talking points in a way that writing briefs and papers and exams assuredly do not. Third, it exposes students to the sort of cross-examination that intelligence and legal specialists encounter. And finally, by using an array of guest 'Presidents,' the exercise exposes students to a range of personalities as well as the necessity of the lawyer adapting his or her personality to the needs and style of the client.").

and policy in their legal, process (both formal and informal), policy, political, and personality (LP4) aspects.<sup>63</sup> Many class sessions include an ethics-focused practice point applicable to legislative lawyering and transferable to any setting. These begin with role assumption and proceed through, *inter alia*, knowing yourself and your principal, tailoring communication to the needs of your audience, maintaining collegial relationships, flagging rather than hiding legal and factual uncertainty when in confidential communication with your principal and colleagues, admitting error, and practicing integrity.

The course and simulation provide intensive experiential training in legislation. Law students construe statutes throughout the simulation. Role-playing senators and their lawyers, students can also change the law through statutory drafting and legislative process as the three branches interact during the simulation in response to injections of fake media stories and intelligence. Law students are assigned a number of roles.

- *Chief counsels to a U.S. Senate committee and its members* draft legislation, using committee rules of procedure to secure (or impede) its passage, advise their principals on matters of law and policy, organize hearings and markups, and otherwise investigate and conduct oversight of the executive branch;
- *Special assistant to the president for legislative affairs* coordinates executive branch contact with Congress, drafts legislation to propose to Congress, and advises the president and Cabinet on Congress' legislative work;
- *Legal advisor to the National Security Council* works with the special assistant to the president for legislative affairs and other senior White House officials, advises and represents agency principals; and,
- *Federal agency lawyers* include general counsels and other senior legal advisors to the non-law students acting as the secretaries of State, Defense, and Homeland Security; the Directors of National Intelligence, the Central Intelligence Agency, and the National Security Agency. Department of Justice lawyers in particular draft and argue surveillance warrants before a faculty member playing a judge on the special national security surveillance court created by the Foreign Intelligence Surveillance Act (FISA) of 1978.

The primary challenges associated with the simulation are the considerable time investment required to design and run (it "takes a village" and one hundred-plus pages of prewritten injects that surface key law and policy issues); to recruit and prepare around one hundred fifty player and non-

63. Professor Rudesill developed the LP4 framework as visiting director of Georgetown Law's Federal Legislation and Administrative Clinic, the website of which continues to reflect this useful analytical approach. See *supra* note 52. For inspiration, he thanks Chief Judge Baker, who recommends analyzing legal, process, and personality angles of issues. See JAMES E. BAKER, *IN THE COMMON DEFENSE* 1 (2007).

player participants; to monitor closely and guide the simulation as it unfolds to ensure that key law, policy, and process issues are raised; and to observe student performance. However, enthusiastic student feedback and skills growth make it worthwhile.

#### 4. Legislative Clerkships Initiative

Many of the students who have taken the first-year Legislation course, D.C. program, or National Security Law and Process Simulation are also participating in an effort coordinated by one of us (Rudesill) to create analogues in legislatures to the highly successful and influential judicial clerkships.

The near-term problem the initiative seeks to address at the federal level is that Congress is missing out on the national lawclerk market because it hires at the last second rather than on the national year-in-advance hiring schedules used by judges, executive branch agencies, and law firms, and does not have positions designed with the needs of new lawyers in mind. The longer-term problem the legislative clerkship initiative seeks to correct is that this lack of supply of legislative clerkships has ceded to the courts and a court-centered legal profession more generally the apprenticeship and shaping of the constitutional perspective of the law's future leaders. It has yielded a legal profession in which elite ranks have very few individuals who have ever worked for the legislatures that write the statutory law they practice. Additionally, sparsely staffed and overworked congressional offices would come to appreciate having bright, energetic legislative law clerks on staff whose intensive focus is the core legislative legal work of the Congress: statutory drafting and analysis, and use of procedural rules.<sup>64</sup>

At the federal level, the deans of more than 120 law schools have urged Congress to create a legislative law clerk program, as have more than 400 law students and recent law graduates nationwide. Several dozen legal luminaries, including former White House counsels to Presidents Reagan, Bush, and Clinton, have also endorsed the proposal.<sup>65</sup> The House has twice passed legislation to create a pilot program at the federal level involving a dozen yearlong positions for recent law graduates, hired and compensated similarly to federal judicial clerks.<sup>66</sup> The Senate version of this bill, S. 1458,

64. Professor Rudesill has made this case in a series of publications. See Dakota S. Rudesill, *Keepers of the U.S. Code: The Case for a Congressional Clerkship Program*, WASH. U. L. REV. SLIP OP., Nov. 5, 2008, available at <http://ssrn.com/abstract=1273943>; Dakota S. Rudesill, *Closing the Legislative Experience Gap: How A Legislative Law Clerk Program Will Benefit the Legal Profession and Congress*, 87 WASH. U. L. REV. 699 (2010); *Starting Out: The Lawyer's Apprentice* (Letter), N.Y. TIMES, Feb. 18, 2013, <http://www.nytimes.com/2013/02/25/opinion/starting-out-the-lawyers-apprentice.html>; *Judges Could Use Legislative Experience*, THE HILL, Feb. 13, 2014, <http://thehill.com/blogs/congress-blog/judicial/198235-judges-could-use-legislative-experience>.

65. These letters and the law student national petition are available at <http://www.congressionalclerkship.com/p/learn-more.html>.

66. Daniel Webster Congressional Clerkship Act of 2009, H.R. 151, 111th Cong. (as passed by House, Mar. 31, 2009); Daniel Webster Congressional Clerkship Act of 2008, H.R. 6475, 110



was sponsored in the last Congress by Senators John Hoeven (R-N.D.) and Patrick Leahy (D-Vt.), and will be reintroduced in the 114th Congress.<sup>67</sup>

In what is an informal mini-clinic focused on Congress, law students at Moritz are learning by doing through their involvement in efforts to pass this bill in Congress.<sup>68</sup> Law students have been involved in every aspect of the legislative campaign of the Congressional Clerkship Coalition from drafting and negotiating bill language, to pitching co-sponsorships successfully to members and staff in person and via email, to building grassroots support among law students and other key legal constituencies.<sup>69</sup>

Congress' dysfunction and declining legislative output, and the law school's distance from Washington, are the primary challenges to the initiative's success. However, the legislative drive is in a strong position thanks to bipartisan support in both houses of Congress, and students and faculty at Moritz are finding that in the Internet age the majority of legislative advocacy can be done remotely—an important skill to be honed for legislative lawyers more generally. The consistent presence of law students supporting the bill in Washington also helps. In recent months Moritz students have met with Senate staff on Capitol Hill, have had a series of conference calls with top congressional staff, and have expanded their co-sponsorship recruitment drive.

A sibling effort involves urging state legislatures to create legislative clerkships. A state-by-state survey conducted in 2011 found no exact analogue to the federal program S. 1458 would create, but programs in several dozen states are similar in some respects.<sup>70</sup> Students and faculty continue to advocate for state legislatures to follow S. 1458's lead by creating legislative clerkships on par with judicial clerkships, and to build on fifteen years of what are essentially semester-length clerkships through the Moritz Legislation Clinic. Legislative bodies, today's new lawyers, and the legal profession's overall constitutional perspective and sophistication regarding legislation stand to benefit.

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Cong. (as passed by House, Sept. 11, 2008).

67. Daniel Webster Congressional Clerkship Act of 2013, S. 1458, 113th Cong. (2013).
68. See Michael Perriatt, *Moritz Makes Push for Legislative Clerkship Program*, SIDEBAR, Feb. 6, 2014, <http://moritzlaw.osu.edu/alumni-old/sidebar/article.php?ID=1015&type=story&sidebarID=99> (quoting Ohio State law students involved in advocating for Congress to pass legislation creating legislative clerkships).
69. This effort has been underway since the late 2000s, with important contributions from law students at Georgetown University Law Center, Yale Law School, William Mitchell College of Law, and most recently Moritz. For more information on the Congressional Clerkship Coalition, visit [www.congressionalclerkship.com](http://www.congressionalclerkship.com) or follow the Coalition on Facebook (congressionalclerkship) or Twitter (@congressclerks).
70. See Dakota S. Rudesill, *Legislative Clerkships & Legislative Constitutionalism*, Presentation at Moritz College of Law Legislative Constitutionalism Conference, April 2011 (on file with authors).

### **Conclusion**

The program in legislation we have outlined in this essay—and which our institution has implemented incrementally and effectively over the past two decades—underscores the need for lawyers to understand how to interpret statutes, navigate the legislative and political processes, and represent clients in the modern regulatory state. These skills can be truly mastered only when traditional doctrinal courses are coupled with advanced experiential-learning curricular offerings.

Moreover, in this difficult legal market, the focus of law schools has shifted to developing practical skills and to training lawyers for jobs that are in enduring demand. Law students who engage in a comprehensive, experiential-learning legislation program meet both of these objectives by obtaining critical practice-ready skills from real-world experiences and by receiving training in areas of high demand for law school graduates. There are also tremendous positive externalities created by experiential-learning legislative offerings such as the legislation clinic and D.C. program: These programs build the law school's professional networks; introduce law students to potential employers while being guided by experienced faculty mentors to produce high-quality work product; and channel graduates to work at governmental and public-interest organizations that often hire from their established networks of current employees—thus strengthening those hiring pipelines while providing excellent alumni mentorship for current students.

As law schools look to adapt their curricula in these challenging times, the Moritz approach offers an attractive model of comprehensive education in legislation.