

December 2020

Beyond Thinking Like a Lawyer and the Traditional Legal Paradigm: Toward a Comprehensive View of Legal Education

Jess M. Krannich

James R. Holbrook

Julie J. McAdams

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

Recommended Citation

Jess M. Krannich, James R. Holbrook & Julie J. McAdams, Beyond Thinking Like a Lawyer and the Traditional Legal Paradigm: Toward a Comprehensive View of Legal Education, 86 Denv. U. L. Rev. 381 (2009).

This Article is brought to you for free and open access by Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

BEYOND “THINKING LIKE A LAWYER” AND THE TRADITIONAL LEGAL PARADIGM: TOWARD A COMPREHENSIVE VIEW OF LEGAL EDUCATION

JESS M. KRANNICH, JAMES R. HOLBROOK, AND JULIE J. MCADAMS[†]

INTRODUCTION

As anyone who is familiar with the annual *U.S. News and World Report* survey of American law schools is aware, there are a great number of institutions engaged in the business of educating lawyers in this country—currently, there are nearly two hundred accredited law schools.¹ America’s law schools have vastly different rates of enrollment. For example, the Thomas M. Cooley School of Law reported 3,606 students enrolled for the 2006-2007 academic year, while the University of Montana School of Law reported 83 students.² The size of the schools’ first-year entering classes also varies wildly. Again, the Thomas M. Cooley School of Law was at the high end of the range in 2006, with 1,691 first-year students entering its program last fall, while the University of South Dakota welcomed only 72 first-year students.³ Given these ranges and the sheer number of law schools, both public and private, it is clear that a vast number of students begin an education in the field of law each year.

Despite the differences among American law schools, however, the students’ education will be remarkably similar, regardless of which institution they attend. Legal education—perhaps more than any other type of instruction—is characterized by a distinctive teaching methodology designed to create a common experience and mindset for all who are exposed to it. A lawyer who was educated in Boston can tell a lawyer who attended school in Los Angeles about the time his contracts professor questioned him regarding the rule of mitigation. Not only will the lawyer from Los Angeles be familiar with the type of classroom dialogue the lawyer from Boston is referring to, but he will likely also be able to identify with the precise feelings the exchange engendered.

[†] Jess M. Krannich, Associate, Kirkland & Ellis, LLP; J.D., University of Utah S.J. Quinney College of Law; B.S., with Honors, University of Utah. James R. Holbrook, Clinical Professor of Law, University of Utah S.J. Quinney College of Law; J.D., University of Utah College of Law; M.A., Indiana University; B.A., Grinnell College. Julie J. McAdams, Adjunct Professor of Law, University of Utah S.J. Quinney College of Law; J.D., Columbia Law School; B.S., Utah State University.

1. See U.S. News and World Report, Best Law Schools (2008), <http://grad-schools.usnews.rankingsandreviews.com/grad/law/search>.

2. See U.S. News and World Report, Best Law Schools Index (2008), <http://grad-schools.usnews.rankingsandreviews.com/grad/law/items>.

3. *Id.*

This common educational experience results from the fact that American law schools have historically emphasized one specific skill—known as “legal analysis,” “legal reasoning,” or simply “thinking like a lawyer”—in their curricula, and have almost universally used a particular type of instruction to develop this skill. Indeed, the foundation of modern legal education is the institutionalized belief that students’ legal aptitude is best developed through a classroom dialogue known as the “Socratic method,” whereby professors force students to distill “rules” from case law and apply those rules to various factual scenarios. This type of instruction has dominated legal education for more than one hundred years, and during that time legal reasoning has been the primary skill taught to law students.

That law schools collectively focus on developing students’ skill in legal analysis is not, in and of itself, a problem. It is natural for those who have been educated in a particular profession to have shared experiences; certainly all medical students learn how to chart a patient’s progress. It is also beyond debate that legal reasoning is a crucial skill for the legal practitioner, and is thus a necessary component of a proper legal education. However, many law schools tend to focus on legal analysis to the exclusion of other equally important skills, and therefore give students an incomplete understanding of legal practice. As a result, a common perspective among new lawyers is that law school taught them how to *think* like a lawyer, but if they wish to actually learn how to *be* a lawyer, they must do so after earning their degree. This is a pessimistic, but realistic, view for many students, and not one that we should be proud of as educators. We should also be alarmed by the toll that the standardized teaching methods take on many students. A wealth of recent research has demonstrated that law schools’ heavy emphasis on legal analysis—and the teaching methodology that is used to develop this skill—has unintended consequences that detrimentally impact students both personally and professionally.

In the materials that follow, we first detail the historical underpinnings of traditional legal education and the impetus for law schools’ focus on the skill of legal reasoning. We then discuss in depth the limitations and consequences of this method of instruction. Finally, we address the changes that have been occurring in the institutional culture of legal education in recent years, changes that stem from the shortcomings of the traditional model. As discussed below, we believe that these changes are the harbinger of a broad shift in the nature of legal education—a shift toward a more comprehensive, integrated approach designed to teach students the broad range of skills and perspectives they will need to succeed as professionals.

I. TRADITIONAL LEGAL EDUCATION AND THE “PIGEON-HOLE” OF LEGAL REASONING

Modern legal education can be traced to Dean Christopher Columbus Langdell’s development of the case method as a tool for teaching the skill of legal analysis at Harvard Law School in the 1870s.⁴ Prior to Langdell’s appointment to the deanship,

students were typically taught black-letter law by professors who lectured from treatises, and they learned practical skills by applying their knowledge in apprenticeships.⁵ Law was widely regarded as a profession grounded in the humanities, and legal education took an interdisciplinary approach emphasizing literature and philosophy.⁶ Indeed, one of the profession’s stalwarts, Judge Learned Hand, consistently advocated an interdisciplinary approach to legal education during his lifetime, believing “that law is centrally located in the humanities, and is not complete unless it draws nourishment from them.”⁷ Langdell, on the other hand, viewed law as a form of science premised on a distinctive methodology—legal analysis.⁸

For Langdell, “legal science” consisted, principally, of the art of reading a relatively closed set of materials found in libraries: the decisions of judges, particularly those at the appellate level. From these decisions the legal scientist would then discern, through the power of legal analysis, the structures of overarching doctrine that could unite such seemingly disparate topics as the sale of potatoes and the sale of slaves into one subject matter called “contracts.”⁹

Langdell thus viewed legal training as a process of learning how to synthesize rules by dissecting cases, a process that was distinctly scientific and did not require input from humanistic disciplines.¹⁰ Langdell’s

4. See, e.g., Daniel R. Coquillette, *The Legal Education of a Patriot: Josiah Quincy Jr.’s Law Commonplace*, 39 ARIZ. ST. L.J. 317, 324 (2007) (discussing Langdell’s development of case method of legal education at Harvard law School in 1870); Adam Todd, *Neither Dead Nor Dangerous: Postmodernism and the Teaching of Legal Writing*, 58 BAYLOR L. REV. 893, 915-16 (2006) (“Most doctrinal law classes are taught in a modernist paradigm little changed from the pedagogical classes introduced by Christopher Langdell at Harvard Law School in 1870. . . . The professor is seen as holding the truth or core knowledge about the subject and students are tested at the end of the semester using exams where formalism and black letter law are expected to be mechanically applied to limited fact patterns.”); Jack M. Balkin & Sanford Levinson, *Law and the Humanities: An Uneasy Relationship*, 18 YALE J.L. & HUMAN. 155, 159-60 (2006) (discussing Langdell’s influence on “[t]he modern American legal academy” due to the prominence of the case method to develop the skill of legal analysis (or, in the words of the authors, “legal craft”)); Nancy B. Rapoport, *Eating Our Cake and Having it, Too: Why Real Change is So Difficult in Law Schools*, 81 IND. L. J. 359, 374 n.26 (2006) (“Langdell’s innovative methodology resulted not just in a new, optional pedagogical tool, but became the foundational basis for what was to become established conventional practice in American legal education.” (citation omitted)).

5. Coquillette, *supra* note 4, at 323-24.

6. See Balkin & Levinson, *supra* note 4, at 155-57.

7. *Id.* at 157.

8. *Id.* at 159-60.

9. *Id.*

10. See Coquillette, *supra* note 4, at 324.

theory was quickly put into practice at Harvard, and it soon became the dominant view of legal education in America.¹¹ In particular, Oliver Wendell Holmes, Jr. helped champion Langdell's cause. In his legendary speech entitled "The Path of the Law," delivered at the Boston University School of Law in 1897, Holmes endorsed a scientific perspective of legal education, predicting that the future of legal academics would rely more on economic theory than on philosophy.¹² Holmes' speech was certainly prophetic; Langdell's approach has remained in vogue for more than a hundred years, and during that time the most prominent interdisciplinary perspective to be introduced has been the law and economics movement, the ultimate view of law as science.¹³

In order to fulfill his "avowed mission . . . to transform American legal education into 'scientific analysis,'"¹⁴ Langdell devised a new method of instruction so powerful that it has persisted until the present day. Known as the "case method," Langdell's model required professors to teach using compilations of cases—typically from appellate courts—known as casebooks, rather than treatises.¹⁵ The compilations were organized by doctrinal topic, which had the additional effect of reorganizing Harvard's first-year curriculum into the core courses that are still taught to nearly every 1L student in America: constitutional law, contracts, criminal law, property, torts, and civil procedure.¹⁶ Langdell's case method was also designed to rely on a Socratic style of classroom dialogue, instead of lectures, as the means of instructing students in legal doctrine.¹⁷ In a typical Socratic class, the professor will pose questions to the students about the cases they have been assigned to read for that particular day. A Socratic law professor rarely indicates when his questions have been answered correctly, but instead manipulates the course of the classroom dialogue so that the students themselves are forced to distill the governing rules from the cases they have read. The relevant legal principles are thus teased out through a nuanced discussion and applied to various hypothetical scenarios devised by the professor. In many ways, a Socratic professor functions as a conductor or puppet master, carefully orchestrating the questions and arguments to guide the discourse in a preordained direction. A case method classroom therefore centers on the professor himself, and the students typically view the professor as holding the truth to the subject, but rarely revealing it.¹⁸

Langdell's case method is a calculated means of developing a very specific set of skills. Superficially, the case method trains students to

11. See Balkin & Levinson, *supra* note 4, at 160.

12. *Id.* at 157.

13. *Id.* at 159-60.

14. *Id.* at 159.

15. Coquillette, *supra* note 4, at 324.

16. *Id.*

17. *Id.*

18. Todd, *supra* note 4, at 916.

synthesize overarching rules of law by dissecting raw cases and extracting snippets of doctrine that, when viewed cumulatively, make up a body of law in a particular subject. Students learn how to recognize not just the rules used in certain cases, but also, hopefully, the policies animating the rules. Without an understanding of the policies—historical, political, economic, and social—upon which rules are premised, a lawyer cannot truly master a particular area of law, for it is these policies that give the rules both predictability and fairness. A lawyer who cannot grasp the reasoning behind the evolution of rules from case to case—which requires an understanding of the history and purposes of the field of law in which the rules exist—cannot predict the future evolution of rules, which is a key attribute for effective advocacy. In addition to teaching students how to understand and synthesize rules of law, the case method also trains students to apply the rules they have synthesized to specific disputes. In fact, students' grades in nearly every first-year course are determined by a single, comprehensive exam in which students must predict the legal outcome of hypothetical fact patterns devised by their professor by applying the legal doctrine they have learned during the course of the semester.

While the case method, on the surface, teaches students to recognize and apply legal rules, its most profound impact is on the way students think. Put simply, legal reasoning is a subtle thinking process in which legal rules, as extrapolated from case law, are applied to facts, real or hypothetical, to predict outcomes.¹⁹ The process is not an intuitive one, and few students arrive at law school with an understanding of it. Prior to law school, most students' academic experience has centered on memorizing information and supplying the right answers to professors' questions, whether in class or on exams. Those who are qualified enough to gain admittance to law school have obviously become adept at this process, and many are surprised to find that it has little to do with law school success. Indeed, most first-year students struggle, at least initially, with the fact that the case method requires them to continually try to answer questions that appear to have no "right" answer. The process leaves many students feeling that their professors are "hiding the ball." But the point of the case method is that there usually is not a right answer; students are being trained to analyze disputes a certain way, rather than to solve the particular issues at hand.

19. This definition of legal reasoning, which is the best we have found in all our research, is taken from a classroom handout that John J. Flynn, Hugh B. Brown Professor Emeritus of Law at the University of Utah S.J. Quinney College of Law, frequently gave to his first-year students. The handout is entitled "Why 'Why'?", and it provides an excellent description of why first-year doctrinal courses are taught as they are, explaining that the skill of legal reasoning is an inductive, not deductive, thinking process that is best learned when students are forced to struggle with questions having no apparent right answer. We are deeply indebted to Professor Flynn for his wisdom and insight, which informs much of the content in this section. For those who have further interest, Professor Flynn's handout remains on file with the authors. John J. Flynn, *Why "Why"?* (unpublished handout, on file with authors).

From the moment they set foot in their 1L classrooms, first year law students are being initiated into a distinctive method of thinking that will forever alter the way they analyze disputes. Non-lawyers typically view disputes from a narrative standpoint, focusing on the “story” of the characters involved.²⁰ This perspective tends to emphasize the social and interpersonal dynamics involved in situations of conflict.²¹ And most law students initially approach their coursework from this perspective, focusing on the story behind each case they read.²² In class, however, students quickly learn that law professors are not interested in narrative accounts of disputes and do not particularly care about the relationships or emotions of the characters involved. Rather, in a case method classroom students are encouraged to focus on only the strategic positions of the parties.²³ Through Socratic questioning, professors prompt students to reframe the narratives involved in the cases students have read by organizing the “facts” in terms of legal claims and precedent.²⁴ Students are repeatedly encouraged to siphon all non-essential facts from the disputes they analyze and to focus instead on only those facts relevant to the specific legal principles at issue.²⁵ Form is thus elevated over substance, and students are conditioned to disregard the emotional, interpersonal, moral, and social consequences of disputes as extraneous concerns that will only confuse the legal analysis to be performed.²⁶ Students quickly learn “that to ‘think like a lawyer’ means redefining messy situations of actual or potential conflict as opportunities for advancing a client’s cause through legal argument before a judge.”²⁷ Many come to see legal reasoning as a tool used to formalistically “pigeon-hole” the facts of a par-

20. See, e.g., 32 LAW & SOC. INQUIRY 869, 874-75 (2007) (reviewing and summarizing ELIZABETH MERTZ, *THE LANGUAGE OF LAW SCHOOL: LEARNING TO “THINK LIKE A LAWYER”* (Oxford 2007) and Elizabeth Mertz, *Inside the Law School Classroom: Toward a New Legal Realist Pedagogy*, 60 VAND. L. REV. 483, 494-95 (2007) (“When students attempt to tell the stories of conflict embodied in the cases assigned for their courses, they typically start by focusing on the content of the story.”) [hereinafter Mertz Summary]; Susan Daicoff, *Law as a Healing Profession: The Comprehensive Law Movement*, 6 PEPP. DISP. RESOL. L.J. 1, 6 (2006) (non-lawyers tend to focus on personal aspects of disputes).

21. See Daicoff, *supra* note 20, at 6 (citing Sandra Janoff, *The Influences of Legal Education on Moral Reasoning*, 76 MINN. L. REV. 193, 219-22 (1991) and CAROL GILLIGAN, *IN A DIFFERENT VOICE* 17-21 (1982)).

22. See Mertz Summary, *supra* note 20, at 494-95.

23. *Id.* at 498-99.

24. See *id.* at 493-94; see also WILLIAM M. SULLIVAN, ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 187* (The Carnegie Foundation for the Advancement of Teaching 2006) (discussing effects of case method style of instruction on first-year law students) [hereinafter CARNEGIE REPORT].

25. CARNEGIE REPORT, *supra* note 24, at 187 (“[S]tudents are led to analyze situations by looking for points of dispute or conflict and considering as ‘facts’ only those details that contribute to someone’s staking a legal claim on the basis of precedent.”); Daicoff, *supra* note 20, at 5 (“Law schools traditionally teach students to sift through facts and issues to eliminate ‘irrelevant’ concerns and focus only on what is ‘relevant’ to the rule of law. The emotional and interpersonal dynamics of a matter are deemed irrelevant to the pure legal analysis learned in the first year of law school.”).

26. See Mertz Summary, *supra* note 20, at 498-99; CARNEGIE REPORT, *supra* note 24, at 187-88.

27. CARNEGIE REPORT, *supra* note 24, at 187.

ticular dispute into legally relevant categories, discarding those that cannot be so categorized.

The pedagogical power of the case method and its accompanying Socratic classroom dialogue cannot be denied. In an extremely short educational period, the case method forces students “to grasp the law as a subject characterized by a particular way of thinking, a distinctive stance toward the world.”²⁸ As the Carnegie Foundation for the Advancement of Teaching (“Carnegie Foundation”) found in its recent ground-breaking study of legal education:

Within months of their arrival in law school, students demonstrate new capacities for understanding the legal processes, for seeing both sides of legal arguments, for sifting through facts and precedents in search of the more plausible account, for using precise language, and for understanding the applications and conflicts of legal rules. Despite a wide variety of social backgrounds and undergraduate experiences, they are learning, in the parlance of legal education, to “think like a lawyer.”²⁹

From this perspective, the case method must be viewed as a resounding success, a nearly fool-proof strategy for training students in the art of legal reasoning. And because legal analysis is uniformly prioritized in legal education—the doctrinal courses at nearly every law school (the majority of which are encompassed in the standardized first-year curriculum) overwhelmingly rely on the case method—there “is a striking conformity in outlook and habits of thought among legal graduates.”³⁰ Regardless of their patterns of thought prior to law school, students leave law school with the ability to cull legally relevant facts from complicated disputes and organize those facts around persuasive legal arguments.

While the uniformity with which law schools produce students skilled in legal reasoning is an impressive feat, the flip-side of the coin is that, by heavily prioritizing such training, schools are also uniformly creating the same deficiencies. Indeed, Langdell’s methodology has been so successful that law schools have steadfastly adhered to it, even in the face of mounting empirical research demonstrating that the traditional methods of instruction suffer from major shortcomings.³¹ As discussed in the following section, the case method of legal instruction, when used in isolation, has many unintended consequences that ultimately impair lawyers’ professional development and well-being. The combined effect of these consequences has resulted in an imbalance in Amer-

28. *Id.*

29. *Id.* at 186.

30. *Id.*

31. See Balkin & Levinson, *supra* note 4, at 160.

ican legal education and in the practice of law, an imbalance that can be corrected by a more comprehensive approach to legal instruction.

II. THE LIMITATIONS OF TRADITIONAL LEGAL EDUCATION

While there is no question that the traditional model of legal education produces dramatic results, it also has equally dramatic and unintended consequences. At most law schools, the genius of Langdell's methodology has not been matched by an equally well-considered means of instructing students in legal practice. Legal institutions have mastered the process of teaching students how to *think* like lawyers, but not the process of "teaching students how to *use* legal thinking in the complexity of actual law practice."³² Courses that emphasize practical skills and real-world training typically hold a subordinate place to doctrinal courses in most law schools' curricula.³³ Furthermore, the course offerings that are designed to prepare students for the practice of law are not nearly as synchronized or refined as the doctrinal part of the curriculum, and there is little integration between the two types of courses.³⁴ In the required portion of legal education, which is primarily doctrinal, students are inundated with training in legal reasoning via a coordinated set of "core" classes. But most students are then left to tailor the remainder of their law school experience, including any practical courses they wish to take, haphazardly. Because little emphasis is placed on direct training in professional practice, legal analysis thus overshadows the entirety of students' education, "conveying the impression that lawyers are more like competitive scholars than attorneys engaged with the problems of clients."³⁵ Most students' educational experience is therefore dominated by the process of learning to "think like a lawyer."³⁶ The result of this unbalanced and inaccurate perspective is that many students spend the third (and even second) year of law school figuratively treading water, having been taught the skill of legal reasoning but not provided a structured way to place this skill in the context of legal practice.³⁷ The second two years of law school thus provide diminishing returns in terms of students' educational advancement, with a great number of students simply waiting to graduate and begin practice even though they have little knowledge of what the practice of law actually entails.³⁸ While this gap between education and practice highlights a major inefficiency in American legal education, the more alarming consequence is that America's

32. CARNEGIE REPORT, *supra* note 24, at 188 (emphasis added).

33. *Id.*

34. *See id.* at 194.

35. *Id.* at 188.

36. *Id.* at 186.

37. *See id.* at 195.

38. *See id.* at 77.

law schools are not producing lawyers equipped with the skills necessary to thrive as professionals.³⁹

When the skill of legal reasoning is considered within the context of the actual practice of law, it is clear why the focus of the case method is so narrow. The American judicial system is premised on an adversarial, winner-take-all approach to dispute resolution in which legal rules are formalistically applied to the facts of a particular conflict and the party with the more persuasive position is assigned the contested resource.⁴⁰ Traditional legal education is deliberately geared toward developing the primary skill needed to operate within this system; the case method drills students to focus exclusively on the legal rights, liabilities, obligations, duties, and entitlements present in a given fact pattern.⁴¹ To this end, students are trained to disregard all facts and consequences that are outside the precise legal issue at hand and recognize as relevant only those facts that pertain to the legal tests that will be used in court.⁴² This purposeful simplification of conflicts removes all peripheral issues from the equation, preventing students from being distracted by moral concerns or compassion and allowing them to focus solely on honing their analytical skills.⁴³ From a litigation standpoint, this perspective makes sense: to zealously represent or advise a client faced with a lawsuit, a lawyer must be able to evaluate and marshal the facts presented by the client by reference to the law that will apply to the dispute in court.⁴⁴ Legal analysis is therefore an essential skill for lawyers practicing in the American legal system, but it is far from the only skill needed, even for litigators.

In practice, lawyers provide analysis, advocacy, and advice to both people and organizations regarding an infinite number of different transactions, disputes, and problems, both legal and non-legal. To provide competent representation to their clients,⁴⁵ all lawyers, regardless of specialty, must draw on a vast array of skills and perspectives beyond the pure legal analysis that is emphasized in law school. For example (and

39. Of course, a great many law students who are successful at learning legal analysis are also successful at learning practical skills during their first few years after graduation. But the point is that law school is, for most students, the only opportunity to learn practical legal skills in a simulated, structured environment. By not emphasizing and integrating this aspect of the curriculum, law schools are failing to provide crucial and necessary training to the next generation of practicing attorneys.

40. ROBERT A. BARUSCH BUSH & JOSEPH P. FOLGER, *THE PROMISE OF MEDIATION: RESPONDING TO CONFLICT THROUGH EMPOWERMENT AND RECOGNITION* 56-58 (Jossey-Bass Publishers 1994).

41. See Daicoff, *supra* note 20, at 5.

42. *Id.*

43. CARNEGIE REPORT, *supra* note 24, at 187.

44. See, e.g., MODEL RULES OF PROF'L CONDUCT R. 1.3 (2002) ("A lawyer must . . . act with commitment and dedication to the interests of a client and with zeal in advocacy upon the client's behalf.").

45. *Id.* R. 1.1 ("A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.").

without attempting to be exhaustive), every lawyer needs excellent social and ethical skills.⁴⁶ Despite the rapid growth and change that has occurred in recent years, the legal profession remains a people-centered business.⁴⁷ Attorneys interact with a large assortment of characters, including clients, potential clients, co-workers, opposing lawyers, experts, witnesses, and judges. It is therefore crucial that practicing attorneys have well-developed, versatile communication skills and a proficiency for interpersonal relations. Yet, it is surprising how many attorneys are deficient in these areas. Law schools rarely train students in these skills in any structured manner, and thus the lawyers who have excellent communication abilities are either those who are naturally endowed with them or those who have developed such skills through trial and error in practice.⁴⁸ Indeed, two of the most common complaints lodged against the legal profession are that lawyers “tend to put process above people” and that “certain mindsets and attitudes stand between [clients] and the lawyers they hire.”⁴⁹ Analysis is important, but it must be placed in context and it should not come at the expense of lawyers’ abilities to relate to the people with whom they must interact.

Similarly, because of the countless relationships and dilemmas with which they are faced, practicing lawyers are regularly forced to consider the moral and ethical implications of various courses of action. It is essential for lawyers to appear to—and to actually—have firm morals and ethics because the legitimacy of the legal profession depends on the integrity of its members. And while ethics are taught in law school, typically via an upper-level course focusing on the rules that govern attorneys’ conduct, the importance of moral and ethical considerations is minimized when these concerns are purposely excluded by the case method, only to be reintroduced in an isolated fashion later.⁵⁰ When morals and ethics are segregated in this manner, students are left with the impression that such matters are irrelevant for purposes of law school success and, by correlation, secondary to what counts in practice.⁵¹ Students are also rarely given the opportunity to explore moral and ethical issues in simulated practice settings, and thus enter practice with only a marginal understanding of the manner in which these issues may affect their practical responsibilities as professionals.⁵²

46. See CARNEGIE REPORT, *supra* note 24, at 187-88.

47. See, e.g., LARRY RICHARD & SUSAN RARIDON LAMBRETH, MAKING LAWYERS INTO LEADERS (2006), available at http://www.hildebrandt.com/Documents.aspx?Doc_ID=2476 (discussing “the tremendous change affecting the legal profession generally and law firms specifically”).

48. See, e.g., CARNEGIE REPORT, *supra* note 24, at 6 (discussing law schools’ general failure to develop law students’ ethical and social skills).

49. Steven W. Keeva, *Mindfulness in the Law and ADR*, 7 HARV. NEGOT. L. REV. 97, 101 (2002).

50. *Id.*

51. *Id.*

52. *Id.*

Every practicing attorney must also be equipped with a broad set of problem-solving skills. At base, lawyers are advisors and advocates who use their expertise to help clients solve legal problems. To provide thorough and competent counsel to clients, lawyers must take into account an immense number of disparate issues, both legal and non-legal. This requires the ability to view legal problems comprehensively and from many different perspectives. While the problems lawyers are called upon to solve frequently require the skill of legal reasoning, this is not always the case, and legal reasoning is rarely the exclusive skill needed. For example, a lawyer representing an automobile parts supplier in a breach of contract dispute with a manufacturer will probably need to assess the likelihood of prevailing if the case should go to trial. But if the parties engage in settlement discussions, the lawyer will also need to, among other things, discuss and consider the client's goals (including non-legal goals, such as business productivity and good will), conduct a detailed risk analysis that takes into account the costs and benefits of various non-litigation alternatives, devise a negotiation strategy in light of the various personalities and interests involved, and negotiate the potential settlement. This is a scenario that practicing lawyers face on a regular basis, for settlement is a possibility in virtually every lawsuit and, statistically speaking, is an exponentially more likely outcome than trial.⁵³ Yet, the tasks described above require perspectives and skills that are much more broadly-focused and nuanced than the pure legal analysis that is emphasized in doctrinal law school courses.

As another example, consider the issues an attorney representing a party in a bitter divorce action might face. Legal analysis is often less important in such situations because most states have enacted no-fault divorce statutes,⁵⁴ and the parties' respective factual positions relative to the applicable law therefore often have less impact on the outcome.⁵⁵ Extralegal concerns may in fact be far more important. For instance, the parties may view the psychological and emotional impact of the divorce as the most important issue because they have young children and will need to maintain a cordial relationship going forward. They may want family counseling to be an important component of the separation agreement in order to provide a forum for the children to deal with their feelings. They may see the children's education as a crucial concern, and want to prioritize this issue in discussing the financial ramifications of

53. Cf. David Sherwyn, J. Bruce Tracey, and Zev J. Eigen, *In Defense of Mandatory Arbitration of Employment Disputes: Saving the Baby, Tossing out the Bath Water, and Constructing a New Sink in the Process*, 2 U. PA. J. LAB. & EMP. L. 73, 150 (1999).

54. See, e.g., 750 ILL. COMP. STAT. ANN. 5/406 (West 2007).

55. Of course, legal analysis may still be relevant in such situations. The parties may, for example, dispute the amount of alimony that should be paid. The resolution of this issue will depend largely on the parties' respective earning capacities and the pre-divorce standard of living, evaluated in light of the applicable statute. This is obviously a classic example of legal analysis. Our point, however, is that other concerns often dominate divorce proceedings, and extralegal considerations will likely remain relevant even when legal analysis is necessary to resolve a specific issue.

the divorce. The parties' needs in a situation such as this have very little to do with legal analysis, and their interests will likely not be served if they become embroiled in protracted litigation. To effectively represent the parties in such a scenario, the lawyers must therefore be able to take into account a variety of extralegal concerns, such as the emotional consequences of various courses of action, and must be able to carefully manage the tensions between the parties. Obviously, training in legal analysis does not equip a lawyer to provide such representation; rather, the case method encourages students to ignore such concerns.⁵⁶

Recent research has also shown that leadership skills are tremendously valuable to practicing attorneys but, like social, ethical, and problem-solving skills, are not purposely taught or adequately emphasized in law school.⁵⁷ This should not be surprising, for leadership is a "people-focused, inspirational, emotional, non-linear and visceral" skill, and most of these qualities are de-emphasized by traditional legal education.⁵⁸ Law school graduates have a tendency to be "less sociable and more skeptical, urgent, analytical, autonomous, and more defensive and thin-skinned than the general public—by a wide margin."⁵⁹ While these characteristics make us good legal analysts, they usually also make us mediocre leaders. Leadership is a skill that is based on one's ability to exhibit certain key behaviors; because these behaviors can be learned, leadership can also be learned.⁶⁰ According to Larry Richard and Hillary Lambreth, the key behaviors include: thinking outside the box and experimenting with new and better ways of doing things; advocating positive, forward-looking goals; collaborating with, encouraging, and praising co-workers rather than hoarding power; acting in accordance with the values and principles to which others are held; and being self-aware enough to take responsibility for and determine how to overcome setbacks.⁶¹ Certainly these behaviors could be incorporated into legal education—for example, by teaching certain practice-based courses using a team-based approach and encouraging students to brainstorm both legal and non-legal solutions to problems. Currently, however, law schools rarely take such considerations into account, and the case method of instruction does little to promote these behaviors.

Not only does the singular focus of traditional legal education fail to adequately develop the full range of skills students will need as lawyers,

56. See, e.g., CARNEGIE REPORT, *supra* note 24, at 6 ("[T]he task of connecting [legal] conclusions with the rich complexity of actual situations that involve full-dimensional people, let alone the job of thinking through the social consequences or ethical aspects of the conclusions, remains outside the case-dialogue method."); Daicoff, *supra* note 20, at 6 ("[I]n law school, emotional and interpersonal concerns are strongly de-emphasized, if not blatantly ignored.").

57. Richard & Lambreth, *supra* note 47.

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

but the teaching methods themselves also have a detrimental impact on law students. The case method is designed to require summative assessments in which students' competence in doctrinal subjects is measured solely by comprehensive examinations given at the end of the semester.⁶² The usual result of summative assessments is to rank, sort, and filter those being assessed.⁶³ Certainly this is most students' experience with the high-stakes exams given during the first year of law school, which have the effect of opening academic and career options for some students and closing them for others.⁶⁴ In certain situations, summative assessments are a preferable form of evaluation. For example, the bar examination is a summative assessment designed to create a barrier to entry in the legal profession by ensuring that those who are admitted have basic levels of competency.⁶⁵ Such an examination may be desirable in some law school courses, but the dominance of this form of evaluation in law schools is troubling. Studies have shown that formative assessments—in which students are evaluated periodically, allowing educators to better chart and encourage students' progress—are far more conducive to learning.⁶⁶ Yet, formative evaluations are rarely utilized in law school classes.⁶⁷ If law schools' mission is truly to educate, then schools should consider using a variety of teaching methodologies so that students' capacity for learning is maximized.

The prominence of the case method in legal education also has a proven negative impact on students' psyches. By forcing students to narrowly focus on only the legal consequences of disputes, the case method excludes the social context in which disputes occur from students' frames of reference.⁶⁸ For purposes of instructing students in legal analysis, this is an effective strategy. But law schools typically reintroduce the social, moral, interpersonal, psychological, and emotional dynamics of legal issues haphazardly, if at all, leaving students to determine on their own the relevance of such issues to legal practice.⁶⁹ As discussed above, this frequently leaves students with the misimpression that such concerns are irrelevant in legal practice when, in fact, nothing could be further from the truth. But the lack of attention given to such matters in traditional legal education also has another, more personal consequence. Many students find the narrow, formalistic approach emphasized in law school to be disillusioning because it discourages the ideals and goals that bring a great many students to law school in the first place, such as

62. CARNEGIE REPORT, *supra* note 24, at 7.

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. See Mertz Summary, *supra* note 20, at 5; CARNEGIE REPORT, *supra* note 24, at 6.

69. See Daicoff, *supra* note 20, at 5-6; CARNEGIE REPORT, *supra* note 24, at 6-7.

helping people or promoting social justice.⁷⁰ On one hand, the case method eliminates misconceptions about how the law works; in a great many individual cases the law operates in a manner counter to students' ideals and aspirations, and legal results are often reached without reference to social or moral consequences.⁷¹ But one would hope that lawyers, as officers of the American judicial system, aspire to something greater in their representation of clients than the simple ability to manipulate legal rules. When law students are conditioned to believe that the practice of law entails nothing more, they are forced to either shift their goals and values or reluctantly accept the hand they have been dealt. Commentators have found that both types of changes regularly occur in law students, resulting in a great deal of cynicism and anxiety.⁷²

For example, Kennon M. Sheldon and Lawrence S. Krieger recently completed a three-year longitudinal study of law students at two different law schools.⁷³ The first school heavily emphasized abstract legal theory and analysis in its curriculum, while the second attempted to integrate this traditional approach with a heavy dose of practical skills training.⁷⁴ Using a variety of statistical tests, Sheldon and Krieger measured the students' well-being as they progressed through law school.⁷⁵ The results of the study are striking. At both schools, the students experienced a decline in emotional and psychological well-being.⁷⁶ Sheldon and Krieger attribute this decline to multiple factors. First, they found that the students experienced a dramatic shift in their value systems during law school, from a generally intrinsic focus to a generally extrinsic fo-

70. See, e.g., Mertz Summary, *supra* note 20, at 5 (“[T]he way legal reasoning is taught and practiced creates a closed linguistic system that is capable of devouring all manner of social detail, but without budging from its core assumptions.” (internal quotation marks omitted)); CARNEGIE REPORT, *supra* note 24, at 6 (“Students often find [the exclusion of moral concerns from their training in legal analysis] confusing and disillusioning. The fact that moral concerns are reintroduced only haphazardly conveys a cynical impression of the law that is rarely intended.”).

71. See CARNEGIE REPORT, *supra* note 24, at 6.

72. See, e.g., Milton C. Regan, Jr., Book Review, 55 J. LEGAL EDUC. 454, 464 (2005) (reviewing JEAN STEFANCIC & RICHARD DELGADO, *HOW LAWYERS LOSE THEIR WAY: A PROFESSION FAILS ITS CREATIVE MINDS* (Duke Univ. Press 2005) (“On a personal level, lawyers confront stories that evoke visceral moral responses; on a professional level, they are consistently denied recourse to those responses when they do their work It’s easy to see that this can be a recipe for cynicism and despair, because it undermines the very notion that human beings can achieve a degree of moral order by establishing a legal system.”); Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & LAW 261, 283 (2004) (finding that students generally experience increasing distress during law school associated with a shift in values and perspectives) [hereinafter Sheldon & Krieger: Motivation, Values, and Well-Being].

73. Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test and Extension of Self-Determination Theory*, PERS. & SOC. PSYCHOL. BULL. (forthcoming 2008), available at http://papers.ssm.com/sol3/papers.cfm?abstract_id=913824 [hereinafter Sheldon & Krieger: Negative Effects].

74. *Id.* at 11.

75. *Id.* at 15-19.

76. *Id.* at 4.

cus.⁷⁷ On entering law school, most students' values were oriented toward societal contribution, helping others, emotional connections, and personal growth.⁷⁸ Over the course of law school, however, students became less likely to act based on personal interest or inherent satisfaction and more likely to act based on extrinsic rewards such as image, appearance, and prestige.⁷⁹ This shift in values understandably caused a great deal of distress for the students, for it represented a change in many students' self identities.⁸⁰ Sheldon and Krieger also found that the students' levels of need satisfaction declined during law school, resulting in an overall loss of motivation.⁸¹ Their studies linked the decline in need satisfaction to lower levels of autonomy (i.e., feelings of independence and self-sufficiency), intrinsic satisfaction (i.e., the ability to satisfy personal needs and values), and psychological satisfaction (i.e., feelings of competence and relatedness to others).⁸²

According to Sheldon and Krieger, the methodology of traditional legal education is primarily responsible for the decline in well-being that they identified.⁸³ While students' emotional and psychological well-being declined at both schools, it declined much more precipitously at the school that heavily emphasized legal theory.⁸⁴ Sheldon and Krieger found that this disparity resulted from the difference in social contexts at the two schools.⁸⁵ When the social context in law school supports students' autonomy, gives them balanced interdisciplinary training, and focuses on satisfying students' psychological needs, such as competence and relatedness, students' need satisfaction increases.⁸⁶ And when students' needs are satisfied, their emotional well-being and psychological health is enhanced, their performance (as measured by, for example, GPA) improves, and their self-determined job motivation increases.⁸⁷ Self-determined job motivation is a particularly important gauge of institutional success, for it is highly correlative with professional achievement and fulfillment after graduation.⁸⁸ Unhappy lawyers make unprofessional lawyers, and therefore we must train law students in a way that

77. *Id.*; see also Sheldon & Krieger: Motivation, Values, and Well-Being, *supra* note 72, at 272-83 (discussing law students' shift in values during law school).

78. Sheldon & Krieger: Negative Effects, *supra* note 73, at 4; Sheldon & Krieger: Motivation, Values, and Well-Being, *supra* note 72, at 264-78.

79. Sheldon & Krieger: Negative Effects, *supra* note 73, at 4; Sheldon & Krieger: Motivation, Values, and Well-Being, *supra* note 72, at 272-83.

80. See, e.g., Sheldon & Krieger: Motivation, Values, and Well-Being, *supra* note 72, at 283 (discussing law student distress).

81. Sheldon & Krieger: Negative effects, *supra* note 73, at 4-5, 28-32.

82. *Id.*

83. *Id.* at 28-33.

84. *Id.* at 11, 21.

85. *Id.* at 11, 32.

86. *Id.* at 28-33.

87. *Id.*

88. *Id.* at 31.

promotes intrinsic fulfillment and encourages them to pursue personally satisfying career options.⁸⁹

However, traditional legal education, with its formalistic use of the case method and narrow focus on legal analysis, does not provide a social atmosphere conducive to students' intrinsic needs.⁹⁰ In fact, when used in isolation, the standard methods of legal instruction tend to stifle students' needs and promote a shift in values that is detrimental to students and, consequently, to the profession.⁹¹ Sheldon and Krieger suggest that even schools that focus primarily on teaching legal analysis can foster a culture that improves students' well-being by, for example, focusing on student concerns, providing students with choices, and including rationales and explanations for mandatory requirements.⁹² But their study also found that law schools with a balanced, comprehensive curriculum are much more likely to create such a culture because students who are given the opportunity to learn and implement a larger range of legal skills have increased feelings of independence and competence.⁹³ Thus, the second school in Sheldon and Krieger's study was able to temper the negative effects they identified by balancing the development of traditional legal skills with application-based practical courses.⁹⁴

Analyses such as Sheldon and Krieger's help explain the alarming rates of depression, cynicism, and career dissatisfaction that afflict the legal profession. Recent studies have shown that lawyers suffer depression at a rate four times higher than the general population; in fact, in a study of more than 100 professions, lawyers had the highest incidence of depression.⁹⁵ In a survey of lawyers with six to nine years of experience, only forty one percent reported being satisfied with their career.⁹⁶ Of that same group, only thirty-five percent would recommend a legal career to a young person.⁹⁷ Commentators have attributed these ills to the general lack of intrinsic fulfillment and intrapersonal development in the legal profession,⁹⁸ problems that, as demonstrated by Sheldon and Krieg-

89. See Lawrence S. Krieger, *The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness*, 11 CLINICAL L. REV. 425, 426 (2005).

90. Sheldon & Krieger: Negative effects, *supra* note 73, at 4-5, 28-33.

91. See *id.* at 3-4 (noting that the case method style of instruction, when used in isolation, "thwart[s] the needs and preferences of typical law students" because it "train[s] students to ignore their own values and moral sense, undermine[s] students' sense of identity and self-confidence, and create[s] cynicism"); see also Sheldon & Krieger: Motivation, Values, and Well-Being, note 72, at 272-83 (discussing impact of traditional legal training on law students' values).

92. Sheldon & Krieger: Negative effects, *supra* note 73, at 5-6.

93. *Id.* at 32.

94. *Id.* at 11, 32.

95. Joan E. Mounteer, *Depression Among Lawyers*, 33 COLO. LAW., Jan. 2004, at 36, 37, available at http://www.cobar.org/tcl/tcl_articles.cfm?ArticleID=2963.

96. Stephanie F. Ward, *Pulse of the Legal Profession*, A.B.A. J., Oct. 2007, http://www.abajournal.com/magazine/pulse_of_the_legal_profession.

97. *Id.*

98. See, e.g., Daicoff, *supra* note 20, at 53-54 (noting that the "crisis" facing the legal profession is that many lawyers' do not have the "ability to know themselves well").

er, can be traced back to a lawyer's education.⁹⁹ In an educational system that promotes such a rapid shift in thought processes—away from intrinsic fulfillment and growth—it should come as little surprise that disillusionment reverberates through many lawyers' early careers, particularly when the intrinsic impact legal education has on who law students are as people is not addressed at an institutional level.

In summary, legal analysis is merely the tip of the iceberg in terms of the skills practicing lawyers require. None of the skills discussed in this section are taught in a structured manner or even emphasized in most law schools' curricula, yet all are crucial for professional success. Thus, when the case method is used in isolation and legal analysis is emphasized to the exclusion of other important skills and perspectives, students are being short-changed because they are trained to analyze disputes from only one narrow point of view. Students graduate with an incomplete set of tools and are therefore ill-prepared for the variety of situations they will face as practicing attorneys. The dominant methods of legal instruction also have a negative emotional and psychological impact on students, causing a shift in perspectives and values that fosters cynicism and distress. The failure of legal institutions to attend to students' well-being and satisfaction has a tendency to create disillusioned students, and this does not serve those being educated, the profession, or society as a whole. As educators, we can do better. Law schools are institutions of higher learning, and their educational mission should be to educate the best lawyers possible. When schools are instead churning out masses of unprepared, disenchanting practitioners, it is time to reevaluate our teaching methodologies. With this background in mind, the following section examines the changes currently underway in legal education and suggests an approach that will both give students more comprehensive training in legal practice and also maximize the personal benefit students receive from their law school experience.

III. TOWARD A COMPREHENSIVE VIEW OF LEGAL EDUCATION

Law is a profession of immense depth, and it would be impossible to convey a full understanding of all its nuances and intricacies during a mere three-year instructional period. Indeed, legal education is a process that can never be viewed as "complete," for law is never static and those who practice it will continue to update their doctrinal knowledge and hone their skills throughout their careers. The best lawyers are those that remain eager to learn and improve their craft long after they have accumulated enough experience to be considered seasoned practitioners. Thus, law school must be viewed as the beginning of students' legal education rather than an experience that will impart everything they need to

99. Sheldon & Krieger: Negative Effects, *supra* note 73, at 4; Sheldon & Krieger: Motivation, Values, and Well-Being, *supra* note 72, at 272-83.

know for a career as a lawyer. Nonetheless, the significance of the institutional failures that are occurring in American law schools cannot be overstated. Law school is the singular experience that unites all members of the legal profession, “where the profession puts its defining values and exemplars on display, and future practitioners can begin both to assume and critically examine their future identities.”¹⁰⁰ When law students are educated in a manner that is not only inadequate but also fosters cynicism and distress, the entire profession suffers and, correspondingly, so does society in general. After all, lawyers are officers of the court, and the legal profession is the sole supplier of personnel for the judicial branch of our government, which is sworn to serve the public by justly deciding disputes. The training this nation’s legal institutions impart to future lawyers is vital to the successful functioning of American democracy.¹⁰¹ It is therefore crucial that law schools redefine their educational mission and begin to train students in more of the skills and perspectives they will need to maximize their success as professionals.

Reforming the institution of legal education will not be easy. It is a testament to the pedagogical power of Langdell’s approach that the case method remains firmly entrenched as the dominant form of legal instruction despite mounting criticism in recent years. And while all institutional cultures are generally resistant to change, legal education may be even more so. The prevailing mindset in the profession is not one that encourages change; most educators have been trained to “think like a lawyer” and contest conflicting information, rather than alter their approach when contradictory data are presented.¹⁰² Furthermore, because the current regime has morphed into a reliable method of sorting students for prestigious law firms and the government,¹⁰³ the most influential actors in the profession do not have a strong incentive to promote reform.¹⁰⁴

Nonetheless, American legal education has been gradually evolving in spite of these obstacles. Indeed, law students currently receive more practical skills training and are exposed to a broader range of interdiscip-

100. CARNEGIE REPORT, *supra* note 24, at 4.

101. Carnegie Foundation, Carnegie Examines the Education of Lawyers and Calls for Change, 2007, <http://www.carnegiefoundation.org/news/sub.asp?key=51&subkey=2152> (“The calling of legal educators is a high one—to prepare future professionals with enough understanding, skill and judgment to support the vast and complicated system of the law needed to sustain the United States as a free society worthy of its citizens’ loyalty.”).

102. See, e.g., Mertz Summary, *supra* note 20, at 5-6 (contrasting the mindset of those trained in legal reasoning with “that of academics in, for example, social sciences, who are forced, at least eventually, to revise their theories when confronted with conflicting or contradictory data”).

103. Steven W. Keeva, *Practicing From the Inside Out*, 7 HARV. NEGOT. L. REV. 97, 105 (2002).

104. On the other hand, legal employers would ultimately benefit if law schools reliably produced more self-aware, well-rounded lawyers. Not only would new lawyers enter the workforce with a larger set of skills, but they would also be more in touch with their professional goals and desires, and would thus be less likely to leave their jobs (or the profession) at such a rapid rate.

linary perspectives than ever before.¹⁰⁵ For example, many law students now receive real world legal experience through clinical programs,¹⁰⁶ and the vast majority of law schools offer courses that teach practical legal skills such as interviewing, counseling, and negotiation.¹⁰⁷ In addition, a variety of novel approaches to legal practice have sprung up within just the last ten years and have been incorporated to some extent in law school curricula. Examples of these alternative approaches include: “(1) collaborative law, (2) creative problem solving, (3) holistic justice, (4) preventive law, (5) problem solving courts, (6) procedural justice, (7) restorative justice, (8) therapeutic jurisprudence, and (9) transformative mediation.”¹⁰⁸ These recent developments are all responsive to the dilemma of traditional legal education outlined previously; in law school, students are trained in analysis, issue-spotting, fact siphoning, and logical deduction but regularly need a broader and more dynamic skill-set to solve the problems with which they are confronted in practice.¹⁰⁹ The skills and perspectives making their way into legal education have thus developed to fill the vacuum created by the case method’s singular focus. Many of these perspectives are interdisciplinary in nature and are designed to provide lawyers with a different “lens” through which to view disputes or problems.¹¹⁰ For example, therapeutic jurisprudence is a distinctly psychological practice in which lawyers consider the effect of legal options on the well-being of the characters involved in a particular dispute in addition to the usual legal concerns, such as rights and duties.¹¹¹ “[G]iven two different options for achieving a particular legal result, if one option is more therapeutic than the other, the lawyer should attempt to pursue the more therapeutic course of action.”¹¹² Similarly, the discipline of creative problem solving is “a broad approach to solving legal problems that takes into account a wide variety of non-legal issues and concerns and then seeks creative, win-win solutions to otherwise win-lose scenarios.”¹¹³ While traditional legal analysis is often a starting point, a creative problem solving approach encourages students to explore options and solutions beyond what would result from the formal application of legal rules.¹¹⁴

Although the recent advances in legal education encompass a variety of skills and approaches, the reforms all share several common pers-

105. See, e.g., CARNEGIE REPORT, *supra* note 24, at 189 (“Compared to fifty years ago, law schools now provide students with more experience, more contextual experience, more choice and more connection with the larger university world and other disciplines.”).

106. Daicoff, *supra* note 20, at 47.

107. *Id.*

108. *Id.* at 1-2 (footnotes omitted).

109. *Id.* at 46.

110. *Id.* at 10.

111. See *id.* at 11-12.

112. *Id.* at 12.

113. *Id.* at 20.

114. *Id.* at 20-21.

pectives. First, an interdisciplinary view of legal practice in which extra-legal concerns such as resources, goals, morals, values, psychological well-being, and interpersonal relations are integrated with legal reasoning is becoming increasingly prominent.¹¹⁵ A second and related development is that a broad problem-solving approach to dispute resolution is being stressed instead of the narrow focus of pure legal analysis. Finally, many of the changes represent an implicit recognition of the personal nature of legal practice and the corresponding need for lawyers to develop excellent human relations and communication skills.¹¹⁶ These common threads have led some commentators to refer to the changes cumulatively as the "comprehensive law movement"¹¹⁷ or "postmodern" legal education.¹¹⁸ Viewed collectively, the recent reforms reflect a gradually increasing shift back to legal education's humanistic roots as law schools broaden their curricula and begin exposing students to a more diverse range of skills and perspectives.

While the focus of legal education has certainly changed during the last fifty years, the reforms have not yet stimulated the type of improvements that are necessary to maximize students' law school experience. Most of the changes that have occurred "have been more piecemeal than comprehensive."¹¹⁹ In other words, most law schools have treated alternative skills and perspectives in an additive fashion, refusing to intrude on the priority given to training in legal analysis.¹²⁰ Courses in, for example, practical legal skills are thus subordinated to doctrinal training and are not integrated into the curriculum or developed to the extent that traditional courses are.¹²¹ Although the majority of students graduate with a well-developed capacity for legal analysis, most are still trained in other crucial skills only haphazardly.¹²² As a result, the deficiencies identified in the prior section persist.¹²³

What is needed is an integrated, comprehensive approach to legal education. In his revolutionary book, *The Fifth Discipline: The Art and Practice of the Learning Organization*, Peter Senge gives the DC-3, the world's first twin engine airplane that was introduced in 1935, as an example of a comprehensive approach in the field of engineering.¹²⁴ As Senge writes,

115. *Id.* at 4.

116. *Id.* at 4, 46-48.

117. *Id.* at 3.

118. Todd, *supra* note 4, at 895.

119. CARNEGIE REPORT, *supra* note 24, at 190.

120. *Id.*

121. *Id.*

122. *See id.* at 188.

123. *Id.* at 191-92.

124. PETER M. SENGE, *THE FIFTH DISCIPLINE: THE ART AND PRACTICE OF THE LEARNING ORGANIZATION* 6 (New York Doubleday 1990).

[t]he DC-3, for the first time, brought together five critical component technologies that formed a successful ensemble. They were: the variable-pitch propeller, retractable landing gear, a type of light-weight molded body construction called "monocoque," radial air-cooled engine, and wing flaps. To succeed, the DC-3 needed all five; four were not enough.¹²⁵

Law schools need to adopt such an approach to creating lawyers: a comprehensive, integrated curriculum focused on developing a greater range of the skills and perspectives lawyers need to succeed in practice. As an institution, legal education must acknowledge the deficiencies of the traditional methods of legal instruction and recognize that practical legal skills and diverse perspectives, such as those emphasized in the comprehensive law movement, are every bit as essential to a lawyer's development as legal analysis.

Dean Erwin Griswold of Harvard Law School once stated that law students need human relations and communication training because "lawyers deal with people. They deal with people far more than they do with appellate courts."¹²⁶ Similarly, in discussing attorneys' role in society, former Chief Justice Warren E. Burger said, "[w]e must be legal architects, engineers, builders, and from time to time, inventors as well. We have served, and must continue to see our role, as problem-solvers . . ."¹²⁷ Law schools should respond to the calling of these two great scholars and integrate the practical and non-traditional parts of their curricula with the standard doctrinal training. In its recent study of American law schools, the Carnegie Foundation advocated such an approach, urging schools to "bridge the gap between analytical and practical knowledge" by "unit[ing] the two sides of legal knowledge: formal knowledge and experience of practice."¹²⁸ This requires numerous changes in the way law schools approach legal training. While doctrinal instruction and legal analysis are central to legal education, they should not overwhelm the curriculum or represent "the exclusive content" of students' first-year experience.¹²⁹ From the beginning of their law school experience, students should be taught the importance of legal analysis to legal practice but also its limits. Schools can promote such a perspective by, for example, emphasizing other skills in their doctrinal classes, even while teaching students how to narrowly analyze disputes in the traditional sense. To illustrate, doctrinal classes could be taught using a team-based approach in which students are asked to analyze specific cases in small groups. Professors can also ensure that extralegal concerns are not ig-

125. *Id.*

126. David M. Hunsaker, *Law, Humanism, and Communication: Suggestions for Limited Curricular Reform*, 30 J. LEGAL EDUC. 417, 421 (1980).

127. Warren E. Burger, *The Decline of Professionalism*, 61 TENN. L. REV. 1, 5 (1993).

128. CARNEGIE REPORT, *supra* note 24, at 12.

129. *Id.* at 195.

nored by discussing the social and moral consequences of specific results, or asking students to assume the role of a party's attorney and discuss how they would approach a particular case from both legal and non-legal standpoints. We explicitly use such an approach in our courses by encouraging students to incorporate extralegal goals and values into their formalistic decision-making.

Law schools should also give students practical experience early on by including in the first year curriculum at least one course that develops practical skills and teaches students to "think like a lawyer" in simulated practice settings.¹³⁰ The practical aspects of legal education should then be expanded as students progress through law school, giving students an increased opportunity to assume the responsibility of acting on behalf of clients.¹³¹ In this manner, students would gradually transition from learning how to *think* like a lawyer to learning how to *act* like a lawyer. For example, schools could construct various sequences of practical courses—organized by, for instance, practice settings such as litigation or transactional work—in which students would learn and apply comprehensive skills. A commonly-taught course that follows this model is a pre-trial practice class, which typically builds on first-year civil procedure and other doctrinal courses by requiring students to apply their analytical knowledge to a simulated legal dispute as it progresses from discovery to trial. Law schools should also expand and refine their clinical training and require students to perform supervised legal work while in law school.¹³² Ideally, students would work in small clinical groups and meet weekly with their supervisor in a classroom setting to discuss their experiences. By organizing clinics in this manner, schools would provide students with real-world experience and also a forum in which to brainstorm, share ideas, and receive advice and feedback.

In addition to emphasizing practical knowledge, schools should also seek to expose students to alternative perspectives, such as those that comprise the comprehensive law movement, either integrated with existing classes or as free-standing courses. This would allow schools to promote extralegal and interdisciplinary perspectives explicitly in addition to the implicit recognition such perspectives would receive in a more integrated curriculum. Furthermore, law schools must give increased emphasis to the ethical aspects of lawyering. Simply requiring a class on professional conduct is insufficient; training in professional ethics should be required earlier in law school and integrated with practice settings as students progress so that they can more fully appreciate the manner in which ethical and moral concerns impact their actions as practicing attorneys. For example, in our courses we often use practical simulations,

130. See *id.* at 188 (arguing that law schools should "employ well-elaborated case studies of professional work" to teach students how to use their skills in practice settings).

131. *Id.* at 178.

132. *Id.*

such as working with a client with diminished capacity, that require students to account for moral and ethical concerns in addition to legal analysis. An example of a similar approach in a doctrinal course would be a corporations professor teaching a hypothetical that required the students to address the policy concerns behind the attorney reporting requirements of the Sarbanes-Oxley Act. By integrating these types of concerns, law schools can provide a structured framework for the “exploration and assumption of the identity, values and dispositions consonant with the fundamental purposes of the legal profession.”¹³³

The integration discussed above would dramatically improve legal education by maximizing the impact of the second and third years of law school and training students in a more complete set of skills.¹³⁴ It would also, in and of itself, improve students’ well-being and professional outlook by creating more well-balanced, self-aware, and satisfied law school graduates.¹³⁵ But law schools must also “be responsive to both the needs of our time and recent knowledge about how learning takes place.”¹³⁶ Legal education as a whole needs to consider “the actual and potential effects of the law school experience on the formation of future professionals”¹³⁷ and engage in a self-critical examination of its teaching methodologies. This requires a recognition of the effects of not only the case method—which would be largely addressed by integrating the law school curriculum—but also of the way we teach and test across the board. If, as educators, we are truly committed to creating the best lawyers possible rather than ranking students so that law firms can determine who to hire, we must reevaluate the purpose of summative teaching and testing in legal education. This is not to say that summative assessment has no place in law school but rather that it should not be used to the exclusion of other methods that would enhance learning. To the extent possible, students should be evaluated periodically during the course of every law school class, even those in which grades are determined primarily on the basis of a final comprehensive exam. This would give professors the chance to assess students’ progress and give them feedback and students the opportunity to improve and maximize their learning experience in each course.

Finally, law schools should also explicitly address the personal impact that their training—integrated or not—has on students. Legal education has a tremendous impact on the way students think and view the world; we cannot pretend that it does not also have an immeasurable

133. *Id.*

134. *See, e.g., id.* at 36-37 (discussing need for law schools to make better use of the second and third years of law school).

135. *See, e.g.,* Sheldon & Krieger: Negative Effects, *supra* note 73, at 28-33 (discussing the negative effects of traditional legal education on students’ well-being and job motivation and the positive impact a more comprehensive approach to instruction would have).

136. CARNEGIE REPORT, *supra* note 24, at 12.

137. *Id.*

effect on who students are as people (nor should we want to).¹³⁸ When the personal, intrinsic changes that occur during law school are ignored, young lawyers enter the profession disillusioned, without a compass to guide their professional growth. Yet, the professional identities that students will carry with them into practice are forged from the intersection of their personalities and their newly developed capacities and perspectives. It is therefore essential that students develop a deep understanding of both who they are as individuals and how the legal training they are receiving can be integrated with their sense of self. To this end, law schools must create focused opportunities for students to reflect on their intrapersonal development.¹³⁹ Law schools must also help students develop a self-awareness of who they want to be as professionals by encouraging them to integrate their intrinsic goals and needs with the practice area they choose to pursue.

CONCLUSION

In essence, what we are advocating is a legal education focused on the practical and humanistic aspects of the profession to the same extent as the theoretical. By critiquing the current state of legal education, we do not purport to solve all of its ills. Education is fluid, and institutions maximize their potential by remaining flexible and dynamic, not by adhering to hard and fast rules. Change and growth are inevitable even under a comprehensive, integrated view of legal education because law schools must be responsive to the demands of the legal profession and society. But we believe that the narrow perspective of traditional legal education has become antiquated and that the comprehensive law movement is the harbinger of a rapidly approaching paradigm shift in legal education. By integrating the doctrinal and practical aspects of their curricula and providing direct training in the skills and perspectives outlined herein, law schools would provide students with a much more comprehensive toolkit with which to view disputes. Students would enter the legal profession as creative problem-solvers, rather than mere legal analysts. Such an approach would be much more consonant with society's need for lawyers. We must not forget that the law is founded on the social and moral evolution of humankind, not merely black-letter treatises, codes, or casebooks..

138. See, e.g., Joshua E. Perry, *Thinking Like a Professional* (unpublished essay on file with the authors) ("Over the course of their legal education, our students evolve both personally and professionally along complex and rich domains."); Parker J. Palmer, *A New Professional: The Aims of Education Revisited*, CARNEGIE FOUNDATION, Nov./Dec. 2007, <http://www.carnegiefoundation.org/change/sub.asp?key=98&subkey=2455> (discussing how professional education has a tendency to focus exclusively on objective, analytical perspectives at the expense of important humanistic, emotional elements); Keeva, *supra* note 49, at 98 ("Almost nowhere in our modern lexicon does the use of the word practice suggest that side by side with acquiring knowledge of our chosen field we are simultaneously called on to make an active, ongoing effort to work with ourselves inwardly if we are to engage in the full practice of our profession.").

139. See Perry, *supra* note 138, at 9.