

THE RECURRENT CURRENT CRISIS IN LEGAL EDUCATION

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Karl Llewellyn, the famous legal realist, commercial legal scholar, and chief drafter of the Uniform Commercial Code, published *The Current Crisis in Legal Education* seventy-three years ago.¹ In that article he argued that the casebook method's dominance of the law school curriculum hindered legal education.² Llewellyn acknowledged the method's benefits but noted that excessive devotion to its approach prevented law students from developing the full set of skills they needed in practice.³ Teaching centered on appellate cases, he argued, encouraged students to focus too heavily on developing subject-matter expertise at the expense of understanding how cases found their way into appellate courts in the first place.⁴ Appellate cases, focused as they are on a judge's reasoning, hid much of the work of the lawyer as advocate and counselor that took place behind the scenes.⁵ The casebook

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1. Karl N. Llewellyn, *The Current Crisis in Legal Education*, 1 J. LEGAL EDUC. 211 (1948) [hereinafter *Current Crisis*].

2. *Id.* at 212.

3. *See id.* at 216.

4. *Id.* at 212.

5. *See id.* at 214, 216–218.

method therefore hindered attempts to “focus attention on the techniques of solution, rather than on the answers,” and to teach students the skills of “legal crafts which have to be studied both in theory and in practice in order to develop an adequate craftsman.”⁶

Nearly three-quarters of a century after Llewellyn published this criticism, the legal profession has changed significantly. At the time he wrote, fewer than 225,000 lawyers practiced in the United States.⁷ Harvard still excluded women from its law school, and the American Bar Association (ABA) refused to admit African-American lawyers.⁸ Nearly 90% of lawyers worked in “private practice,” solo practitioners made up a significant 61% of the bar, and law firms operated on a much smaller scale.⁹ Moreover, only 65% of lawyers had received a legal education from an ABA approved law school.¹⁰ Today, the bar is six times larger and the lawyer to population ratio has doubled.¹¹ The bar is still unrepresentative, but female lawyers now make up 36% of the profession and non-white lawyers 15%.¹² Practice has also changed, as lawyers are significantly more likely to work as in-house counsel and in larger firms and much less likely to work as solo practitioners.¹³ ABA-approved law schools now have a virtual monopoly on legal training in the United States.¹⁴

Despite these changes, the case-centered law school teaching Llewellyn criticized remains a defining feature of American legal ped-

6. *Id.* at 212.

7. *See* AM. BAR ASS'N, ABA PROFILE OF THE LEGAL PROFESSION 106 (2019), <https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf>, (221,605 lawyers in the U.S. in 1950).

8. Robert W. Gordon, *The Legal Profession*, in LOOKING BACK AT LAW'S CENTURY 287 (Austin Sarat et al., eds. 2002). Columbia Law School admitted its first woman in 1927, but women still made up less than five percent on average of the school's classes from 1927–1952. *See* David W. Leebron, *The 75th Anniversary of Women at Columbia Law School*, 102 COLUM. L. REV. 1439, 1439–40 (2002).

9. Gordon, *supra* note 8 at 293.

10. *See* RICHARD L. ABEL, AMERICAN LAWYERS 55 (1989). The figure is for 1949.

11. According to the ABA as of January 1, 2019 there were 1,352,027 lawyers in the United States, which makes the lawyer to population ratio 1:242. AMERICAN BAR ASSOCIATION, *supra* note 8 at 65. In 1951, the lawyer to population ratio was 1:695. CLARA N. CARSON with JEEYOON PARK, THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN 2005 (2005).

12. AMERICAN BAR ASSOCIATION, *supra* note 7 at 1, 8.

13. Gordon, *supra* note 8 at 293.

14. ABEL, *supra* note 10 at 56.

agogy. According to many commentators, law school is in another crisis and legal teaching is still in drastic need of reform.¹⁵ Llewellyn's writing on teaching therefore remains relevant to modern legal educators. Scholars, however, have devoted relatively little attention to Llewellyn's work on legal education and his pedagogical practices. This is not because they ignore Llewellyn—he is widely viewed as a significant legal thinker and is one of the most cited legal scholars of all time.¹⁶ But Llewellyn's educational work is deemed much less important. The handful of articles on Llewellyn's educational approach pale in comparison to the hundreds on his jurisprudence and on the Uniform Code he helped create.¹⁷

Yet, Llewellyn wrote extensively on the subject, publishing reviews of casebooks, providing withering criticism of conventional law school pedagogy, and proposing a serious reshaping of the law school curriculum.¹⁸ He also expended significant effort in his own teaching. He wrote a Sales casebook, offered innovative courses, and understood this work as central to his broader efforts to shape the law and the legal profession.¹⁹ This paper takes Llewellyn seriously as a teacher and as a thinker on legal pedagogy and considers the role his ideas can play in our *current* crisis in legal education.

15. See, e.g., Rachel F. Moran, *The Three Ages of Modern American Lawyering and the Current Crisis in the Legal Profession and Legal Education*, 58 SANTA CLARA L. REV. 453 (2019); RICHARD ABEL, "You never want a serious crisis to go to waste." *Reflections on the Reform of Legal Education in the US, UK, and Australia*, in LEGAL EDUCATION AT THE CROSSROADS: EDUCATION AND THE LEGAL PROFESSION 1 (Avrom Sherr et al. eds, 2017); BENJAMIN H. BARTON, *FIXING LAW SCHOOLS: FROM COLLAPSE TO THE TRUMP BUMP AND BEYOND* (2019); STEVEN J. HARPER, *THE LAWYER BUBBLE: A PROFESSION IN CRISIS* (2013); PAUL CAMPOS, *DON'T GO TO LAW SCHOOL (UNLESS): A LAW PROFESSOR'S GUIDE TO MAXIMIZING OPPORTUNITY AND MINIMIZING RISK*, at xii (2012); BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS*, at i (2012); Editorial, *Legal Education Reform*, N.Y. TIMES, Nov. 26, 2011 at A18.

16. See Fred R. Shapiro, *The Most-Cited Legal Scholars*, 29 J. LEGAL STUD. 409, 424 (2000).

17. William Twining, one of Llewellyn's biographers, devotes roughly thirty-five pages of a nearly four-hundred-page biography to Llewellyn's writings on education, concluding that despite a few important contributions, Llewellyn's work on legal education is "uneven and disorganized." WILLIAM TWINING, *KARL LLEWELLYN AND THE REALIST MOVEMENT* 354 (1973). Of the thirty-five pages, much is spent reading Llewellyn's work on education for its insight into other aspects of his thinking. See *id.* at 128, 128–152. For articles on Llewellyn's educational approach, see, e.g., Alfred F. Konefsky, *Karl's Law School, or the Oven Bird in Buffalo* in REVISITING THE OVEN BIRD'S SONG 56 (Mary Nell Trautner, ed. 2018); Anders Walker, *Bramble Bush Revisited: Llewellyn, The Great Depression and the First Law School Crisis, 1929-1939*, 64 J. LEGAL EDUC. 145 (2014); Francis J. Mootz, *Vico, Llewellyn, and the Task of Legal Education*, 57 Loy. L. Rev. 135 (2011).

18. See *infra* notes 58–106 and accompanying text.

19. See *infra* note 35, 118–121 and accompanying text.

Llewellyn's work offers special insight for modern legal educators who aim to teach business lawyering. Some of his ideas have since been implemented and serve as successful models for reform. Llewellyn's writings also provide support for reform in legal education for which the papers in this issue advocate and offer novel solutions to persistent pedagogical problems. That one of the most important framers of the UCC—not to mention one of the most significant thinkers on American jurisprudence—shared a devotion to developing lawyers as problem solvers, as business experts, and as ethical commercial legal practitioners suggests that reformers are on the right track. That the same person who successfully spearheaded a three-decade-long effort to get the United States to adopt a uniform commercial code failed at many of his efforts to reform American legal education underscores the difficulty of improving legal pedagogy. Although some of the problems that Llewellyn identified have been ameliorated since he highlighted them, many have not.

In this paper, I will begin by providing a brief background on Llewellyn, concentrating on his efforts to reform legal education. Next, I will explain what he saw as the main problems with American legal education and highlight some of his proposed solutions. These solutions align in large part with the aims of this conference's sponsor—the Willamette Business Lawyering Institute—to educate problem-solving lawyers who understand business context to ethically apply their skills to the issues of their clients. Finally, I will assess the effectiveness of Llewellyn's efforts at legal reform and attempt to draw some lessons from his efforts.

I. KARL LLEWELLYN'S BACKGROUND

Karl Llewellyn was born in Seattle in 1893 and spent his childhood in Brooklyn, New York.²⁰ After graduating early from high school, Llewellyn attended three years of school in Germany before beginning his Freshman year at Yale University in 1911.²¹ From college, Llewellyn proceeded directly to Yale Law School, from which he graduated with an LLB in 1918.²² He received his J.D. from Yale in 1920 but by 1919 he had already begun teaching a course on bills and notes.²³ Llewellyn returned to teaching permanently after two years of

20. TWINING, *supra* note 17 at 87.

21. *Id.* at 90.

22. *Id.* at 99.

23. *Id.* at 100.

legal practice, working first for the National City Bank and then for Shearman and Sterling.²⁴ By 1923, Yale had already promoted Llewellyn to associate professor.²⁵ He moved to Columbia in 1924 after he married his first wife, an economics graduate student there.²⁶ Llewellyn would spend the bulk of his career at Columbia, moving finally to the University of Chicago in 1951, where he taught until his death in 1962.²⁷

Llewellyn's most celebrated achievements as a scholar were his jurisprudential critiques of legal formalism. Building on interests in sociology, anthropology, and the process of judicial decision-making, Llewellyn and other realists argued that American jurists focused too heavily on legalistic science at the expense of understanding legal practice.²⁸ Llewellyn saw his critique of formalism not only as a scholarly endeavor but also a practical one.²⁹ As we shall see, his writing on legal education reflected the broader changes to legal decision making for which he advocated in his jurisprudential writings. Llewellyn's realist approach to legal analysis also appears in the last major project of his life, the drafting of the Uniform Commercial Code. As he put it, the goal of the project was to provide "simpler, clearer, and better adjusted rules, built to make sense and to protect good faith, [and] make for more foreseeable and more satisfactory results both in court and out."³⁰ Begun in 1940, the UCC attempted to codify American commercial law in a way that reflected and improved commercial practice.³¹ With significant help from Soia Mentschikoff, and other drafters, the code was eventually enacted, first in Pennsylvania in 1953, and later across the United States.³² Llewellyn died of a heart attack in 1962, leaving behind a reputation as a subversive legal thinker, devoted teacher, and as "easily the most important single figure" responsible for the UCC.³³

24. *Id.* at 101.

25. *Id.* at 102.

26. *Id.*

27. *Id.* at 112.

28. See J.H. Schlegel, *Legal Realism*, INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL AND BEHAVIORAL SCIENCES 8667-8670 (Neil J. Smelser & Paul B. Baltes eds., 2001).

29. See also TWINING, *supra* note 17 at 354.

30. Karl N. Llewellyn, *The Modern Approach to Counseling and Advocacy, Especially in Commercial Transactions*, 46 COLUM. L. REV. 167, 178 (1946).

31. WALTER P. ARMSTRONG, A CENTURY OF SERVICE: A CENTENNIAL HISTORY OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 56-57 (1991).

32. *Id.* at 57-77; TWINING, *supra* note 17 at 300-302.

33. TWINING, *supra* note 17 at 70-83, 270-302; 271.

From early on in his academic career Llewellyn devoted significant energy to thinking about legal education. Llewellyn's own education left a strong impression. In 1918 he published a tribute to Wesley Newcomb Hohfeld, one of his most influential law school professors, in which he honored Hohfeld's ability to elevate the thinking of his students.³⁴ When he became a professor himself, Llewellyn continued to write and think about teaching. In the 1920s he authored careful and detailed reviews of casebooks,³⁵ and in 1930 he published his own *Cases and Materials on the Law of Sales*.³⁶ That same year he also published *The Bramble Bush*, a guide to incoming law students that had originated in a series of lectures at Columbia to first year students.³⁷ In addition to these well-known publications, Llewellyn wrote nearly two dozen other articles focused on legal education.

II. THE PROBLEMS WITH AMERICAN LEGAL EDUCATION

For Llewellyn, teaching and scholarship were linked. Llewellyn's writings on teaching reflected and advanced his work on jurisprudence and commercial law, and his legal thinking suffused his teaching. In *The Bramble Bush*, for example, Llewellyn argued that a practice-centered approach to law would help students better understand the functioning of the legal system.³⁸ Similarly, Llewellyn's case book on sales warned students that doctrine alone would not explain legal outcomes; it was only "the first step in a wider process of seeing what law means and of bringing it to bear on facts."³⁹ According to the historian N.E.H.

34. See Karl N. Llewellyn, *Wesley Newcomb Hohfeld—Teacher*, 28 YALE L.J. 795 (1918).

35. Karl N. Llewellyn, *The Modern Business Law Book*, 32 YALE L. J. 299, 302–306 (1922) (reviewing William Britton and Ralph Bauer, *Cases on Business Law* (1922); Harold Perrin and Hugh Babb, *Commercial Law Cases* (1921); Lincoln F. Schaub and Nathan Isaacs, *The Law in Business Problems* (1921); William Spencer, *Law and Business* (1921–22)); Karl N. Llewellyn, 22 COLUM. L. REV. 770 (1922) (reviewing Howard L. Smith and William Underhill Moore, *Cases on the Law of Bills and Notes* (1922)); Karl N. Llewellyn, 25 COLUM. L. REV. 980 (1925) (reviewing Frederick C. Woodward, *Cases on Sales* (1925)); Karl N. Llewellyn, 40 HARV. L.R. 142 (1926) (reviewing Morton C. Campbell, *Cases on Mortgages of Real Property* (1926)).

36. See KARL N. LLEWELLYN, *CASES AND MATERIALS ON THE LAW OF SALES* (1930) [hereinafter LLEWELLYN, SALES].

37. TWINING, *supra* note 17 at 141. See KARL N. LLEWELLYN, *THE BRAMBLE BUSH: ON OUR LAW AND ITS STUDY* (1960) [hereinafter LLEWELLYN, BRAMBLE].

38. See LLEWELLYN, BRAMBLE, *supra* note 37 at 12–14; N.E.H. HULL, ROSCOE POUND AND KARL LLEWELLYN: SEARCHING FOR AN AMERICAN JURISPRUDENCE 171 (1998).

39. See LLEWELLYN, SALES, *supra* note 36 at xi ("Doctrine is therefore emphasized, as doctrine must be; but it is emphasized as the first step in a wider process of seeing what law means of bringing it to bear on facts."); see also LAURA KALMAN, LEGAL REALISM AT YALE,

Hull, Llewellyn “knew firsthand that the way to change the law was to win over the hearts of the next generation of lawyers,” so he “carr[ie]d the fight” for his controversial legal realist views to the classroom because he believed it would improve the profession.⁴⁰ As a consequence of the fusion between Llewellyn’s teaching and scholarship, Llewellyn’s works aimed at students also found an audience with professors. *The Bramble Bush* was “widely read by Llewellyn’s peers,” and his sales casebook was “endlessly influential” even if many found it difficult to teach.⁴¹

In addition to leading by example through material for students, Llewellyn also advocated for the broader reform of legal education. He did so in the same biting tone that he used to criticize American jurisprudence. In *The Bramble Bush*, for example, he described the “stupendous inadequacy, the lack of direction, [and] the inefficiency in legal education.”⁴² In other work, he followed up with more specific criticisms that sound familiar today—arguing that law school was hampered by tradition. The casebook method, which had once more widely included experimentation with technique, had calcified and standardized.⁴³ Traditional teaching techniques failed to reach average students, and professors experienced difficulty stimulating interest after the first year of instruction.⁴⁴ This type of instruction, focused “at all costs” on “tiny, mostly unimportant intricacies of narrow positive doctrine,” occurred at the expense of a broader set of legal skills.⁴⁵ Professors too willingly blamed their students’ lack of preparation for practice on the limited time and resources available to them, or pointed fingers at the

1927–1960 at 79 (1986) (noting Llewellyn’s inclusion of “annotations about business organization, marketing practices, methods of financing, bills of lading, and other functions of business”).

40. HULL, *supra* note 38 at 322, 171.

41. See Harry W. Jones, 32 U. CHI. L. REV. 197 (1964) (reviewing Karl N. Llewellyn, *Jurisprudence: Realism in Theory and Practice* (1964)). Twining writes that CASES AND MATERIALS ON THE LAW OF SALES was “based on learning and insight worthy of a major treatise” and was a “work of profound scholarship and originality.” TWINING, *supra* note 17 at 129. He also notes that the book “was not widely used” because of its density and difficulty. *Id.* at 131. Neil Duxbury sees Llewellyn’s casebook as “a germinal expression of some of the ideas which, in later years, would find their way into Llewellyn’s drafts of article 2 of the Uniform Commercial Code.” NEIL DUXBURY, PATTERNS OF AMERICAN JURISPRUDENCE 144 (1995).

42. LLEWELLYN, BRAMBLE, *supra* note 37 at 129.

43. See Karl N. Llewellyn et al., *The Place of Skills in Legal Education*, 45 COLUM. L. REV. 345, 389 (1945).

44. Karl N. Llewellyn, *Current Crisis*, *supra* note 1 at 211, 218 (1948); Karl N. Llewellyn, *The Study of Law as a Liberal Art*, in JURISPRUDENCE: REALISM IN THEORY AND PRACTICE 375, 384 (1962).

45. Llewellyn, *Law as a Liberal Art*, *supra* note 44 at 384.

students themselves.⁴⁶ As a result, law schools had seemingly ceded practical training to law firms.⁴⁷ “[N]o faculty,” Llewellyn concluded, and “not one per cent of instructors, [knew] what it [was] they [were] really trying to educate for.”⁴⁸

Change, Llewellyn recognized, would not come easy. Law school reformers, he wrote, were “[stuck] in tradition as a body sticks in muck. They [were] tied hand, foot, and eyes. Five years of struggle [got] one hand free, to wave for help.”⁴⁹ Pedagogical reform therefore rested on the efforts of a few “freaks,” with little support from the rest of the faculty.⁵⁰ Even these “freaks,” Llewellyn maintained, were “tradition-ridden in what freakishness they [had].”⁵¹ Serious reform, he argued, was hampered by the inability of law school faculties to work together to develop coherent curriculums. As Llewellyn put it, “[e]ach first-rate course-book [was] planned and carried through as if on that editor’s shoulders lay, *alone*, the salvation of private law and of its students.”⁵²

III. LLEWELLYN’S PROPOSED SOLUTIONS

Despite the obstacles that law school’s traditionalism presents, Llewellyn believed in the necessity of reform, and he presented many recommendations for revising the law school curriculum. In his most extreme writings, he suggested the need for a wholesale reimagining of the American law school.⁵³ The principles on which his arguments relied are also directly relevant for those, like the participants in this conference, interested in improving the teaching of business law. First, Llewellyn felt that good lawyers needed more than legal knowledge to succeed. They also needed to learn problem-solving skills to help their clients with real-world solutions. Second, Llewellyn believed in the importance of understanding the broad context within which legal rules operate. He believed that the curriculum should reflect the insights on which he relied in his jurisprudence and in the drafting of the UCC.

46. See Karl N. Llewellyn, *On What Is Wrong with So-Called Legal Education*, 35 COLUM. L. REV. 651, 665–66 (1935) [hereinafter *On What is Wrong*].

47. *Id.*

48. *Id.* at 653.

49. *Id.* at 652.

50. *Id.*

51. *Id.*

52. Karl N. Llewellyn, *On the Problem of Teaching Private Law*, 54 HARV. L. REV. 772, 776 (1941). This is an admirably self-aware statement from someone whose own casebook’s size, coverage, and ambition made it difficult to teach. See *supra* note 41 and accompanying text (discussing Llewellyn’s casebook).

53. See, e.g., Karl N. Llewellyn, *On What Is Wrong*, *supra* note 46.

Would-be business lawyers needed to learn how business works to be able to assist their clients. Finally, he argued for the value of ethics and professionalism; he believed learning legal ethics mattered, not only for its own sake but also because an ethical lawyer made a more effective practitioner. Ethical practice improved advocacy, even in business.

A. Problem Solving

Llewellyn felt that one of the primary goals of legal education should be to teach students the “craft of doing and getting things done with the law.”⁵⁴ He defined the legal craft broadly; it included:

practical effective, persuasive, inventive skills for getting things done, any kind of things in any field; . . . wisdom and judgment in selecting the things to get done; . . . skills for moving men into desired action, any kind of man, in any field; and . . . skills for regularizing the results, for building into controlled large-scale action such doing of things and such moving of men.⁵⁵

Lawyers, he continued, were in “the game of planning and organizing management” and they “concentrate[d] on the areas of conflict, tension, friction, trouble, doubt—and in those areas [had] the skills for working out results.”⁵⁶ Good lawyers were “troubleshooters” who could “find the way out and set up the method of the way, and get men persuaded to accept it, and to pick up the operation.”⁵⁷ In other words, “[t]he lawyer [was] the man to whom you turn in a situation of human relations and human difficulties to find effective ways and means with teeth that cog into life and [got] the job done.”⁵⁸ The best lawyers could “learn to give practical reality, [and] practical effectiveness, to vision and to ideals.”⁵⁹ Despite his reputation as a critic of professional norms, Llewellyn believed in the value and capabilities of the best lawyers and the important roles they played in business.

In preparation for these roles, Llewellyn argued that law students needed to learn a “vision and sense for the Whole, and skills in finding

54. Karl N. Llewellyn, *The Crafts of Law Revalued*, 15 ROCKY MT. L. REV. 1, 3 (1942) (emphasis omitted).

55. *Id.*

56. *Id.* Such claims for the importance of the profession in these skills were especially significant during World War II.

57. *Id.* at 3.

58. Karl N. Llewellyn, *The Adventures of Rollo*, U. CHI. L. SCH. REC. 1 (Summer 1952).

59. Llewellyn et al., *Place of Skills*, *supra* note 43 at 391.

ways, smoothing friction, handling men in any situation.”⁶⁰ This meant learning to use, rather than “manhandle” statistics, to understand policy considerations,⁶¹ and to develop a “horse-sense” for what worked in particular situations.⁶²

B. Context

To become problem solvers for business, lawyers needed to understand business. In a review of business books early in his career, Llewellyn underscored the importance of educating students on business practice. Relying on factual descriptions in law reports, he argued, hindered a law student’s understanding of how rules functioned in commerce,⁶³ particularly because appellate cases were outliers: “The mere fact that two men have gone to law [was] itself abnormal.”⁶⁴ To understand negotiable instruments, a student needed to understand banking; only then could they “make[] the legal job intelligible.”⁶⁵ Law school, properly conceived, thus necessitated “cultural studies.”⁶⁶ It also meant learning basic contractual rules in a business context, rather than relying solely on outlandish hypotheticals or outlier cases:

[I]t is not safe to reason about business cases from cases in which an uncle became interested in having his nephew see Europe, go to Yale, abstain from nicotine, or christen his infant heir “Alvardus Torrington III.” And it may even be urged that safe conclusions as to business cases of the more ordinary variety cannot be derived from what courts or scholars rule about the idiosyncratic desires of one A to see one B climb a fifty-foot greased flagpole or push a peanut across the Brooklyn Bridge.⁶⁷

Here, it is evident how Llewellyn’s legal realist ideals affected his approach to teaching law. Abstract law was much less useful than law in

60. Llewellyn, *Crafts of Law*, *supra* note 54 at 7.

61. Llewellyn, *On What Is Wrong*, *supra* note 46 at 673; LLEWELLYN, SALES, *supra* note 36.

62. Karl N. Llewellyn, *Our Case-Law of Contract: Offer and Acceptance II*, 48 YALE L. J. 779, 783 (1939).

63. Llewellyn, *Modern Business*, *supra* note 35 at 299.

64. Felix Frankfurter, Karl N. Llewellyn, and Edson R. Sunderland, *The Conditions for and the Aims and Methods of Legal Research*, 6 AM. L. SCH. REV. 663 (1930).

65. Karl N. Llewellyn, *Meet Negotiable Instruments*, 44 COLUM. L. REV. 299 (1944).

66. Karl N. Llewellyn, *On the Why of American Legal Education*, 4 DUKE B. ASS’N J. 19, 23–24 (1936).

67. Llewellyn, *Teaching Private Law*, *supra* note 52 at 772, 785 (1941).

its context. As Llewellyn summed up, law professors needed to “integrate the background of social and economic fact and policy, course by course, or fail of our job.”⁶⁸ In his own casebook, Llewellyn allotted 28% of the text to annotations and discussions, to offer students a broader perspective of legal doctrine in an effort to present “[s]ales law . . . as a tool of modern business in a credit economy.”⁶⁹

C. Ethical Lawyering

As the historian Fred Konefsky has argued, Llewellyn saw teaching “as primarily a moral enterprise.”⁷⁰ Llewellyn believed that the goal of legal education was not merely to create craftsmen but also to hone a “sense of responsibility to self and society.”⁷¹ This sense was especially valuable to future lawyers who were expected to become not just “decent citizens” but “officer[s]” of the law.⁷² As with problem solving and the integration of context, Llewellyn’s educational prescriptions aligned with his jurisprudence. Understanding law in context meant judging law, not by adherence to “mere legalistic correctness,”⁷³ but “by its effects.”⁷⁴ Understanding business context then was not just helpful to problem-solving, but also critical to ethical practice. In Llewellyn’s memorable formulation: “Ideals without technique are a mess. But technique without ideals is a menace.”⁷⁵

68. Llewellyn, *On What Is Wrong*, *supra* note 46 at 671; *see also* Llewellyn, *Our Case-Law of Contract*, *supra* note 62 at 785.

69. LLEWELLYN, SALES, *supra* note 36 at xxi. Although Llewellyn’s Sales book “addressed specific matters of economics and business practice—matters which, in his view, shaped the expectations and behavior of commercial buyers, sellers and middleman” he failed in fully integrating the interdisciplinary sources which he intended to include. *See* DUXBURY, *supra* note 41 at 144; KALMAN, *supra* note 39 at 92 (“Although Llewellyn indicated in the introduction to *Cases and Materials on the Law of Sales* that he had drawn on modern psychology, experimental logic, social psychology, anthropology, and sociology, most of his annotations discussed business practices without using material from any of the social sciences to explain their significance.”).

70. Konefsky, *supra* note 17 at 56, 58. Llewellyn believed that education could also play an important role outside of law schools. *See* Karl N. Llewellyn, *Yes, It Takes Mass Production*, in *JURISPRUDENCE: REALISM IN THEORY AND PRACTICE* 468 (1962) (discussing importance of education for democracy).

71. Llewellyn, *Adventures of Rollo*, *supra* note 58 at 22.

72. *Id.*

73. Llewellyn, *Crafts of Law*, *supra* note 54 at 6.

74. Karl N. Llewellyn, *On Philosophy in American Law*, U. PA. L. REV. 205, 212 (1934).

75. Llewellyn, *On What Is Wrong*, *supra* note 46 at 662. Llewellyn argued for a mandatory upper-level course on jurisprudence that could be taught in many ways but insisted that it must include both attention to “legal techniques” and the “quest for justice.” Karl N. Llewellyn, *The Content of a Jurisprudence Course*, in *JURISPRUDENCE: REALISM IN THEORY AND PRACTICE* 372 (1962).

Llewellyn's interest in educating students in the ideals of ethical practice reflected his experience in legal practice. Courts disliked enforcing the most unfair bargains.⁷⁶ It was not only ethical lawyering, but practical lawyering also, that required students to understand how to draft documents that courts would not hesitate to enforce. This meant taking "account of the other side as well as of your own" to ensure "public approval" and that courts would not see the agreement as excessively lopsided.⁷⁷ Schools needed to teach their students that in both legal and business practice, ethics affected outcomes.

IV. LLEWELLYN'S VISION FOR LEGAL EDUCATION

Llewellyn believed that the need to create ethical, problem-solving lawyers with an understanding of commercial context demanded significant reform to the law school curriculum. This meant getting cooperation not just from a few "freaks," but from the entire faculty. By operating in silos, professors missed important opportunities to share responsibility for developing the skills their students need.⁷⁸ They also failed to learn from one another:

Worry and experiment about teaching method have remained largely individual, and the individual worry and experiment has remained, even when superbly successful, with no impact outside the given faculty (to most unknown), and with impact even within a faculty, in the main, merely in terms of permission to one man to be different.⁷⁹

Finally, isolated thinking about teaching led to an over-emphasis on each professor's area of expertise. Professors raced to cover their areas of law extensively in elective classes, neglecting opportunities to provide more in-depth discussion and skill development. If a course was not required, Llewellyn asked, why did professors feel obligated

76. See Karl N. Llewellyn, *The Modern Approach to Counselling and Advocacy—Especially in Commercial Transactions*, 46 COLUM. L. REV. 167, 177 (1946) ("[T]he courts are emerging as they should as conscious and powerful guardians of fairness in the interests of All-of-Us . . . Judges have a duty to use the available leeways to make for sense and accomplish decency, and because upright judges, these days, want to try to do just that."). The UCC's integration of good faith, fair dealing, and prohibitions on unconscionability as basic precepts of business deals demonstrates a similar perspective. See, e.g., U.C.C. §§1-304, 2-302.

77. Llewellyn, *Modern Approach*, *supra* note at 76 at 192.

78. Llewellyn, *On What Is Wrong*, *supra* note 46 at 677.

79. Llewellyn et al., *Place of Skills*, *supra* note 43 at 349.

to cover as much ground as possible to the subset of students who do take the class?⁸⁰

Llewellyn called for a reorientation of the law school curriculum. Despite his criticisms of the calcified form the casebook method had assumed, he did not think it ought to be eliminated. Instead, he maintained that it needed to be used more deliberately and explicitly, and supplemented with instruction designed to inculcate other skills.⁸¹ Law schools needed to clarify what skills were important, explain the importance of these skills to their students, and then allocate the development of those skills to specific classes and professors.⁸² Such an approach would allow students to learn some of the context necessary to develop the problem-solving skills they needed as advocates and counselors and presented the opportunity for instructors to integrate non-appellate cases into the curriculum. Dividing skill preparation between classes promised to give students “sustained practice” that would help them develop legal skills.⁸³ In addition, Llewellyn believed that a more coherent curriculum would leave space for deeper integration of training in liberal arts skills, like rhetoric, which improved lawyers’ advocacy skills.⁸⁴ He suggested that further understanding of context could also be developed through implementation of a legal history class that would provide the needed background for many courses, saving individual instructors from introducing legal context in piecemeal fashion in their classes.⁸⁵

Llewellyn had a laundry list of other suggestions, including increasing personal contact between professors and students; expanding testing subjects beyond black letter law; adding small group work to classes; integrating court visits into the curriculum; teaching students how to use legal forms; introducing more secondary sources to doctrinal classes; instructing students in library research techniques; encouraging independent reading; including more legal writing opportunities for students across the curriculum; introducing appellate advocacy assignments (with rewrites); requiring a compulsory third-year course in

80. Llewellyn, *Teaching Private Law*, *supra* note 52 at 772.

81. Llewellyn et al., *Place of Skills*, *supra* note 43 at 353, 358.

82. *Id.* at 358.

83. *Id.*

84. Llewellyn, *On What Is Wrong*, *supra* note 46 at 663; *see also* Mootz, *supra* note 38 at 135.

85. Llewellyn et al., *Place of Skills*, *supra* note 43 at 358.

jurisprudence; adding more public and administrative law to the curriculum; using formal teaching evaluations; and even rotating of faculty between schools to spread innovative teaching methods.⁸⁶

V. SUCCESS AND FAILURE

Despite the vituperative tone of much of Llewellyn's writing on legal education and the radicalism of many of his proposals, Llewellyn's writing on legal education received a positive reception from many professors and students at the time he published it.⁸⁷ They approvingly cited Llewellyn's work⁸⁸ and praised his "stimulating suggestions for reform"⁸⁹ as well as his "emphasis on more patient, rigorous training in case analysis."⁹⁰ In 1944, the Association of American Law Schools appointed Llewellyn to chair its "Committee on Curriculum."⁹¹ The resultant report, "The Place of Skills in Legal Education," authored by Llewellyn and five other committee members, was deemed "[b]rilliant" work.⁹² Although the report's rhetoric was tamer than

86. *Id.* at 359–63. Llewellyn, *On What Is Wrong*, *supra* note 46 at 677; See LLEWELLYN, SALES, *supra* note 36 at xvii; Llewellyn, *Law as Liberal Art*, *supra* note 44 at 387–91; Llewellyn, *Content of a Jurisprudence Course*, *supra* note 75 at 372.

87. According to N.E.H. Hull, Llewellyn "held no grudges and never expected anyone else to hold them." HULL, *supra* note 38 at 195.

88. For examples of Llewellyn's contemporaries who cited his work with approval see John O. Murdock, 45 YALE L. J. 381, 384 (1935) (reviewing Charles G. Fenwick, *Cases on International Law* (1935)); Sidney Post Simpson, *The Function of the University Law School*, 49 HARV. L. REV. 1068 n.2 (1936); Cecil A. Wright, *Law and the Law Schools*, 16 CAN. B. REV. 579, 591 (1938) ("See the ideas suggested here developed with his customary ebullience by K. N. Llewellyn"); Sidney Post Simpson, *The New Curriculum of the Harvard Law School*, 51 HARV. L. REV. 965 (1938); Walter B. Kennedy, *Realism, What Next-II*, 8 FORDHAM L. REV. 45, 76 (1939); Brendan F. Brown, *Legal Education in Philosophical Perspective*, 3 U. DET. L.J. 181 (1940); Philip Mechem, *Proposed Four-Year Law Curriculum: A Dissenting Opinion*, 38 MICH. L. REV. 945, 959 (1940); Walter Gellhorn, Note, *The Law Schools' Responsibility for Training Public Servants*, 9 U. CHI. L. REV. 469, 475 (1942); Frederick K. Beutel, *The New Curriculum at the University of Nebraska College of Law*, 25 NEB. L. REV. 177, 179 (1946); Jerome Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303 (1947); Julius Cohen, *On the Teaching of Legislation*, 47 COLUM. L. REV. 1301 (1947); Harry Jr. Kalven, *Law School Training in Research and Exposition: The University of Chicago Program*, 1 J. LEGAL EDUC. 107 (1948) ("It is undoubtedly true, as Professor L warns, that much of modern casebook teaching no longer preserves the classic advantages of the case system."); Norberto J. Quisumbing, *Teaching Law—Making Lawyers*, 24 PHIL. L.J. 280, 280 (1949); Joseph O'Meara, *Legal Education at Notre Dame*, 28 NOTRE DAME L. REV. 447, 450 n.4 (1953).

89. 47 Mich. L. Rev. 442, 443 (1949) (reviewing HENRY SIMONS, *EDUCATION FOR PROFESSIONAL RESPONSIBILITY* (1948)) (praising Llewellyn's work along with that of others in the collection).

90. Kalven, *supra* note 88 at 107.

91. Llewellyn et al., *Place of Skills*, *supra* note 43 at 346.

92. Harold Jr. Marsh, *Law Review and the Law School: Some Reflections about Legal Education*, 42 ILL. L. REV. 424, 440 n.1 (1947).

Llewellyn's usual writing, the fact that he was tasked with chairing it illustrated the extent to which his reformist agenda was not far outside of mainstream opinion. Llewellyn's casebook also proved influential. The historian Laura Kalman has illustrated the extent to which its "strong . . . impact" encouraged the development of other casebooks by legal realists that challenge the traditional model.⁹³ Llewellyn's work was therefore an important part of a broader discussion of the future of legal education in the 1940s and 1950s.⁹⁴

Not everyone appreciated Llewellyn's suggestions or his models for reform, however. Although *Cases and Materials on the Law of Sales* received praise from some reviewers for its emphasis on the workings of business, others complained that it "neglected law."⁹⁵ Nor did its influence and praise lead to its adoption. Like many other innovative textbooks of the time, it failed to gain a large following.⁹⁶ Most of Llewellyn's proposed legal reforms met a similar fate. "Critique of Langdellian assumptions was easy," Neil Duxbury observes, "compared with implementing a programme of legal education; and while realists tended to excel at the former task, they fared comparably poorly at the latter."⁹⁷ Llewellyn, of course, recognized the same thing. When writing about the difficulty the "freaks" faced when attempting to reform legal education, he spoke from his own experience. Enthusiasm and interest in reforming legal education seemed to decline steadily by the late 1950s.⁹⁸

Llewellyn may not have fully integrated his insights into his teaching, but he left behind a legacy as a memorable, energetic teacher. At Columbia he taught Sales, Jurisprudence, Law in our Society, Legal Argument, Partnership, Commercial Law, and several seminars. When

93. KALMAN, *supra* note 39 at 79; see also Kalman discussing Llewellyn's understanding of William O. Douglas's "quite heterodox" casebooks which were designed to use in Yale's series of courses on "losses," "management," and "finance," and to present business law in a way that mirrored the "practical problems" that business created. *Id.* at 86. These also do not appear to have been widely assigned. *Id.* at 86.

94. Irvin C. Rutter, *A Jurisprudence of Lawyers' Operations*, 13 J. LEGAL EDUC. 301, 303-304 (1960); Frank R. Strong, *Pedagogical Implications of Inventorying Legal Capacities*, 3 J. LEGAL EDUC. 555 (1951); Harrop Freeman, *Legal Education: Some Farther-Out Proposals*, 17 J. LEGAL EDUC. 272, 273 n.5 (1964).

95. KALMAN, *supra* note 39 at 57 n.45 (citing H.C. Havighurst, 36 W. VA. L. Q. 310-13 (1930) and Roscoe B Turner, 30 COLUM. L. REV. 904-07 (1930) as examples of praise; and B Waite, 28 MICH. L. REV. 947-49 (1930) and Arthur A. Morrow, 15 IOWA L. REV. 515-17 (1930) as examples of criticism).

96. KALMAN, *supra* note 39 at 94 ("[t]hey failed to sweep the law school world").

97. DUXBURY, *supra* note 41 at 145.

98. Freeman, *supra* note 94 at 273 n.5 (1964)

he moved to the University of Chicago, he concentrated on Jurisprudence, Sales, and Legal Elements, an introductory class for first-year students that emphasized the importance of the legal craft, context, and ethical skills, for which he had advocated throughout his career.⁹⁹ Llewellyn was well-liked by many of his students; at least some of them found him “a tremendous moral and intellectual force.”¹⁰⁰ Variants of the Legal Elements class, some using Llewellyn’s materials, continue to be taught today.¹⁰¹

VI. LLEWELLYN’S LESSONS AND LEGACY

In 1935, Llewellyn claimed that a “law school education, even in the best schools [was]. . . so inadequate, wasteful, blind and foul that it will take twenty years of unremitting effort to make it half-way equal to its job.”¹⁰² Eighty-six years later, it’s unclear what he would make of the modern teaching of business lawyering. On one hand, some of his proposed changes have occurred, at least in part. Legal writing is now a standard component of the law school curriculum.¹⁰³ Public law and statutory classes make up a greater share of coursework, in part thanks to Llewellyn’s efforts on the UCC. Interdisciplinary classes provide students with some of the cultural context Llewellyn thought was

99. See UNIVERSITY OF CHICAGO LIBRARY, GUIDE TO THE KARL N. LLEWELLYN PAPERS 1890–1983 (2014), available at <https://www.lib.uchicago.edu/c/scrc/find-ingaids/view.php?eadid=ICU.SPCL.LLEWELLYNK> (listing information about Llewellyn’s courses); Leslie E. Gerwin and Paul M. Shupack, *Karl Llewellyn’s Legal Method Course: Elements of Law and Its Teaching Materials*, 33 J. LEGAL. EDUC. 64, 67–74 (1993) (discussing continuing use of Llewellyn’s course materials). One of Llewellyn’s lectures from his legal elements course is available online. See Karl N. Llewellyn, *Elements of the Law—Introductory Lecture* (Oct. 18, 1957), available at <https://www.law.uchicago.edu/recordings/karl-llewellyn-elements-law-introductory-lecture>.

100. HULL, *supra* note 38 at 322 (quoting MARY ANN GLENDON, A NATION UNDER LAWYERS 18–19 (1996)). For more on Llewellyn’s teaching style see GEORGE W. LIEBMANN, COMMON LAW TRADITION: A COLLECTIVE PORTRAIT OF FIVE LEGAL SCHOLARS 149–51 (2005) (recounting experience as first-year student in Llewellyn’s class); see also Robert Whitman, *Soia Mentschikoff and Karl Llewellyn: Moving together to the University of Chicago Law School*, 24 CONN. L. REV. 1119, 1125 at n.24 (1992). His teaching methods also caused some issues for his students; see Dennis J. Hutchinson, *Elements of the Law*, 70 U. CHI. L. REV. 141, 153 (2003). Llewellyn’s drinking may also have hurt his teaching. See Whitman, *supra* at 1128 (noting that Llewellyn had been accused of coming to class drunk).

101. See Gerwin and Shupack, *supra* note 99 at 66 (discussing continued use and publication of materials from Llewellyn’s course).

102. Llewellyn, *On What is Wrong*, *supra* note 46 at 678. In another piece he was more optimistic, believing that ten years would be enough to make a significant difference. Llewellyn et al., *Place of Skills*, *supra* note 43 at 390.

103. *C.f.* Llewellyn, *On the Why*, *supra* note 66 at 24 (“It might indeed be that learning to read and write would be part of law training.”).

critical to legal practice. Formalism, on balance, is less prominent in classrooms.

On the other hand, many of Llewellyn's criticisms of legal education appear equally valid today as many of the other papers in this issue attest. Robert Illig illustrates that the decline in interest of third-year law students in coursework remains a problem.¹⁰⁴ Experiential education, especially for transactional law, is still a small part of the standard law school curriculum.¹⁰⁵ Skills-training struggles to gain purchase in a curriculum dominated by broad coverage of traditional legal subjects. Experiments in legal education, like those of Seth Oranburg and Victor Goldberg, are still relatively rare.¹⁰⁶ Interest in the culture of business practice apparent in Sukhsimranjit Singh and Deborah Burand's work is also uncommon.¹⁰⁷ Concern with pedagogy might still primarily be the realm of Llewellyn's "freaks."

By some measures, the situation has worsened. How many legal scholars of Llewellyn's prominence devote significant attention to legal pedagogy? How frequently are casebooks reviewed carefully in major law reviews as they were by Llewellyn and his colleagues? How many professors, like Llewellyn, draw a direct connection between their scholarship and teaching? How many are interested in the profession in addition to the law? Does the integration of legal writing into modern law school curricula signal a belief in its importance, or is its seclusion in legal writing classes a sign that most doctrinal professors continue to doubt its value? Is the current crisis of legal education any less of a crisis?

I ask these questions not out of cynicism but sympathy. Llewellyn's writing on legal education reminds us of the importance of thinking about legal education and working to reform it. His experience also reminds us of the difficulty of implementing even our best ideas. If we keep working for reform of legal education, maybe things will be a little better in another eighty-six years.

104. See Robert C. Illig, *Using Context to Teach Business Law: The Case for Sports Law and Other Practice-Area Subjects*, 56 WILLAMETTE L. REV. 329 (2020).

105. But see Deborah Burand, "Building the Case" for the Business Lawyer of Tomorrow: Putting Impact into Practice, 56 WILLAMETTE L. REV. 425 (2020); David Thomson and Steven Daniels, *Looking Back: What Law School Graduates Say About Experiential Learning*, 56 WILLAMETTE L. REV. 283 (2020); Frank Gevurtz, *The Complexity Dilemma: A Reflection on Teaching a Simulation Course in Business Planning*, 56 WILLAMETTE L. REV. 307 (2020).

106. See Seth C. Oranburg and David D. Tamasy, *Corporations Hybrid: A Case Study on Innovation in Business Law Pedagogy*, 56 WILLAMETTE L. REV. 363 (2020); Victor Goldberg, *Deals*, 56 WILLAMETTE L. REV. 345 (2020).

107. See Sukhsimranjit Singh, 56 WILLAMETTE L. REV. 397 (2020); Burand, *supra* note 105.

