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### Practice Ready: Are We There Yet?

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# PRACTICE READY: ARE WE THERE YET?

MARGARET MARTIN BARRY\*

**Abstract:** Clinical legal education is garnering more attention as a vehicle for providing the training required to graduate “practice ready” lawyers as law schools face economic concerns and increasing expectations from the legal market. To create a school that trains practice ready lawyers, law schools are increasingly recognizing that they need significant curricular reform. Schools must combine the traditional case method of teaching with experiential learning, where the curriculum focuses not just on doctrine but on training professionals. This Article proposes accepting a framework designed to achieve such goals, wherein first year classes relate doctrine to practice more effectively and the experience culminates with students spending their third year in practice. This approach would leave creativity and expression of mission to course development within the accepted framework.

## INTRODUCTION

If law schools aim to graduate lawyers who are “practice ready,” how effective is clinical education relative to other pedagogical methods, both experiential (including simulation, practicum, and externship offerings) and non-experiential (including classroom and seminar courses), in achieving that goal?<sup>1</sup>

The assertion that law schools aim to graduate practice ready lawyers lies at the heart of the debate about the role of legal education in preparing students for the profession. Critiques of legal education are

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<sup>1</sup> Symposium, *The Way to Carnegie: Practice, Practice, Practice—Pedagogy, Social Justice, and Cost in Experiential Legal Education*, 32 B.C. J.L. & Soc. JUST. 215 (2012). This is the question posed to participants on the first panel of the Symposium. *Id.*

abundant and the conclusions are fairly consistent.<sup>2</sup> Yet, despite these critiques, law schools still generally operate on the assumption that legal education is ideal and that deconstructing cases in doctrinal courses is its essence.<sup>3</sup>

It once seemed cutting-edge for law schools to proclaim that they produce practice ready lawyers; buses tooling down Massachusetts Avenue in the District of Columbia even boasted the phrase as an advertising slogan. The concept held great promise, as it meant that schools were actually fulfilling their goals for accreditation.<sup>4</sup> Over time, law school deans increasingly used practice readiness as a talking point. It surfaced in critiques by the profession and made its way into discussions regarding revisions of the ABA Standards for Accreditation of Law Schools.<sup>5</sup>

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<sup>2</sup> See Margaret Martin Barry et al., *Clinical Education for This Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 12–13, 32 (2000) (discussing the historical barriers and challenges to the development of clinical education); Rebecca Sandefur & Jeffrey Selbin, *The Clinic Effect*, 16 CLINICAL L. REV. 57, 58 (2009) (“Law schools teach students to think like lawyers but not to act like them . . . . [T]hey neither prepare students adequately for the practice of law (the skills dimension), nor instill in them sufficiently a sense of professional responsibility and public obligation (the civic dimension).”).

<sup>3</sup> See Carrie Menkel-Meadow, *Taking Law and \_\_\_\_\_ Really Seriously: Before, During, and After “The Law,”* 60 VAND. L. REV. 555, 578–79 (2007). The casebook method of teaching prevails. See *id.* at 579 (“If one looked at the schoolroom, the hospital, the police station, the prison, or the business office of the nineteenth century, and then compared it to today’s institutions, one would see more change in each of these than in the law school classroom.”). Additionally, most law school resources go into teaching doctrinal courses and supporting those who teach them. Richard K. Neumann, Jr. & Stefan H. Krieger, *Empirical Inquiry Twenty-Five Years After The Lawyering Process*, 10 CLINICAL L. REV. 349, 384 (2003) (noting that faculty allotments are often still set based on “a standard-size allotment initially determined generations ago when all faculty taught doctrinal courses and nearly all legal scholarship was doctrinal”).

<sup>4</sup> See STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, § 301(a) (2011–2012), available at [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2011\\_2012\\_standards\\_and\\_rules\\_for\\_web.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2011_2012_standards_and_rules_for_web.authcheckdam.pdf) (“A law school shall maintain an educational program that prepares its students for . . . effective and responsible participation in the legal profession.”).

<sup>5</sup> See John S. Elson, *The Regulation of Legal Education; The Potential for Implementing the MacCrate Report’s Recommendations for Curricular Reform*, 1 CLINICAL L. REV. 363, 366–67 (1994). In redrafting Chapter Three of the ABA Standards for Accreditation of Law Schools, the Accreditation Committee considered what practice ready meant, ultimately deciding that it indeed meant to create students ready to practice right out of law school. See *id.*; Laurie A. Lewis, *Winning the Game of Appellate Musical Shoes: When the Appeals Band Plays, Jump from the Client’s to the Judge’s Shoes to Write the Statement of Facts Ballad*, 46 WAKE FOREST L. REV. 983, 1007–08. The language decided upon is reflected in the November 2011 draft. See AM. BAR ASS’N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR STANDARDS REVIEW COMM., REDLINE—DRAFT AFTER NOVEMBER 2011 MEETING, § 301, Interpretation 301-1 (2012), available at [http://www.americanbar.org/content/dam/aba/migrated/2011\\_build/legal\\_education/committees/standards\\_review\\_documents/jan2012/20111222\\_standards\\_chapters\\_](http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/jan2012/20111222_standards_chapters_)

What does practice ready mean? It could mean that graduates, equipped with a basic array of substantive knowledge, are able to learn what they need to practice through apprenticeship in their first job. In the comforting embrace of an office prepared to introduce the necessary professional competencies, graduates would learn the essentials for participation in the profession. But law schools do promise more—that graduates who pass the bar exam are capable of representing clients, no further lessons required.<sup>6</sup> As it happens, however, law schools overlook or tacitly reject that promise.

For years, law schools remained satisfied that they adequately prepared students for the profession—they believed that introducing students to the skill of legal analysis and to certain areas of substantive law achieved their preparatory obligation.<sup>7</sup> The constellation of substantive law offerings has long remained the same at its core.<sup>8</sup> Additional subject areas generally reflect faculty preferences as well as pressures by students and the legal community to address legal developments of growing interest and demand.<sup>9</sup> The conveyance of doctrine through analysis of cases is the dominant approach to teaching and it has undeniable benefits: it efficiently introduces a significant amount of material, demands that students understand and analyze the material, and

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I\_to\_7\_post\_nov11.pdf [hereinafter ABA DRAFT STANDARDS] (“The Standards in this chapter are designed to ensure that the law school’s educational program is rigorous and prepares its students both to be admitted to the bar and then, once admitted, to participate effectively, ethically, and responsibly in the legal profession.”); *id.* § 301, Interpretation 301-2 (describing how a law school can demonstrate “how well it prepares [students] for effective, ethical and responsible participation in the legal profession”).

<sup>6</sup> Cf. Jayne W. Barnard & Mark Greenspan, *Incremental Bar Admission: Lessons from the Medical Profession*, 53 J. LEGAL EDUC. 340, 340–41 (2003) (describing how physicians are prepared, through clinical and theoretical work, to practice after a residency).

<sup>7</sup> See ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 16–17, 19 (2007) (arguing that law schools are not fully committed to preparing students for practice and must “expand their educational goals” because a focus on legal reasoning and some main legal principles is insufficient).

<sup>8</sup> Menkel-Meadow, *supra* note 3, at 579. There are some exceptions to bar-centric first year course selections. See, e.g., *First-Year Curriculum Changes: Part Two*, BOS. C.L. SCH. (Mar. 14, 2008), <http://www.bc.edu/schools/law/newsevents/2008-archive/31408-2.html> (describing a change in the first year curriculum that allows students to choose an elective class from a variety of offerings).

<sup>9</sup> STUCKEY ET AL., *supra* note 7, at 95–96. International law, environmental law, and intellectual property law are a few examples. Students want to learn about these areas because of the special interests that brought them to law school and their desire to gain and demonstrate knowledge in the areas where they hope to practice. See Deborah Jones Merritt & Jennifer Cihon, *New Course Offerings in the Upper-Level Curriculum: Report of an AALS Survey*, 47 J. LEGAL EDUC. 524, 533–34 (1997).

creates a contained, shared experience with the material.<sup>10</sup> It is a socializing process that builds a foundation for approaching doctrine and, significantly, for taking the bar examination.<sup>11</sup>

Despite almost a century of critique that this approach does not provide enough preparation for the profession, law schools have been reluctant to substantially modify it.<sup>12</sup> Yet, many in the law academy still hold onto the traditional approach, believing it will—or unconcerned that it will not—give students the grounding required to handle the pressing needs of their clients, whether an individual, corporation, government entity, or NGO. This debate, however, has remained merely theoretical for many schools that continue to avoid significant curriculum redesign and assessment.

Making students practice ready involves more than substantive analysis, especially considering the increasing diversity and complexity of the legal world that graduates enter—the international intersections, the varied practice forums, economic sustainability, and recognition of bias within the law and its application.<sup>13</sup> The term suggests a sufficient grounding in how the law is developed, interpreted, critiqued, accessed, and used to work toward expertise, whether independently or with the benefit of organizational support.<sup>14</sup> It is clear that carefully

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<sup>10</sup> See WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 47–48, 53, 56 (2007) [hereinafter CARNegie REPORT].

<sup>11</sup> See CARNegie REPORT, *supra* note 10, at 47–60. *But see* STUCKEY ET AL., *supra* note 7, at 15.

<sup>12</sup> See, e.g., STUCKEY ET AL., *supra* note 7, at 2 (tracing the historical critique of the legal education model at least as far back as 1917); Barry et al., *supra* note 2, at 5–9 (discussing the birth of the modern law school and early critique of its emphasis on the casebook method); Erwin Chemerinsky, *Why Not Clinical Education?*, 16 CLINICAL L. REV. 35, 37–38 (2009) (referencing the history of critique dating back to 1921). The critique of this intransigence has been consistent. See, e.g., STUCKEY ET AL., *supra* note 7, at 17; Menkel-Meadow, *supra* note 3, at 579.

<sup>13</sup> See CARNegie REPORT, *supra* note 10, at 88 (discussing the “much-needed bridge between the formal skills of legal analysis and the more fluid expertise needed in much professional work”); STUCKEY ET AL., *supra* note 7, at 17; Gail B. Agrawal, *Foreword*, 96 IOWA L. REV. 1449, 1450, 1452 (2011) (discussing the future possibility of a globalized legal market, “the extent to which legal services will be . . . outsourced,” a potentially new regulatory model to govern the practice of law, and training lawyers to recognize issues of social justice).

<sup>14</sup> See STUCKEY ET AL., *supra* note 7, at 17 (quoting Alan Watson, *Legal Education Reform: Modest Suggestions*, 51 J. LEGAL EDUC. 91, 93 (2001)) (“There is so much more to the law, even for the practice of law, than [training]: issues such as the social functions of law, the factors that influence legal development, patterns of change, [and] the interaction of law with other forms of social control . . .”).

analyzing a set of appellate cases and some statutes does not provide sufficient grounding.<sup>15</sup> So what else is needed?

Law schools' responses to that question reflect ambivalence. Many schools have looked to clinical and experiential offerings—which they are required to provide by the ABA—to address pesky critiques about professional relevance.<sup>16</sup> Yet, there has been little reflection on how these and other more traditional courses relate to each other and to the overall curriculum.<sup>17</sup> Furthermore, unconvinced of the value of clinical and experiential courses, many schools complain of their cost, fail to treat the faculty who teach them as full participants in the educational enterprise, and decline to make the courses available to all students.<sup>18</sup> Nonetheless, the clinical legal education movement in this country has had its impact. Clinical programs have given form to consideration of broader competencies, both in the classroom and through supervision. Furthermore, market forces and ongoing critique have pushed law schools to seriously consider substantive curricular change.<sup>19</sup> Law

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<sup>15</sup> See CARNEGIE REPORT, *supra* note 10, at 55–56 (criticizing the practice of teaching from casebooks comprised of appellate cases); Barry et al., *supra* note 2, at 32 (questioning the wisdom of “[t]he analysis of legal doctrine as presented in appellate decisions digested in casebooks”); Watson, *supra* note 14, at 93 (arguing for the abolition of the casebook method because casebooks present cases out of context and do not give students a framework for the law).

<sup>16</sup> See STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, § 302(b) (2011–2012) (“A law school shall offer substantial opportunities for (1) live-client or other real-life practice experiences . . . .”); Barry et al., *supra* note 2, at 12 (noting demands for relevance as a reason for the expansion of clinical legal education).

<sup>17</sup> Barry et al., *supra* note 2, at 35 (“Little attention is paid to synthesis, either of bodies of substantive law or lawyering techniques that might help the student understand how the law lives and the lawyer’s role in bringing it to life.”).

<sup>18</sup> *Id.* at 21–22, 25–26, 49; Letter from Richard K. Neumann, Jr., Professor, Hofstra Univ. Sch. of Law, & Roy Stuckey, Professor Emeritus, Univ. of S.C. Sch. of Law, to Standards Review Comm., Am. Bar Ass’n Section of Legal Educ. & Admissions to the Bar, 6–7 (July 14, 2010), available at [http://www.americanbar.org/content/dam/aba/migrated/2011\\_build/legal\\_education/committees/standards\\_review\\_documents/outcome\\_measurements/comment\\_outcome\\_measures\\_neumann\\_stuckey\\_july\\_2010.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/outcome_measurements/comment_outcome_measures_neumann_stuckey_july_2010.authcheckdam.pdf) [hereinafter Neumann & Stuckey Letter]. Those who teach clinical courses or legal writing are still viewed as second class in many institutions. See Peter A. Joy & Robert R. Kuehn, *The Evolution of ABA Standards for Clinical Faculty*, 75 TENN. L. REV. 183, 193–94 (2008); Michael L. Seigel & Kathi Miner-Rubino, *Some Preliminary Statistical, Qualitative, and Anecdotal Findings of an Empirical Study of Collegiality Among Law Professors*, 13 WIDENER L. REV. 1, 8–9 (2006). Attention to these faculty members is often lacking in terms of hiring, academic support, salaries, and participation in the life of the school. See Justine A. Dunlap & Peter A. Joy, *Reflection-in-Action: Designing New Clinical Teacher Training by Using Lessons Learned from New Clinicians*, 11 CLINICAL L. REV. 49, 105 (2004); Joy & Kuehn, *supra*, at 194.

<sup>19</sup> See Barry et al., *supra* note 2, at 30 (“The market forces driving competition among law schools will eventually prompt most law schools . . . to expand the skills and values curriculum . . . .”).

schools are beginning to process a new reality that calls for relevance and effective professional preparation.

Because schools have limited time and resources, consideration of change inevitably leads them to question what they must sacrifice to achieve the goal of producing practice ready lawyers.<sup>20</sup> If other legal skills are emphasized, how will burgeoning areas of substantive law get covered?

Educators who raise such concerns understand that students cannot know a reliable body of law when they graduate; the law often changes before students leave school. Indeed, the law is dynamic because of the profession, people, and circumstances that interface with and propel it. Thus, the practice ready student should have received an introduction to broad doctrinal precepts and the basic tools needed for access, responsible use, development, and comprehension of the law.<sup>21</sup> Many in-house clinics strive to cover in one semester, often for less than half of a student's credit load, a laundry list of goals intended to equip students for their roles as professionals.<sup>22</sup> Clinics aim to relate substantive law to professional competencies like client interviewing and counseling, communication, fact investigation, drafting, negotiating, trial and pre-trial practice, ethics, professionalism, cultural awareness, problem solving, law office management, notions of alternative dispute resolution, and social justice (ranging from access to the courts to discrimi-

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<sup>20</sup> See *id.*; Peter A. Joy, *The Cost of Clinical Legal Education*, 32 B.C. J.L. & SOC. JUST. 309, 327. (2012). Students are already being crushed by the cost of a legal education. See N. William Hines, *Ten Major Changes in Legal Education Over the Past 25 Years*, AALS NEWS (Ass'n of Am. Law Sch.), August 2005, at 4–5, available at [http://www.aals.org/documents/aals\\_news\\_letter\\_aug05.pdf](http://www.aals.org/documents/aals_news_letter_aug05.pdf) (describing extraordinary increases of law school tuitions). With federal financial aid shrinking, the pressure on students is unlikely to subside. See Budget Control Act of 2011, Pub. L. No. 112-25, §§ 502–503, 125 Stat. 240, 266 (eliminating interest-subsidized loans to graduate and professional students and direct loan repayment incentives). Schools that rely on tuition, private, and government funding are feeling the effects of student pressure and economic downturns. See, e.g., Carl A. Yirka, *The Yirka Question and Yirka's Answer: What Should Law Libraries Stop Doing in Order to Address Higher Priority Initiatives?*, AALL SPEC-TRUM (Am. Ass'n of Law Libraries), July 2008, at 29 (discussing how Vermont Law School's library aligned their priorities with the mission of the school in cutting costs); Carolyn McMillan, *State Budget Shortfall Forces Second Fee Increase for Fall 2011*, UC NEWSROOM (July 14, 2011), <http://www.universityofcalifornia.edu/news/article/25942> (discussing California state tuition increases of 9.6% due to government budget shortfall); see also Hines, *supra*, at 5–6 (describing tuition as “the primary source of revenue for most law schools” and discussing Stafford loans).

<sup>21</sup> See CARNEGIE REPORT, *supra* note 10, at 88; STUCKEY ET AL., *supra* note 7, at 17.

<sup>22</sup> See Barry et al., *supra* note 2, at 49–50; Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow*, 8 CLINICAL L. REV. 109, 151–52 (2001); Stephen Wizner, *Is Social Justice Still Relevant?*, 32 B.C. J.L. & SOC. JUST. 345, 351–52 (2012).

natory laws and practices).<sup>23</sup> By emphasizing reflection on the process of developing these competencies, clinics introduce students to the skill of life-long learning that professionals need.<sup>24</sup> The goals are ambitious, but clinical faculty set them because they recognize that students have not had much chance to engage with these competencies in their other courses.

Externships immerse students in the life of legal enterprises outside of the school, including judicial chambers, government offices, non-profit organizations, corporate offices, and private firms.<sup>25</sup> The goal is for students to have substantive experiences working alongside practicing lawyers or judges, to understand how law is practiced in these settings, and to benefit from the opportunities to reflect on the experience with a faculty member.<sup>26</sup> Hybrid clinics can combine certain in-house clinic goals with practice in external offices.<sup>27</sup>

These experiences connect aspiring professionals to their chosen profession in ways that exploring doctrine cannot achieve.<sup>28</sup> Professors Rebecca Sandefur and Jeffrey Selbin, in their assessment of the study *After the JD*, argue that there is much to learn about how effective clinics and externships are at preparing students for the profession.<sup>29</sup> There is also much to learn about the value of doctrinal courses.<sup>30</sup> What we do

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<sup>23</sup> See CARNEGIE REPORT, *supra* note 10, at 88; *see, e.g.*, Barry et al., *supra* note 2, at 46–48 (describing the lawyering skills developed in clinics at William & Mary School of Law and The City University of New York School of Law).

<sup>24</sup> See CARNEGIE REPORT, *supra* note 10, at 85–86; STUCKEY ET AL., *supra* note 7, at 172.

<sup>25</sup> See Robert A. Parker & Sue Schechter, *The Ugly Duckling Comes of Age: The Promise of Full-Time Field Placements*, SOC. SCI. RES. NETWORK, 5, 17 (July 15, 2011), <http://ssrn.com/abstract=1886509> (discussing advantages of externships and placement opportunities).

<sup>26</sup> *Id.* at 6.

<sup>27</sup> Barry et al., *supra* note 2, at 28–29.

<sup>28</sup> See Parker & Schechter, *supra* note 25, at 5. Several substantive courses, such as Civil Procedure, Criminal Law, Criminal Procedure, and Evidence, provide some foundation, but the students in clinics and externships are removed from the doctrinal course experience. See CARNEGIE REPORT, *supra* note 10, at 88. In most schools, practice experiences are available to those students who seek them out. STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, § 302(b)(1) (2011–2012); Joel W. Barrows, *On Becoming a Lawyer*, 96 IOWA L. REV. 1511, 1511 (2011). Only a few schools require them and fewer connect them to the overall educational development of students. See Barry et al., *supra* note 2, at 44–46 (discussing the approaches to clinical legal education of a variety of law schools).

<sup>29</sup> See RONIT DINOVTZER ET AL., AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS 85–86 (2004), *available at* <http://www.americanbarfoundation.org/uploads/cms/documents/ajd.pdf> [hereinafter AFTER THE JD]; Sandefur & Selbin, *supra* note 2, at 79–83, 100–03 (discussing the results of the *After the JD* study, concluding that the study had too many unaddressed variables to provide sound information about the effects of clinical legal education, and urging further research).

<sup>30</sup> See Chemerinsky, *supra* note 12, at 38.



know from the many qualitative assessments of legal education to date is that we need to teach doctrine differently, doctrine is not all that we need to teach, and the other part of what we need to teach is found in clinical legal education.<sup>31</sup>

Part I of this Article discusses some of the new pressures that repeatedly call for change in legal education. Part II discusses some of the changes enacted by law schools, possibly in direct response to these pressures. This Article then proposes in Part III an outline for how schools may move past some of the initial roadblocks toward significant redesign.

## I. THE PRESSURE ON LAW SCHOOLS TO CHANGE THEIR APPROACH TO TEACHING LAW

*This is a critical moment in the history of legal education and the profession. Law faculties must come together, talk seriously about how lawyers should be trained for the world ahead, and take action. The choice cannot be between skills training and a broader education; it must be both . . . Unless law faculties can say what a sound legal education requires for today and tomorrow, who will—or should—take us seriously?*<sup>32</sup>

Interestingly, in the face of sustained, harsh critique of legal education, academics that so thoughtfully assess the law have been reactive at best in considering how to modify teaching it.<sup>33</sup> In his introduction to *Best Practices for Legal Education*, Professor Roy Stuckey offers three assumptions that underlie the principles identified in the book: most new lawyers are not sufficiently prepared for practice; “[s]ignificant improvements to legal education are achievable;” and there will be no significant change to the law school educational process.<sup>34</sup>

Since Professor Stuckey made those observations in 2007, market pressures have spurred some law schools to consider reform more seriously.<sup>35</sup> Deregulation, bank failures, falling markets, distrust of investment, frustration with government, job loss, and failure to address cli-

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<sup>31</sup> See CARNEGIE REPORT, *supra* note 10, at 120; STUCKEY ET AL., *supra* note 7, at 276–81; Chemerinsky, *supra* note 12, at 38.

<sup>32</sup> Alfred S. Konefsky & Barry Sullivan, *There’s More to the Law Than ‘Practice Ready,’* CHRON. HIGHER EDUC. (Oct. 23, 2011), <http://chronicle.com/article/Theres-More-to-the-Law-Than/129493>.

<sup>33</sup> See Jamie R. Abrams, *A Synergistic Pedagogical Approach to First-Year Teaching*, 48 DUQ. L. REV. 423, 429–30 (2010).

<sup>34</sup> STUCKEY ET AL., *supra* note 7, at 1.

<sup>35</sup> See Daniel Thies, *Rethinking Legal Education in Hard Times: The Recession, Practical Legal Education, and the New Job Market*, 59 J. LEGAL EDUC. 598, 611 (2010).

mate change may not seem unusual, but their cumulative effect has been deeply unsettling.<sup>36</sup> As a result, the market for the legal professional's services has become more conservative as cost for legal services is balanced against other economic pressures.<sup>37</sup> Law firms, previously relied upon by at least the top tier of law graduates for training, are pulling back.<sup>38</sup> Concerned about a decreasing bottom line, these firms are saying with more conviction that schools need to do a better job of preparing students for the profession.<sup>39</sup> Concerned about survival, law schools are beginning to listen.<sup>40</sup> Ideally, deeper concerns about pro-

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<sup>36</sup> See RAJ PATEL, *THE VALUE OF NOTHING: HOW TO RESHAPE MARKET SOCIETY AND REDEFINE DEMOCRACY* 20–24 (2009); Jonathan H. Adler, *Heat Expands All Things: The Proliferation of Greenhouse Gas Regulation Under the Obama Administration*, 34 HARV. J.L. & PUB. POL'Y 421, 421–22 (2011). Despite the growth in size and diversity of our population and the concomitant reminder that we need to attend to the commons, we celebrate individualism. See, e.g., WENDELL BERRY, *THE UNSETTLING OF AMERICA: CULTURE AND AGRICULTURE* 3–7 (1977) (discussing consequences of the exploitation of Earth's resources); Garrett Hardin, *The Tragedy of the Commons*, 162 SCIENCE 1243, 1243–44 (1968) (explaining the depletion of overexploited, unregulated shared resources). Our country is an interesting political mix of libertarian values, moral imperialism, threads of social responsibility, environmental concern, and denial. We are at a collective loss as to our roles in society. When President Bush advised that Americans should support the national effort in the wake of 9/11 and the ensuing Iraq War by consuming goods, it captured the helplessness that so many felt and created an unnerving sense of superfluity. See Coleen Rowley, *Celebrating Spiritual Death on Black Friday*, HUFFINGTON POST (Nov. 25, 2011), [http://www.huffingtonpost.com/coleen-rowley/black-friday-2011\\_b\\_1113102.html](http://www.huffingtonpost.com/coleen-rowley/black-friday-2011_b_1113102.html); see also NAOMI KLEIN, *THE SHOCK DOCTRINE: THE RISE OF DISASTER CAPITALISM* 8–11 (2007) (discussing how public disorientation is the perfect climate for the wrong kind of control to take hold); PATEL, *supra*, at 20–24 (arguing that faith in prices as a way of valuing the world ignores social and ecological costs, and that the corporate capture of government and financial crisis are the result of a failed political system).

<sup>37</sup> See David Barnhizer, *Redesigning the American Law School*, 2010 MICH. ST. L. REV. 249, 250; Hannah Hayes, *Recession Places Law School Reform in the Eye of the Storm*, PERSPECTIVES, Spring 2010, at 8, 8.

<sup>38</sup> See Hayes, *supra* note 37, at 8.

<sup>39</sup> See Karen Sloan, *Reality's Knocking: The Ivory Tower Gives Way to the Real World's Demands*, NAT'L L.J. & LEGAL TIMES, Sept. 7, 2009, at 1, 15 (discussing law school responses to economic pressures).

<sup>40</sup> See Sloan, *supra* note 39, at 15. Professor David Barnhizer calls for, among other things, eliminating tenure, pursuing distance learning, and avoiding intense competition by creating market niches. See Barnhizer, *supra* note 37, at 305–07. He raises useful points to consider as schools move toward necessary change, even if the points only serve to provoke analysis of purportedly inviolable educational premises. For example, Professor Barnhizer suggests eliminating publication requirements. *Id.* at 307. Some suggest that weighing teaching more heavily would serve students—and probably the legal community—better than scholarly publications. See Jenni Parish, *Report on Future Ed: New Business Models for U.S. and Global Legal Education Conference at New York Law School*, [http://www.uchastings.edu/strategic-planning/docs/future\\_ED\\_Report.pdf](http://www.uchastings.edu/strategic-planning/docs/future_ED_Report.pdf) (last visited Mar. 13, 2012); see, e.g., Richard K. Neumann, Jr., Professor, Hofstra Law School, Address at Future Ed: New Business Models for U.S. and Global Legal Education (April 16, 2011), available at <http://nyls.mediasite.com/mediasite/>

viding quality education would precipitate reform; the market seems too mercurial to guide academic design. It is folly, however, to ignore the fundamental economic shifts taking place. While these shifts bring much uncertainty, they also reinforce for those involved in legal education how unreasonable it is to ignore calls for significant change.

## II. LAW SCHOOL INNOVATIONS

Whether in response to critiques of legal education, internal assessment, or both, a number of schools have begun to revise their curricula.<sup>41</sup> Some have tweaked the first year programs; others have made significant changes elsewhere.<sup>42</sup>

### A. First Year Programs

In 2006, Boston College Law School changed its Torts, Contracts, and Property offerings from five credit courses running from the beginning of fall semester through February to traditional four credit courses ending in December.<sup>43</sup> The school also added Criminal Law to the second semester with the goal of adding more public law perspective to the first year.<sup>44</sup> In 2008, the school further modified its first year curriculum to allow students to choose for their spring semester a three credit elective from a menu of classes that are also available to upper level students.<sup>45</sup> The rearranging of doctrinal options and the oppor-

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SilverlightPlayer/Default.aspx?peid=60c70bbcc15f47358e604f5f09d20ae31d (last visited Mar. 13, 2012). Professor Richard Neumann notes that, throughout legal education, 30% to 50% of a faculty member's job is to write and publish scholarship. This can cost between approximately \$25,487 and \$88,259, depending on the school and faculty rank. These costs are primarily borne by students. Neumann & Stuckey Letter, *supra* note 18, at 8; Neumann, *supra*. Neumann goes on to note that people who make law—namely legislators, courts, and the bar—have increasingly ignored law faculty scholarship. Neumann, *supra*. He referred to a study of 385,000 Articles, Notes, and Comments in Shepard's database, finding that 43% of the articles had not been cited and 79% were cited in 10 or fewer publications. Thomas A. Smith, *The Web of Law*, 44 SAN DIEGO L. REV. 309, 336 (2007); Neumann & Stuckey Letter, *supra* note 18, at 8. Despite the cost and limited impact outside of academia, scholarship does serve an important role in fostering the critical analysis that law faculty bring to the law and their teaching of it. This is a value that has outweighed other important aspects of legal education and that needs to be reevaluated accordingly. See Parish, *supra*.

<sup>41</sup> See Sloan, *supra* note 39, at 15–16.

<sup>42</sup> See *id.* at 16–17.

<sup>43</sup> Paul Marzagalli, *Spotlight: Curriculum Reform*, Bos. C.L. SCH., <http://www.bc.edu/schools/law/alumni/ebrief/features/winter0708/feature1.html> (last visited Mar. 13, 2012).

<sup>44</sup> *Id.*

<sup>45</sup> *First Year Curriculum Changes: Part Two*, Bos. C.L. SCH. (Mar. 14, 2008), <http://www.bc.edu/schools/law/newsevents/2008-archive/31408-2.html>.

tunity to take a practice course provides some autonomy for first year students.<sup>46</sup> It, however, essentially affirms the traditional first year content and approach.

Cardozo Law School has a two week immersion course held each January wherein students learn courtroom litigation from leading civil and criminal law judges and lawyers.<sup>47</sup> Students practice different aspects of trial preparation, including interviewing, witness preparation, jury selection, and witness examination.<sup>48</sup> At the end of the course, students conduct a full jury trial.<sup>49</sup> This course is valuable because it allows first year students to focus on the application of what they are learning. On the other hand, it underscores the casebook message that litigation is the lawyer's central work and, given the course's singularity and brief duration, it may have limited impact on the overall first year experience.

Harvard Law School requires first year students to elect from a group of international and comparative law courses.<sup>50</sup> The school believes that the courses enable students to relate their U.S. public and private law education to the larger universe of global networks, including economic regulation and private ordering, public systems created through multilateral relations among states, and different and widely varying legal cultures and systems.<sup>51</sup> The courses introduce students to one or more legal systems outside of the United States, to the practice of borrowing and transmitting legal ideas across borders, and to a variety of approaches to substantive and procedural law that are rooted in distinct cultures and traditions.<sup>52</sup>

Further innovations in Harvard's first year curriculum include a legislative and regulatory course and a problem solving workshop.<sup>53</sup> The Legislation and Regulation course introduces students to legislation, regulation, and administration, and teaches students to think

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<sup>46</sup> See MICHAEL HUNTER SCHWARTZ ET AL., TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM 91 (2009).

<sup>47</sup> *ITAP Kicks Off the New Year at Cardozo Law*, CARDOZO L. SCH. (Jan. 4, 2011), <http://cardozo.yu.edu/MemberContentDisplay.aspx?ccmd=ContentDisplay&ucmd=UserDisplay&userid=10394&contentid=18896&folderid=358.html>.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *International and Comparative Law*, HARVARD L. SCH., <http://www.law.harvard.edu/academics/degrees/jd/pos/internationalcomparativelaw/index.html> (last visited Mar. 13, 2012).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *J.D. Program*, HARVARD L. SCH., <http://www.law.harvard.edu/academics/degrees/jd/index.html> (last visited Mar. 13, 2012).

about processes and structures of government and how they influence and affect legal outcomes.<sup>54</sup> “The course includes materials on most or all of the following topics: the separation of powers; the legislative process; statutory interpretation; delegation and administrative agency practice; and regulatory tools and strategies.”<sup>55</sup> The course is considered to be a useful prerequisite to further study and work in legislation, administrative law, constitutional law, and a wide range of regulatory subjects, such as environmental law, securities law, and telecommunications law—a view shared by other schools that have adopted the approach.<sup>56</sup> Harvard’s Problem Solving Workshop is designed to help prepare students for practice by allowing them to “engage in the sorts of discussions and activities that occupy” practicing attorneys.<sup>57</sup> Students “combin[e] their knowledge of law with practical judgment to help clients attain their goals . . . .”<sup>58</sup> The course is intended “to help students become the kind of thoughtful practicing lawyers who can see the theoretical issues lurking behind everyday events.”<sup>59</sup>

Harvard’s additions address important gaps in the traditional first year curriculum. The Problem Solving Workshop provides an opportunity to apply the doctrine covered in substantive courses to the work lawyers do, ideally infusing the approach within doctrinal courses. The international courses include substantive and procedural law that must be part of the introductory year so that students learn in the context of the broader traditions that inform our legal universe.<sup>60</sup> Of particular interest are small reading group sections that offer students the opportunity to meet with faculty in informal settings to discuss diverse subjects related to the law.<sup>61</sup> This approach opens an avenue for pursuing critical legal theory, which is often not given enough consideration in the classroom. If the program is indeed meeting the goals ascribed to it, then this first year platform is a departure worth tracking.<sup>62</sup> The bal-

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<sup>54</sup> *Legislation and Regulation*, HARVARD L. SCH., <http://www.law.harvard.edu/prospective/jd/why/legislation-regulation.html> (last visited Mar. 13, 2012).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*; see, e.g., *First Year Course Descriptions*, WASH. & LEE U. SCH. L., <http://law.wlu.edu/academics/page.asp?pageid=1100> (last visited Mar. 13, 2012).

<sup>57</sup> *Problem Solving Workshop*, HARVARD L. SCH., <http://www.law.harvard.edu/prospective/jd/why/problem-solving-workshop.html> (last visited Mar. 13, 2012).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> See Elia Powers, *Harvard Law Alters First-Year Program*, INSIDE HIGHER ED (Oct. 9, 2006, 4:00 AM), <http://www.insidehighered.com/news/2006/10/09/harvard>.

<sup>61</sup> *J.D. Program*, *supra* note 53.

<sup>62</sup> See Powers, *supra* note 60.

ance, however, is unclear between these new courses and traditional requirements.

Washington & Lee University School of Law reorganized some of its traditional first year courses and added ones not generally part of the first year curriculum.<sup>63</sup> American Public Law Process reframes constitutional law as an introduction to constitutional and administrative government.<sup>64</sup> The course covers several substantive areas: the “development of principles of separated legislative, executive and judicial functions; the combination of those functions in the modern administrative agency; and the predominantly procedural responses of the legal system to the continuing questions of legitimacy raised by this allocation of authority.”<sup>65</sup> Professional Responsibility examines the “sources and implications of the moral behavior of lawyers” in its consideration of the Model Rules of Professional Responsibility.<sup>66</sup> It also explores “earlier American compilations on professional ethics, proposals for reform[,] . . . sources on the law of legal malpractice and legal-malpractice prevention[,] and non-legal sources on ethics, including biography, fiction, history, philosophy, and moral theology.”<sup>67</sup> Significantly, this course focuses students early in their careers on the moral underpinnings of the profession.<sup>68</sup> The school’s Transnational Law “course introduces students to core principles of public and private international law, comparative law, foreign law, cross-border legal process and deal-making, transboundary dispute resolution, and elements of U.S. law that have international effect.”<sup>69</sup> Similar to elements seen in Harvard’s revised first year, this course underscores the relationship

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<sup>63</sup> *First Year Course Descriptions*, *supra* note 56.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *First Year Course Descriptions*, *supra* note 56; *see, e.g.*, CARNEGIE REPORT, *supra* note 10, at 126–28 (discussing the centrality of ethics and moral conduct); Letter from Melvin F. Wright Jr., Chair, Am. Bar Ass’n Standing Comm. on Professionalism, to Donald J. Polden, Chair, Am. Bar Ass’n Accreditation Standards Review Comm. (June 10, 2010), *available at* [http://www.americanbar.org/content/dam/aba/migrated/2011\\_build/legal\\_education/committees/standards\\_review\\_documents/comment\\_outcome\\_measures\\_sc\\_on\\_professionalism\\_june\\_2010.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/comment_outcome_measures_sc_on_professionalism_june_2010.authcheckdam.pdf) [hereinafter Wright Letter]. Mr. Wright stated, in part, “On a hierarchy of learning outcomes, recognizing and resolving ethical dilemmas is an elevated and important attribute of lawyers, equal to application of any legal principle.” Wright Letter, *supra*.

<sup>69</sup> *First Year Course Descriptions*, *supra* note 56. Washington & Lee University School of Law describes a goal of this course as “equip[ping] students for the reality that U.S. practitioners increasingly require conversance with international, foreign, and extraterritorial law in all aspects of their legal work.” *Id.*

between U.S., foreign, and international laws and the people they govern.<sup>70</sup> Like Boston College, Washington & Lee requires Criminal Law, often offered as an upper level option, in the first year.<sup>71</sup>

The relatively new University of California Irvine School of Law, under the leadership of Dean Erwin Chemerinsky, has been one of the most creative schools in first year curriculum design.<sup>72</sup> While it has stayed within the traditional landscape of doctrinal coverage, it links its approach most consciously to preparation for professional practice.<sup>73</sup> The fall semester courses are Legal Profession I, Lawyering Skills I, Common Law Analysis: Contracts, Procedural Analysis, and Statutory Analysis.<sup>74</sup> The spring semester courses are Legal Profession II, Lawyering Skills II, Common Law Analysis: Torts, Constitutional Analysis, and International Legal Analysis.<sup>75</sup>

Irvine's Legal Profession courses draw "from various disciplines, including economics, history, sociology, and psychology . . . [to] teach students about the variety of practice settings in which lawyers work . . . ."<sup>76</sup> The curriculum also considers the ethical dilemmas commonly confronted in each of these settings.<sup>77</sup> The school "convene[s] panels of lawyers from each type of practice to talk about their work and careers, the pressures they face, how they resolve such dilemmas, and where they find satisfaction."<sup>78</sup> Students participate in "exercises based on typical problems confronted in practice."<sup>79</sup> Students "also address larger issues facing the profession as a whole—including the legal services market and its regulation, the distribution of legal services, the profession's demographics, social structure, and working conditions, and the implications of globalization for the profession."<sup>80</sup>

Similar to developments in a number of schools, Irvine's Lawyering Skills sections "focus on teaching skills that all lawyers use, such as fact investigation, interviewing, legal writing and analysis, extensive le-

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<sup>70</sup> See *id.*; see also *International and Comparative Law*, *supra* note 50.

<sup>71</sup> *First Year Course Descriptions*, *supra* note 56; Marzagalli, *supra* note 43.

<sup>72</sup> See Chemerinsky, *supra* note 12, at 35–37; Leigh Steinberg, *Professor Steinberg Ready to Take You to School*, DAILY PILOT (Jan. 7, 2012), [http://articles.dailypilot.com/2012-01-07/sports/tn-dpt-0108-spsteinberg-20120107\\_1\\_law-school-sports-practice-students](http://articles.dailypilot.com/2012-01-07/sports/tn-dpt-0108-spsteinberg-20120107_1_law-school-sports-practice-students).

<sup>73</sup> See *First-Year Curriculum*, U. CAL. IRVINE, <http://www.law.uci.edu/registrar/curriculum.html> (last visited Mar. 13, 2012).

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *First Year Curriculum*, *supra* note 73.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

gal research, negotiation and oral advocacy.”<sup>81</sup> Constitutional Law, Torts, Contracts, and Civil Procedure are not described much differently than traditional instruction, and it is not clear which additional skills they offer out of the broader professional skill set favored by Dean Chemerinsky.<sup>82</sup> Irvine’s International Legal Analysis course, like its counterparts at Harvard and Washington & Lee, recognizes the need to understand the United States’ relationship with international laws.<sup>83</sup>

This is by no means an exhaustive list of first year curricular modifications. A number of other schools have made revisions or are considering them.<sup>84</sup> It is encouraging that law schools are giving serious thought to the content of the first year curriculum.

In addition to changing the content of first year courses, some schools are also changing their approach to teaching doctrinal courses. For example, Vermont Law School introduced alternative dispute resolution into several first year courses.<sup>85</sup> The introduction of writing projects, simulations, and multiple assessments is also affecting the way students experience law school.<sup>86</sup> Law schools should continue devel-

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<sup>81</sup> *Id.*

<sup>82</sup> *See id.*

<sup>83</sup> *See First Year Course Descriptions*, *supra* note 56; *First Year Curriculum*, *supra* note 73; Powers, *supra* note 60.

<sup>84</sup> *See, e.g., Chart of Legal Education Reform*, INST. L. TEACHING & LEARNING, <http://lawteaching.org/publications/ILTLchartoflegaleducationreform200905.pdf> (last visited Mar. 13, 2012) (listing proposed reforms to curricula at various law schools); *First-Year Courses*, EMORY SCH. L., <http://www.law.emory.edu/academics/academic-catalog/course-descriptions/first-year-courses.html> (last visited Mar. 13, 2012) (adding a course in legislation and regulation); *First Year Curriculum Changes: Part Two*, *supra* note 45 (describing the addition of an elective to the first year curriculum at Boston College Law School); *Introduction to the JD Program*, GEORGETOWN U.L. CENTER, <http://www.law.georgetown.edu/curriculum/jdprog.cfm> (last visited Mar. 13, 2012) (offering an optional alternative first year curriculum that emphasizes international law and regulation, combines subjects, and includes multi-disciplinary reading while also requiring all students to take Law in a Global Context, a one week course on a transnational, experiential learning problem); *Required Courses*, DRAKE U.L. SCH., <http://www.law.drake.edu/academics/?pageid=requiredcourses> (last visited Mar. 13, 2012) (including first year trial practicum).

<sup>85</sup> *See NLR Survey Follow-Up Interviews*, VT. L. SCH., [http://www.vermontlaw.edu/Academics/Dispute\\_Resolution\\_Program/The\\_NLDR\\_Survey/NLDR\\_Survey\\_Follow-Up\\_Interviews.htm](http://www.vermontlaw.edu/Academics/Dispute_Resolution_Program/The_NLDR_Survey/NLDR_Survey_Follow-Up_Interviews.htm) (last visited Mar. 13, 2012).

<sup>86</sup> *See* Tonya Kowalski, *Toward a Pedagogy for Teaching Legal Writing in Law School Clinics*, 17 CLINICAL L. REV. 285, 325–29, 335–36 (2010); *see also* Raleigh Hannah Levine, *Of Learning Civil Procedure, Practicing Civil Practice, and Studying A Civil Action: A Low-Cost Proposal to Introduce First-Year Law Students to the Neglected MacCrate Skills*, 31 SETON HALL L. REV. 479, 480 (2000) (proposing integrating oral and written exercises into first year Civil Procedure classes). At Columbus School of Law, Catholic University, I participated in a working group that looked into methods of compliance with regional accreditation requirements and the anticipated changes to Chapter Three of the ABA Standards. In preparing for an initial meeting of the group, I discussed the issues with my research fellow. He shared his experi-



oping multiple teaching methods to ensure the success of law school curriculum reform.<sup>87</sup>

### B. *Upper Level Courses—Clinics and Externships*

Substantive law offerings in the second and third years of law school have grown to reflect the complexity and breadth of modern legal practice.<sup>88</sup> For the most part, these courses repeat the emphasis on analysis of case and statutory law, missing the opportunity to engage other skills and explore professional values.<sup>89</sup> Stanford Law School's new three-dimensional approach to its curriculum breaks this mold, as Dean Larry Kramer observed:

“The first year generally works . . . . The problem is that legal education has traditionally involved teaching one skill (thinking like a lawyer), and doing so for three years . . . . The second and third year curriculum is thus best described as ‘more of the same.’

“Yet more of the same is not enough. What we're doing is creating an upper level experience that is very different from the one students have traditionally had . . . . The core legal education remains as strong as ever, and our law faculty continues to do what it does best. But students can have a much richer, more varied educational experience in which they also get opportunities to study across disciplines, to work in teams with students from law and other disciplines, to have a serious and intense clinical experience.

“At Stanford, we think lawyers have a valuable role to play—not just in modernizing the way that law is practiced, but in helping to solve the world's problems. And we think we are

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ence in several doctrinal courses at the law school that involved multiple assessments, simulations, and collaborative work. Following his lead, I proposed a survey of the faculty, which ultimately confirmed that most professors used more than one assessment and several used more than two assessments—graded and ungraded—to teach their courses.

<sup>87</sup> See STUCKEY ET AL., *supra* note 7, at 283.

<sup>88</sup> *Juris Doctor Course Selection*, GEORGETOWN U.L. CENTER, [http://www.law.georgetown.edu/curriculum/tab\\_clusters.cfm](http://www.law.georgetown.edu/curriculum/tab_clusters.cfm) (last visited Mar. 15, 2012).

<sup>89</sup> See *Juris Doctor Course Selection*, *supra* note 88 (describing the large selection of courses offered at Georgetown University Law Center but not encouraging new skills development); *Required Courses*, *supra* note 84 (demonstrating topical breadth in courses offered, though students are only required to take one “Skills Requirement” course prior to graduation).

uniquely positioned among law schools to produce lawyers who do that[] . . . .”<sup>90</sup>

To accomplish this, Stanford began a series of reforms, the first of which was adopting the rest of the University’s semester schedule, thus making it easier for students to take courses outside of the law school.<sup>91</sup> By doing this, the school made joint degrees more accessible to students and allowed for completion of joint degree programs in three years.<sup>92</sup> The school also offers concentrations for students wishing to pursue interdisciplinary subjects.<sup>93</sup> It modified its international law program, added more simulation courses, and focused on curriculum advising.<sup>94</sup> The school also added more clinical opportunities.<sup>95</sup>

When a leading law school like Stanford commits to revamping its approach to legal education, it inevitably causes greater introspection throughout the academy.<sup>96</sup> Stanford’s critique of the second and third years has made it more difficult for other schools to be complacent. Significantly, Stanford affirmed what schools like CUNY School of Law, Dave Clark School of Law, and the University of New Mexico School of Law have known all along: clinical experiences are a necessary part of legal education.<sup>97</sup>

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<sup>90</sup> A “3D” JD: *Stanford Law School Announces New Model for Legal Education*, STANFORD L. SCH. (Nov. 28, 2006), <http://www.law.stanford.edu/news/pr/47> [hereinafter A “3D” JD] (quoting Stanford Law School Dean Larry Kramer).

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *See id.*

<sup>95</sup> *See A “3D” JD*, *supra* note 90; *see also* Judith Romero, *Stanford Law School Advances New Model for Legal Education*, STANFORD L. SCH. (Feb. 13, 2012), <http://blogs.law.stanford.edu/newsfeed/2012/02/13/stanford-law-school-advances-new-model-for-legal-education> (announcing completion of the first phase of reforms beginning in November 2006 that the school describes as “successfully transforming its traditional law degree into a multi-dimensional JD, which combines the study of other disciplines with team-oriented, problem-solving techniques together with expanded clinical training that enables students to represent clients and litigate cases while in law school”).

<sup>96</sup> *See Chart of Legal Education Reform*, *supra* note 84; *See, e.g., The Third Year in Detail*, WASH. & LEE U. SCH. L., <http://law.wlu.edu/thirdyear/page.asp?pageid=651> (last visited Mar. 13, 2012).

<sup>97</sup> *See* Barry et al., *supra* note 2, at 43–49 (discussing the approaches to clinical legal education of a variety of law schools). Washington & Lee University School of Law has established a new curriculum for its third year students. *See The Third Year in Detail*, *supra* note 96. This model favors the development of practical skills over traditional courses in the third year model by focusing on experiential learning through simulated practice experiences, clinics, and externships. *See id.* (detailing a third-year program that abandons the traditional course menu for a practical-skills-based curriculum, focusing on professionalism, experiential opportunities, extra-curricular service, and short “intensive” courses

The most significant change in upper level courses has been the expansion of clinical and externship offerings, along with a proliferation of simulation courses intended to address the many skills ignored or neglected in doctrinal courses.<sup>98</sup> The ABA accreditation standards required much of this change.<sup>99</sup>

Setting simulations aside, how effectively are clinics and externships covering the vast range of practice preparation that doctrinal courses do not address? Clinical scholars helped pave the way for more thoughtful lawyering, teaching about lawyering, and development of professional values.<sup>100</sup> The *Carnegie Report* credits the clinical experience with addressing the two missing aspects of legal education: experience with clients and matters of ethical substance.<sup>101</sup> Clinics offer a point of transfer from performing abstract legal analysis to fulfilling a professional role that is essential to establishing a sense of professional identity and obligation.<sup>102</sup> As one student recently put it,

“Being able to see a case, basically from its inception through the notice of intent to sue, is a big undertaking . . . . Students in the classroom don’t realize that you have to know a case in

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that cover transactional work and alternative dispute resolution). The University also plans to expand clinical program offerings, which will provide more opportunities for experiential learning in the third year. *See id.*; *see also* Edward Santow & George Mukundi Wachira, *The Global Alliance for Justice Education*, in *THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE* 371, 371 (Frank S. Bloch ed., 2011) (discussing the development of clinical legal education throughout the world, and collaboratively through the Global Alliance for Justice Education).

<sup>98</sup> *Chart of Legal Education Reform*, *supra* note 84.

<sup>99</sup> *See* STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, § 302(a) (2011–2012).

<sup>100</sup> *See, e.g.*, Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 *CLINICAL L. REV.* 33, 35–36 (2001) (emphasizing the need to teach about diversity in law schools and discussing issues of bias and awareness); Paul R. Tremblay, *Practiced Moral Activism*, 8 *ST. THOMAS L. REV.* 9, 28–29 (1995) (discussing the lawyer’s obligation to be morally accountable). *See generally* DAVID A. BINDER ET AL., *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (1991) (establishing the client-centered approach to lawyering); STEPHEN ELLMANN ET AL., *LAWYERS AND CLIENTS: CRITICAL ISSUES IN INTERVIEWING AND COUNSELING* (2009) (providing instruction on client-centered interviewing and counseling); *CLINICAL ANTHOLOGY: READINGS FOR LIVE-CLIENT CLINICS* (Alex J. Hurder et al. eds., 2d ed. 2011) (containing a collection of articles about clinical education topics such as ethics, advocacy, and defining goals).

<sup>101</sup> *CARNEGIE REPORT*, *supra* note 10, at 56–59.

<sup>102</sup> *Id.* at 28–29 (discussing the third apprenticeship: identity and purpose).

and out, every little nuance, and you have to just pore over the evidence you have at hand . . . .”<sup>103</sup>

Thus, the legal academy’s attitude toward clinical programs shifts between appreciation and antipathy. Clinical programs are appreciated for their role in responding to institutional obligations to support access to legal representation—the matters of justice that the *Carnegie Report* references—and introducing students to those obligations.<sup>104</sup> The legal academy evinces antipathy toward clinical programs by not crediting the rigor of clinical offerings and the value of the competencies they are designed to develop, namely experience with clients.<sup>105</sup> As pressure to teach more lawyering competencies has grown, institutional ambivalence regarding clinical programs is giving way to concern about the ability of clinics to teach the skills new lawyers need.<sup>106</sup>

Law school clinics face their own identity challenges, including concerns about mission and pedagogy.<sup>107</sup> While promoting access to justice is a goal shared by clinical faculty, some clinicians place signifi-

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<sup>103</sup> Karen Schmidt, *JD/MELP 2012*, VT. L. SCH., [http://www.vermontlaw.edu/Experience\\_VLS/Student\\_Life/Student\\_Profiles/Karen\\_Schmidt.htm](http://www.vermontlaw.edu/Experience_VLS/Student_Life/Student_Profiles/Karen_Schmidt.htm) (last visited Mar. 13, 2012) (quoting law student Karen Schmidt).

<sup>104</sup> See CARNEGIE REPORT, *supra* note 10, at 126–28; Karen Schmidt, *JD/MELP 2012*, *supra* note 103.

<sup>105</sup> See CARNEGIE REPORT, *supra* note 10, at 56–57, 96–97; see, e.g., Deborah Maranville et al., *Re-Vision Quest: A Law School Guide to Designing Experiential Courses Involving Real Lawyering*, 56 N.Y.L. SCH. L. REV. 517, 519 (2011–2012) (suggesting the need to re-evaluate the clinical model).

<sup>106</sup> See GREGORY MUNRO, OUTCOMES ASSESSMENT FOR LAW SCHOOLS 68–69, 71 (2000).

<sup>107</sup> Stephen F. Reed, *Clinical Legal Education at a Generational Crossroads: A Self-Focused Self-Study of Self*, 17 CLINICAL L. REV. 243, 251–53 (2010) (discussing students as the priority in his approach to clinical teaching, and serving the poor as less consequential); see Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLINICAL L. REV. 355, 391–92 (2008). Reed notes:

I have concluded it is better to give the law students good training they can put to use in BigLaw than to try to get them interested in helping indigent clients as a full time gig. I try to engender in students the view that *pro bono* work, in the context of an otherwise absurdly profitable career, is a good idea for selfish reasons . . . and unselfish reasons . . . . It may be cynical, but I think this approach is the best way to get today’s business-minded, transaction-focused law students to work for the poor. While Great Clinicians may balk at my laziness and/or lack of caring, I am trying to be realistic: students need to come to public service or clinical teaching on their own, and they will not respond if I ram it down their throats.

Reed, *supra*, at 252 (citations omitted). Professor Reed’s perspective reflects one aspect of the discord regarding priorities for clinical teaching. *See id.*

cantly higher value on certain types of practice.<sup>108</sup> Many forms of practice address structural problems in the justice system and access to it. Assessment of the services provided to clients and building student competency in reflection and strategy as they join in the assessment are all important parts of developing strong clinical programs. This type of programmatic goal assessment should continue to guide re-evaluation of clinical programs and legal education in general.

### III. A MODEL CURRICULUM

Similar to the *After the JD Study*, the 2010 Survey of Law School Experiential Learning Opportunities and Benefits reported that 63.1% of surveyed clinic participants found the experience “very useful” and 60.1% found externships to be “very useful.”<sup>109</sup> *After the JD* reported that 62% rated clinics from “helpful” to “extremely helpful,” as opposed to 48% for upper year courses and 37% for first year courses.<sup>110</sup> Highest of all, 78% of students ranked summer internships with no law school affiliation from “helpful” to “extremely helpful.”<sup>111</sup> These are sobering reports. While the reflections of graduates several years out should not be the only benchmark, these reports underscore the need to rethink the value that law schools add to the preparation for practice.<sup>112</sup>

Students need a foundation in the common law and the areas of law relevant to bar passage.<sup>113</sup> Both considerations are important, but neither provides a complete answer. While law schools and their faculty value autonomy, preserving it makes preparation for professional prac-

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<sup>108</sup> See, e.g., Ashar, *supra* note 107, at 391–92 (describing one law school clinic’s push to replace direct representation with community lawyering).

<sup>109</sup> AFTER THE JD, *supra* note 29, at 81; NALP & NALP FOUND., 2010 SURVEY OF LAW SCHOOL EXPERIENTIAL LEARNING OPPORTUNITIES AND BENEFITS 6 (2011), available at <http://www.nalp.org/uploads/2010ExperientialLearningStudy.pdf> [hereinafter NALP SURVEY] (also noting that fewer than a third of the law firm associates from across the country responding to the survey reported participation in a clinic during law school).

<sup>110</sup> Sandefur & Selbin, *supra* note 2, at 85.

<sup>111</sup> *Id.*

<sup>112</sup> See AFTER THE JD, *supra* note 29, at 81; NALP SURVEY, *supra* note 109, at 6; Sandefur & Selbin, *supra* note 2, at 85.

<sup>113</sup> See STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, § 301 (a) (2011–2012); Charles E. Rounds, Jr., *State Common Law Aspects of the Global Unwindings of the Madoff Ponzi Scheme and the Sub-Prime Mortgage Securitization Debacle: Buttressing the Thesis That Globalizing the American Law School Curriculum at the Expense of Instruction in Core Common Law Doctrine Will Only Further Provincialize It*, 27 WIS. INT’L L.J. 99, 102 (2009) (arguing that American law schools are not teaching enough common law doctrinal courses, and those that are taught neglect important facets addressing equity and fiduciary responsibility).

tice uneven and incomplete.<sup>114</sup> As law schools tinker with and change their programs, they should consider forming a consensus with other schools on the proper foundation for all lawyers.<sup>115</sup> This would help set expectations for general professional preparation and determine the specific training needed for specialty areas. If legal educators, accreditors, and the profession agree on a framework, then discussion can focus on assessment and more nuanced design.<sup>116</sup>

#### A. *The First Year Curriculum*

*On our visits to law schools, we were repeatedly told by both students and faculty that the first-year experience typically results in a remarkable transformation: a diverse class of beginners somehow jumps from puzzlement to familiarity, if not ease, with the peculiar intricacies of legal discourse.*<sup>117</sup>

The idea of a common portal to legal education is useful, provided it is the right portal.<sup>118</sup> Law graduates should all share a professional orientation that prepares them to embark on the general study of law. Courses in contracts, torts, and property introduce basic American legal concepts that help lay a proper foundation for students. Comparative and international law, ethics, professionalism, critical legal theory, justice analysis, and problem solving, however, must also be part of the professional orientation. Constitutional law, both as an administrative and rights-based study, should be a first year subject, too, and should

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<sup>114</sup> See CARNEGIE REPORT, *supra* note 10, at 89. *But see* Mary Crossley & Lu-in Wang, *Learning by Doing: An Experience with Outcomes Assessment*, 41 U. TOL. L. REV. 269, 269–71, 273, 277 (2010) (describing how the University of Pittsburgh School of Law worked to develop a system for assessing student learning outcomes and highlighting the importance of including faculty at an early stage).

<sup>115</sup> See, e.g., Karen Sloan, *Action on Law School Reform: Legal Educators Are Organizing to Finally Move Beyond the Talking Stage*, NAT'L L.J. & LEGAL TIMES, Aug. 22, 2011, at 1, 6 (discussing Professor Roberto Corrada's work and the University of Denver's Institute for the Advancement of the American Legal System, which includes fifteen law schools as initial consortium members and is dedicated to incorporating the recommendations made in the *Carnegie Report*); *Strategic Plan—Adopted by SCOL Faculty 12/14/2009*, U. DENVER STURM C.L., <http://law.du.edu/documents/about/SCOL-Strategic-PlanFinal.pdf> [hereinafter *Strategic Plan*] (last visited Mar. 14, 2012). Denver's Sturm College of Law went through a curriculum planning process. *Strategic Plan, supra*. Sturm faculty identified core competencies that track the three apprenticeships in the *Carnegie Report* and decided how to teach to meet them. *Id.* They determined that areas of core knowledge are Administrative Law, Civil Procedure, Criminal Procedure, Constitutional Law, Contracts, Evidence, Professional Ethics, Property, and Torts.

<sup>116</sup> See STUCKEY ET AL., *supra* note 7, at 275–81; Sloan, *supra* note 115.

<sup>117</sup> CARNEGIE REPORT, *supra* note 10, at 47.

<sup>118</sup> See *id.* at 47, 51, 56–57.

involve a comparative consideration of the goals and implications of such documents.

The *Carnegie Report*, in discussing a common portal, correctly points out that adding courses does not address underlying problems with the casebook method.<sup>119</sup> On the other hand, doing away with case analysis does not solve the problem, either. The cases are efficient for conveying common law and, increasingly, statutory analysis. They often benefit from inclusion of stories that—if sufficiently expanded to include people, their motivations, and contextual influences—offer students necessary perspective otherwise lacking in the first year of law school. This perspective can be augmented by students assessing the ethical and moral implications from standpoints of comparative law, critical legal theory, and alternative dispute resolution. Casebooks, therefore, should undergo a few changes. They should have fewer cases but more information about them and a broader exploration of what the cases contribute to the law and its role in society. This approach also suggests that emphasis on legal theory analysis in the first year is appropriate, as long as it connects the theory to individuals, communities, and values.

One area that has expanded in the first year curriculum is the introduction of skills courses.<sup>120</sup> Teaching skills in the first year has often fallen to the legal writing faculty.<sup>121</sup> The underlying concern behind this shift is that students are too disconnected from the profession and that theory alone sends the wrong message about what lawyering involves.<sup>122</sup> A broad conceptual basis for understanding the law, however, is valuable as a shared foundation. First year research and writing courses should emphasize those analytical competencies, but other professional competencies should be developed in the second and third years of law school, too.

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<sup>119</sup> See *id.* at 58.

<sup>120</sup> See *Chart of Legal Education Reform*, *supra* note 84; Powers, *supra* note 60.

<sup>121</sup> See, e.g., Leslie M. Rose, *Norm-Referenced Grading in the Age of Carnegie: Why Criteria-Referenced Grading Is More Consistent with Current Trends in Legal Education and How Legal Writing Can Lead the Way*, 17 J. LEGAL WRITING INST. 123, 149 (2011), available at <http://www.journallegalwritinginstitute.org/archives/2011/17LegalWriting123-159.pdf>. NYU's first year legal writing program is a year-long course called "Lawyering." See *Required First Year Courses*, N.Y.U. L., <http://www.law.nyu.edu/academics/courses/requiredfirstyearcourses/index.htm> (last visited Mar. 14, 2012). The first semester has a fairly traditional legal writing curriculum, while the second semester is comprised of "interviewing, counseling, case analysis and problem handling, negotiation, informal advocacy, and trial advocacy. Working in teams of two, three, or four, the students role-play and then critically review their experiences in each activity." *Id.*

<sup>122</sup> See *CARNEGIE REPORT*, *supra* note 10, at 40–41.

Thus, while legal research and writing should still be included in the first year curriculum, its inclusion should be more consistent and focused. These courses are often offered for fewer credits than other first year courses and are sometimes graded on a pass/fail basis. They often provide the first assessments that law students encounter.<sup>123</sup> While students crave feedback, the demands that often attend these courses compete with the shared introduction to law. As students balance the demands of doctrinal courses—which are graded—the writing and research courses compete for their attention and are a source of frustration for those who see the demands as disproportionate to their relative value in the curriculum.<sup>124</sup> Because these courses cover essential, fundamental skills for accessing and using the law, it is worth reconsidering how to optimize their impact. A required pre-semester summer session on research and simple writing assignments followed by graded legal writing projects during the fall and spring semesters might help students integrate this learning more effectively.<sup>125</sup> The legal writing projects assigned during the academic year should be done in conjunction with the first year courses.<sup>126</sup> In addition to connecting writing and research to doctrinal first year subjects, collaboration between doctrinal and legal writing faculty would provide more opportunities for interaction and feedback in all courses—what the *Carnegie Report* refers to as engaging in “knowledge-transforming performance.”<sup>127</sup>

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<sup>123</sup> See Maureen Arrigo-Ward, *How to Please Most of the People Most of the Time: Directing (or Teaching in) a First-Year Legal Writing Program*, 29 VAL. U. L. REV. 557, 559 (1995); Kirsten K. Davis, *Building Credibility in the Margins: An Ethos-Based Perspective for Commenting on Student Papers*, 12 J. LEGAL WRITING INST. 73, 76 (2006).

<sup>124</sup> See Lisa Eichhorn, *The Legal Writing Relay: Preparing Supervising Attorneys to Pick Up the Pedagogical Baton*, 5 J. LEGAL WRITING INST. 143, 147–48 (1999).

<sup>125</sup> See Jean Boylan, *The Admission Numbers Are Up: Is Academic Support Really Necessary?*, 26 J. JUV. L. 1, 2 (2006).

<sup>126</sup> See Kate O’Neill, *But Who Will Teach Legal Reasoning and Synthesis?*, 4 J. ASS’N LEGAL WRITING DIRECTORS 21, 23–24 (2007); cf. Tracy Bach, *Cooperation, Not Collision: A Response to When Worlds Collide*, 4 J. ASS’N LEGAL WRITING DIRECTORS 62, 64–65 (2007); Kowalski, *supra* note 86, at 327.

<sup>127</sup> CARNEGIE REPORT, *supra* note 10, at 109. The institutional distinctions between legal writing and doctrinal faculty make it difficult for these collaborations to work. See, e.g., STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, § 405(d) (2011–2012). The ABA Standards establish a distinction between legal writing and other faculty, a distinction reviewed in 2011 by the Section of Legal Education’s Standards Review Committee. Donald J. Polden, *The Standards Review Committee’s Comprehensive Review of Accreditation Policy Moves Forward*, SYLLABUS: AM. BAR ASS’N SEC. LEGAL EDUC. & ADMISSIONS TO BAR (2011), [http://apps.americanbar.org/abapubs/syllabus/2011/standards\\_review\\_committees\\_comprehensive\\_review.html](http://apps.americanbar.org/abapubs/syllabus/2011/standards_review_committees_comprehensive_review.html).



### B. *The Second Year*

In the second year of law school, students should engage in an active learning model that teaches substantive law and integrates competencies that were not emphasized in the first year. This is where schools can address the weaknesses in the transfer between knowledge and practice.<sup>128</sup> Second year substantive law courses should include training in skills such as interviewing, counseling, storytelling, cultural awareness, dispute resolution, and written and oral argument. The courses should be taught through the use of simulations, role-plays, and other active learning techniques. Law schools could move Civil Procedure class to the second year and teach it in a practical, rather than theoretical manner. The course should include procedure in venues other than courts, such as administrative proceedings, arbitration, and mediation.<sup>129</sup> If, however, Civil Procedure remains in the first year curriculum, these teaching methods should still apply. Likewise, Evidence and Professional Responsibility should become required courses in the second year, both taught in a way that emphasizes professionalism over doctrine. While requiring these courses interferes with student autonomy, they are nevertheless part of the knowledge that all law graduates should share.

As faculty engage in curricular planning, they should agree on which competencies are covered in each course. By consciously spreading development of competencies across the second year curriculum, students would build and reinforce skills.<sup>130</sup> The General Practice Program (GPP) at Vermont Law School is an example of how active learning and a range of competencies can be included in second year courses.<sup>131</sup> “GPP is a two-year, four-semester program for second- and third-year students” that integrates substantive law with professional

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<sup>128</sup> See CARNEGIE REPORT, *supra* note 10, at 3, 87; Scott E. Thompson, *Developing a Comprehensive Approach to Teaching Lawyering Skills: A Response to The MacCrate Report, Fifteen Years Later*, 3 LIBERTY U. L. REV. 47, 47–48 (2009).

<sup>129</sup> Professor Jackie Gardina includes such an approach in her Civil Procedure course at Vermont Law School.

<sup>130</sup> See, e.g., Lisa Penland, *The Hypothetical Lawyer: Warrior, Wiseman, or Hybrid?*, 6 APPALACHIAN J.L. 73, 89–90 (2006) (focusing on the accumulation of transactional law skills over time). Co-curricular activities, such as moot court and journals, would not be seen as substitutions for building competencies in the curriculum. See, e.g., John O. Mudd, *Academic Change in Law Schools: Part I*, 29 GONZ. L. REV. 29, 31 (1993/94) (discussing calls for “integrating professional skills instruction into the regular academic program”); Thompson, *supra* note 128, at 57–59.

<sup>131</sup> *General Practice Program*, VT. L. SCH., [http://www.vermontlaw.edu/Academics/General\\_Practice\\_Program.htm](http://www.vermontlaw.edu/Academics/General_Practice_Program.htm) (last visited Mar. 14, 2012).

skills.<sup>132</sup> Classes are structured to simulate a law firm, with students acting as associates in a practice related to doctrinal subject matter.<sup>133</sup> “[S]tudents learn and practice a variety of skills: drafting, counseling, interviewing, mediation, negotiation, oral argument, and pre-trial preparation.”<sup>134</sup> The program’s faculty meet to collaborate on teaching goals and decide which skills to cover in each course.

This is not a model that can be superimposed on large classes without careful development. In a recent article discussing GPP’s Domestic Relations course, Professor and GPP Director Susan Apel noted that the GPP approach requires a smaller student-to-faculty ratio,

a carefully drafted script, well-chosen primary materials, carefully vetted secondary materials, volunteers to act as clients, the ability of the professor to assume several different roles as needed, willing and brave students, not to mention working video equipment, dedicated classroom and other space, and a hardworking assistant with a remarkable sense of timing, order, and humor.<sup>135</sup>

Professor Apel observes that the faculty who teach such a program must have “extensive practice experience” and be “willing . . . to teach in this simulation-based way.”<sup>136</sup>

Exporting the GPP learning goals and teaching methods to larger classes is possible. For example, dividing classes into law firms to teach Civil Procedure has provided a way for the rules to resonate while introducing students to a range of lawyering competencies. Professors have used this method by offering their own hypothetical cases or by studying real cases through books like *Storming the Court: How a Band of Yale Law Students Fought the President—and Won* and Jonathan Harr’s tell-

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<sup>132</sup> *Id.*

<sup>133</sup> *See id.* The courses are grouped by semester, and include Domestic Relations in the first semester, Real Estate Transactions, Environmental Problem-Solving, Commercial Transactions, and Employment Law in the second, Criminal Law, Representing Entrepreneurial Business, and International Intellectual Property in the third, and Estate Planning, Personal Injury Law, Municipal Law, Landlord-Tenant Law, and Bankruptcy in the final semester. *Id.*

<sup>134</sup> *Id.* Students “lead[] role-playing clients through divorce proceedings, conducting title searches, providing legal counsel for school districts, handling employment grievance cases, producing wills, [and] preparing for civil and criminal court appearances . . .” *Id.*

<sup>135</sup> Susan B. Apel, *No More Casebooks: Using Simulation-Based Learning to Educate Future Family Law Practitioners*, 49 FAM. CT. REV. 700, 705 (2011).

<sup>136</sup> *Id.*

ing of the *Anderson v. Cryovac* case in *A Civil Action* (and, prior to that, Gerald Stern's *The Buffalo Creek Disaster*).<sup>137</sup>

One major barrier to teaching in this manner is that law schools have not explicitly supported it.<sup>138</sup> Teachers who do the hard work of incorporating active learning methods do so knowing that their primary institutional reward will come, not from their efforts to improve what students learn, but from production of scholarship that is of attenuated use to their students.<sup>139</sup> This would change if the revised goals for the second year are clear and faculty are rewarded for teaching accordingly.

### C. *The Third Year*

One source of debate is when to provide a clinical experience.<sup>140</sup> Some express concern that, if students work with real clients too late in their law school experience, they may acquire perspectives about the law that are inconsistent with serving clients, limit their ability to understand the law, or simply lose interest.<sup>141</sup> The curriculum proposed above balances these concerns in favor of building toward a third year devoted to experience in real legal practice.

In the first semester of their third year, students should practice either in a law school clinic, an externship, or a hybrid of the two. In the second semester, students could choose another practice experience or elect to continue in the same setting—provided it is a clinic supervised by full-time members of the law school faculty. The experience in the second semester should build on competencies developed in the first. Students would get the opportunity to assume the role of the lawyer and gain experience thinking in context about the law, who and how they serve, and their own identities. If the clinical experience

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<sup>137</sup> See Levine, *supra* note 86, at 490, 495, 499–500, 502 (discussing three exercises designed to introduce students to fact investigation, client counseling, recognizing and resolving ethical dilemmas, and organization and management of legal work); see also BRANDT GOLDSTEIN, *STORMING THE COURT: HOW A BAND OF YALE LAW STUDENTS FOUGHT THE PRESIDENT—AND WON* (2005); JONATHAN HARR, *A CIVIL ACTION* (1995); GERALD STERN, *THE BUFFALO CREEK DISASTER* (1976). See generally *Anderson v. Cryovac*, 862 F.2d 910 (1st Cir. 1988) (providing the basis for the book and movie *A Civil Action*).

<sup>138</sup> See Levine, *supra* note 86, at 484–85.

<sup>139</sup> See Neumann & Stuckey Letter, *supra* note 18, at 9; Neumann, *supra* note 40.

<sup>140</sup> See Barry et al., *supra* note 2, at 41, 44–45 (describing various clinical education courses taught during different years of law school).

<sup>141</sup> See *id.* at 42, 72 (describing the value of teaching clinics early in a student's career and building on these skills by offering a "multi-layered level of guided experiential learning").

uses careful supervision to achieve these goals, then schools can and should be creative about clinical opportunities.<sup>142</sup>

ABA Standard 304(b) limits students to a single full-time externship. This Standard requires that at least 45,000 minutes of a student's required 58,000 minutes of instruction be "attendance in regularly scheduled class sessions at the law school."<sup>143</sup> Interpretation 304-3(e) includes in the 45,000 minutes those clinics in which the work is done under direct faculty or instructional staff supervision, but not other clinical experiences.<sup>144</sup> This means that students may only take one semester of externships.<sup>145</sup> While this limits the options available to third-years, it provides a reasonable check on the time students may spend under supervisors who are not primarily focused on legal education.<sup>146</sup>

Refocusing the third year will require a significant change in the way law schools allocate resources. One third of the law school program would become clinical education. In-house clinics, externships, and hybrid clinics are familiar, well-developed models for providing the experiences students need. As in-house and hybrid clinics integrate what students learned in the first and second years, they would refine and expand the knowledge students accrue in the more complex, live experiences without having to teach as many basic competencies; students in externships will similarly bring more to their placement experiences. Any clinic model, however, requires schools to commit to providing students the opportunity to undertake lawyers' work for real clients under faculty supervision.<sup>147</sup>

#### D. *The Fee-Generating Model*

Faculty, too, need to be creative in pursuing effective methods for achieving goals for this third year of experiential learning. While clinicians are closer to professional practice than their faculty colleagues,

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<sup>142</sup> See Maranville et al., *supra* note 105, at 519, 525, 527 (discussing experiential course design and related pedagogical considerations).

<sup>143</sup> STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, § 304(b) (2011–2012).

<sup>144</sup> See *id.* Interpretation 304-3(e). Proposed revisions to this Standard would change the 45,000 minute requirement to 64 semester credit hours. See ABA DRAFT STANDARDS, *supra* note 5, at § 309(b).

<sup>145</sup> See STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, § 304(b) (2011–2012).

<sup>146</sup> See Stephen Ellmann, *The Clinical Year*, 53 N.Y.L. SCH. L. REV. 877, 887 (2008/09).

<sup>147</sup> For example, in externships—where professional lawyers directly supervise students—faculty supervisors must assure that students receive substantive work and that they process their experiences in a manner consistent with their professional development.

both are removed from many of the challenges and demands of the profession and both have traditions they are reluctant to change.

One legal news article asked, “What if law schools opened their own law firms?”<sup>148</sup> While law schools have already opened firms in the form of clinics, the idea of a self-contained firm is provocative, if not new.<sup>149</sup> It resurrects a model for providing fee-generating clinics that could result in less expense to schools and greater attention to law practice as a business.<sup>150</sup> The crushing debt students face makes any opportunity to reduce costs worth considering.<sup>151</sup>

Reducing the cost of legal education, however, should not be the only reason to contemplate a fee-generating model. Such clinics must effectively serve educational goals or risk not fulfilling any legitimate purpose. Fee-generating clinics raise many concerns that have remained compelling for decades. For example, schools have a duty to serve those who are unable to access legal remedies and students benefit from engaging first-hand in the social justice implications of serving them.<sup>152</sup> Moreover, competition with the private bar may cause alarm.<sup>153</sup> There are, however, many who could afford the reduced fees of a fee-generating clinic but not those charged by the private bar. Lack of access to representation for these people likewise raises social justice concerns. On the other hand, both law schools—as expressed in their mission statements—and the private bar share the institutional responsibility to provide pro bono services.<sup>154</sup> Extending that institutional obligation to students in the form of tuition is less legitimate, even if viewed as consistent with developing certain educational goals. Furthermore, schools could control the student experience by varying the

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<sup>148</sup> Karen Sloan, *What if Law Schools Opened Their Own Law Firms?*, NAT'L L.J. & LEGAL TIMES (Aug. 17, 2011), <http://www.law.com/jsp/nlj/PubArticlePrinterFriendlyNLJ.jsp?id=1202511523234&slreturn=1>.

<sup>149</sup> *See id.* (labeling the idea as “novel” and “radical”).

<sup>150</sup> *See id.*

<sup>151</sup> *See* Bradley T. Borden & Robert J. Rhee, *The Law School Firm*, 63 S.C. L. REV. 1, 1, 5, 8 (2011); Neumann, *supra* note 40. Professor Jon Dubin also discussed this debate over fee-generating clinics. Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. REV. 1461, 1470 n.45 (1998).

<sup>152</sup> *See* Martin Guggenheim, *Fee-Generating Clinics: Can We Bear the Costs?*, 1 CLINICAL L. REV. 677, 683 (1995). This becomes an increasingly compelling argument as government and private funding for pro bono services shrink. *See* Guggenheim, *supra*, at 683; *see also* Kellie Isbell & Sarah Sawle, 15 GEO. J. LEGAL ETHICS 845, 850–51 (2002).

<sup>153</sup> *See* Borden & Rhee, *supra* note 151, at 3.

<sup>154</sup> *See* MODEL RULES OF PROF'L CONDUCT R. 6.1 (2010); Margaret Martin Barry et al., *Justice Education and the Evaluation Process: Crossing Borders*, 28 WASH. U. J.L. & POL'Y 195, 203 n.22 (2008) (referencing the social justice missions of twenty-five law schools).

client base to explicitly focus on issues of access while including those who could pay.

Thus, the impetus to accommodate fee-generating cases must not undermine methods that are central to clinical education, such as maintaining small caseloads.<sup>155</sup> This is especially true if it is contemplated that fees will sustain the clinic, as fees may compete with pedagogy and obscure social justice goals.<sup>156</sup> Law schools can balance that pressure and underscore the importance of clinics by treating clinical faculty the same as doctrinal faculty; they, for example, should receive the same attention, support in hiring, and expectations for retention as other faculty.<sup>157</sup> Fees generated by the clinic should not determine faculty salaries or be a condition precedent to running the clinic.<sup>158</sup> The fees, however, could offset some clinic expenses.

Moreover, by charging fees, clinics could engage some of the issues that students do not typically encounter in clinical programs, including ethical considerations regarding billing and the relationship of time to effective client service. These and other aspects of law office management are particularly important for students who aim to set up their own practices after graduation. This model could provide students in their third year with an opportunity to address important moral issues that they might not otherwise encounter in pro bono clinics.<sup>159</sup>

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<sup>155</sup> See Guggenheim, *supra* note 152, at 680. Professor Martin Guggenheim, writing in volume one of the *Clinical Law Review*, objected to the fee-generating clinics previously proposed by Dean Richard A. Matasar and Professor Gary Laser in the *Clinical Law Review's* preceding issue. See *id.*; see also Gary Laser, *Significant Curricular Developments: The MacCrate Report and Beyond*, 1 CLINICAL L. REV. 425, 437–38 (1994); Richard A. Matasar, *The MacCrate Report from the Dean's Perspective*, 1 CLINICAL L. REV. 457, 488–91 (1994). Dean Matasar and Professor Laser proposed funding clinics entirely through fees. See Guggenheim, *supra* note 152, at 680. Professor Guggenheim stated that this compromises learning objectives because it includes too many real-life needs—such as a large, efficient, and lucrative caseload, it discriminates against clinical faculty by requiring them to generate their salaries unlike other faculty, and it compromises the service to indigent clients, which is one of the “great by-products” of clinical legal education. *Id.* at 678, 682–83.

<sup>156</sup> See Guggenheim, *supra* note 152, at 683.

<sup>157</sup> See *id.* at 681–83.

<sup>158</sup> See *id.* at 683.

<sup>159</sup> See Ellmann, *supra* note 146, at 890 (citations omitted) (“[Private offices can teach a lesson] about the moral value of private practice itself, and more generally of legal work that merely seeks to help clients to achieve their goals within the law and to guide those clients, to the extent the lawyer feels appropriate doing so, towards resolutions that treat other people better rather than worse. This is the work that most law students will go on to do after they graduate. There is evidence that many lawyers have lost heart about their work, perhaps because they have lost track of its moral meaning; if we are to help future lawyers find that meaning, we need to help them find it in the work they are most likely to do.”).

If the third year of study set in practice becomes a reality, law schools must set clear goals for clinical education. In identifying these goals, it is not enough to simply proclaim that students will be practice ready. The final year needs to be a carefully conceived culmination of the knowledge and skills gleaned throughout the law school experience. The third year in practice is the time to transfer knowledge and skills into real-world settings. There, professional and personal values will be carefully and safely constructed, challenged, and developed. These are rich opportunities to explore conflicts between responsibility to clients and community. These, too, are rich opportunities to teach the values of professionalism. In sum, a third year devoted to real life experiences—and classes that assess them—integrates the learning of the clinical legal education movement into the law school curriculum. Such experiences may not guarantee that students are ready for the myriad of increasingly specialized areas of practice, but they will provide sound, transferrable competencies that will serve them well as young lawyers.

#### CONCLUSION

Economic uncertainty has done more to make law schools receptive to change than decades of critique. Survival has entered the lexicon, and practice readiness is seen as a lifeline. This change, however, must not occur without a critical approach and evaluation.

Choices about what to teach, when to teach, and how to teach must be tied to clear goals. These goals should have the primary effect of preparing students for the profession they are entering. The *Carnegie Report* got it right in identifying, as others have before and since, the three apprenticeships of knowledge, skills, and values. While some schools have already made progress toward curricular redesign, schools should agree upon a basic structure integrating these apprenticeships into law school curricula. This Article's approach to teaching law provides a framework for integrating basic doctrine, competencies, and values that lawyers should understand as they begin their careers and that a legal education should assure. Mission-driven goals can and should co-exist with shared assumptions of what all law school graduates need. Beyond a basic, shared curriculum, schools may choose to emphasize certain aspects of practice and education. Such distinctions enrich the choices students can make and allow institutions to develop expertise.

Law schools have benefitted from the energy and creativity brought by many doctrinal, clinical, and legal writing faculty. While schools need to determine what will work for each, they spend too much time making

modest distinctions about what shared knowledge to emphasize and too little time on how to introduce professional competencies. Institutional aspirations for practice readiness require more than offering limited clinical or externship opportunities for those students who recognize their value; these experiences must feature in a program designed to build for all law graduates an understanding of—and competency in—the role lawyers need to play in our society.



