Chapter 3

RETHINKING THE CURRICULUM

A. A BALANCED CURRICULUM

By Martin J. Katz & Kenneth R. Margolis

1. Introduction

Best Practices for Legal Education encouraged law schools to engage in more systematic institutional planning of the curriculum in order to achieve greater coherence. The goal was to integrate the teaching of theory, doctrine, and practice to help prepare students for practice. In the face of demands to provide greater value in legal education, many law schools are beginning to re-consider design and organization of the curriculum.

Traditionally law school was about teaching “the law” — legal doctrine — at least to a level that allowed graduates to successfully spot and analyze legal issues. Despite the past decades’ expansion of experiential education, proliferation of specialized courses, demand from the legal profession that law schools teach additional practice-related skills, and the trend toward multidisciplinary perspectives, the typical law school continues to devote the lion’s share of resources to doctrinally-focused teaching and learning. Commentators increasingly suggest that the explosion of statutory and case law in the past century, the increasing pace of change in existing law, changes in the legal profession, and the availability of instantaneous access to information make that traditional approach untenable. Instead, some suggest, after students learn basic analytical skills, legal concepts, and research and writing skills, law schools should focus significantly on teaching a broader range of skills, such as interviewing and fact gathering, risk assessment, problem solving, negotiation, drafting, managing, organizing and filtering information, and advocacy, rather than de-contextualized doctrine. This poses a

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1 See Roy Stuckey and Others, Best Practices for Legal Education: A Vision and a Road Map (2007), text at notes 270–76.
2 Id., text at notes 277–86.
series of fundamental questions: How much legal doctrine should law schools teach, and in what areas? How much of that law should students learn in traditional classroom settings, as contrasted with more contextualized or experiential settings? What is the appropriate balance among doctrinally-focused and applied or practice skills education; large and small classes and one-on-one interactions; and in-the-building and field experiences?

Often, stakeholders will articulate concerns about these fundamental questions in ways that appear binary. For example, they might suggest that a move toward a more applied or practice-skills oriented curriculum will give short-shrift to doctrinally-focused teaching, or that a greater focus on teaching would undercut the scholarly mission of the school. However, in almost all cases, the competing ideals are not mutually exclusive. Rather, the challenge is about striking a balance among ostensibly competing values or educational approaches. Accordingly, in discussing curriculum reform, it is almost always helpful to reframe binary conversations as conversations about balance and comprehensiveness.6

2. Balancing Doctrinal and Practice-Oriented Education

Recent practice-oriented or experiential in-roads into the doctrinally-oriented curriculum have been encouraged by state bars and independently undertaken by some law schools.7 For example, New York, California, and other state bars have recently adopted practice-oriented training or pro bono work requirements before law graduates may be admitted to the bar in those states.8 Many law schools are beginning to make curriculum changes that reflect a greater emphasis on practice-oriented education both because they perceive that the marketplace for potential law students desires this and because they hope to gain a competitive advantage among schools competing for a shrinking applicant pool.9

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6 See Lauren Carasik, Renaissance or Retrenchment: Legal Education at a Crossroads, 44 Indiana L. Rev. 735, 785–813 (2011). This section does not discuss three other important balance issues: the appropriate balance between litigation-oriented programming and courses aimed at transactional lawyering, see Gregory M. Duhl & Jaclyn Müllner, Transactions and Settlements: Creating a Balance in Legal Education, 14 Tenn. J. Bus. L. 517, 518–519 (2013); issues relating to how much of a law school’s resources should be devoted to particular subject matters such as individual rights (e.g., family law, wills and trusts, privacy litigation), corporate or business law (e.g., business organizations, corporate tax, mergers and acquisitions), or public law (e.g., constitutional law, criminal law and procedure, international law); and issues addressed by the AALS Section on Balance in Legal Education aimed at “humanizing legal education” and increasing “balance” in a variety of domains” of interest to educators and practitioners. See Symposium, Balance in Legal Education, 60 J. Legal Ed. 107 (2010). See Chapter 4, Section B, Subsection 1, Humanizing Delivery of Legal Education below. However, the issues discussed in the this section underlie and should serve to encourage further consideration of these and other balance issues.

7 See Chapter 1, Section A, The Accreditation Context and the Law School Mission above and Chapter 5, Section F, Subsection 1, Incorporating Experiential Education throughout the Curriculum below.


A BALANCED CURRICULUM

From a best practices perspective, however, decisions about the proper balance between doctrinal and practice-oriented teaching should not be based on marketing considerations or short-term attempts to gain a foothold in a shrinking applicant pool. Instead, schools should engage in thoughtful consideration about the extent and nature of legal doctrine that students should learn in law school (as opposed to once in practice).

In doing so, schools should take into account the fact that doctrinal classes generally serve at least two pedagogical goals: They teach students (1) what the substantive law is, and (2) the analytical skills required to interpret and understand the substantive law (which may include the skills required to critique substantive law, as well as to understand its applicability and limits). Some doctrinal courses also teach students how to find substantive law, though those skills are more often taught in legal research and writing courses. Schools should also take into account that it is not possible to learn all there is to know about anything in the law school setting. So the marginal return for students might be enhanced by a more effective balance struck between practice-oriented learning and doctrinal learning.\(^\text{10}\)

Striking a balance more in favor of practice-oriented learning does not necessarily mean less doctrine is taught. It means that doctrine is not taught as an end in itself, but rather as one of the many issues to consider in solving problems that have a legal dimension. Practice-oriented courses do not replace doctrine; they contextualize it.

What the proper balance should be for any particular school is for each school to determine. In making those determinations, schools should consider, among other things, the common career paths their students take and the tools needed for them to succeed. A student-centered approach would focus on the extent to which the traditional doctrinal approach serves student interests and whether those interests could be better achieved through other approaches. Legal educators need to address such questions as:

a. To what extent can a student understand on her own the doctrinal complexities of the subject? Conversely, to what degree is it necessary for an expert to convey that information to the student in order for her to understand it?

Students are able to learn many areas of law largely on their own. In fact, when they begin professional practice, they will be called upon to do this on a regular basis. However, in some subject-matter areas, a foundation learned from a faculty expert is not only helpful, but may be essential. Arguably, law school resources focused primarily on doctrinal learning should be targeted to these areas.

b. To what extent does the doctrine lend itself to a well-organized outline or other written resource rather than classroom instruction?

\(^{10}\) At least as long ago as the publication of the MacCrate Report in 1992, it has been argued that legal education should be viewed as a continuum and law school education is not the end of the process but a step in the development of lawyer competence in skills, values and knowledge. Report of the Task Force on Law Schools and the Profession: Narrowing the Gap [hereinafter MacCrate Report], ABA Section on Legal Education and Admission to the Bar (1992), at 284–85.
Valuable in-class time need not always be devoted to conveying doctrinal information. In some instances, that information can be conveyed more efficiently through bar-review type outlines, on-line learning formats, videos, or readings with exercises that would not require the direct involvement of a faculty member in a classroom setting, or might permit the faculty member to supplement such materials rather than be the primary source.

c. To what extent is the subject matter viewed as foundational for other courses such that it would be helpful for a faculty member to provide context not obvious from the subject itself to assist in the understanding of the later courses?

Good examples of these types of subjects are the traditional first-year courses in contracts, torts, criminal law and property where faculty provide more than an understanding of the applicable rules, but also the processes for rule development and evolution.

d. To what extent can the doctrinal principles be learned through the resolution of real client problems related to that doctrine?

Students learn significant amounts of doctrine through client problem solving in clinical or other forms of experiential legal education. Such in-context learning of doctrine may well be more effective than classroom learning, in the sense that it is retained longer, especially if doctrinal classes are taught in ways that allow, or encourage, students to cram information into short-term memory, take a test, and forget. The more the doctrine is stated in general terms and is dependent upon specific factual scenarios, the more it may lend itself to this type of learning. If the doctrine itself is highly nuanced, it will likely need more involvement of an expert faculty member to explain it in a more traditional classroom setting or in a seminar that is part of an otherwise experiential classroom setting.

e. To what extent does the doctrine in the area rely on underlying theory that is either not well-articulated in the doctrine itself or draws on other disciplines that are not part of common knowledge?

This type of subject may be most in need of faculty expertise in a traditional doctrinal teaching setting because the underlying principles upon which specific doctrine is based are complex and less obvious. In such cases, careful explanation and exploration in a classroom setting can lead to a much greater understanding of the subject and more facility in predicting changes in doctrine once the student is a practicing lawyer. Examples of such subject areas might be property, contracts, or taxation, in which the doctrine that has developed may be based on economic theory, which is not necessarily specifically alluded to in that doctrine.\footnote{See Paul H. Rubin, Law and Economics, in The Concise Encyclopedia of Economics (2008), available at http://www.econlib.org/library/Enc/LawandEconomics.html, archived at http://perma.cc/J3LQ-L5HF.}

3. Balancing Teaching Settings and Teaching Methods

In addition to calibrating the balance between doctrinal and practice-oriented learning, law schools must consider the appropriate balance among teaching settings and among various teaching methods. Teaching settings include large and small classes, other group learning such as supervision of clinic or moot court teams, and one-on-one settings, such as tutorials of independent study topics, or supervision of individual clinic students. Most of the teaching methods in a law school fall into one or more of these categories: Lecture, Socratic dialogue, in-class exercises, large- or small-group discussions, presentations, simulations, and work on actual legal problems (for example, in a clinic or externship setting).

The goal of all teaching should be to maximize the usable learning by the students of whatever subject is being considered. But efforts to achieve this goal will usually have to be tempered by the relative costs of engaging each method in different settings. Cost should not be considered in a vacuum, however, and should be balanced against the relative benefits to student learning inherent in each teaching setting and method.

For example, because of the large number of students taught by one teacher, the large class setting will be the most efficient and cost effective if student learning across settings is comparable and students are learning the material in a way that they can access it later and use it in real problem-solving situations. The accuracy of that assumption may be doubtful, however, in many lecture-focused large classrooms. Learning theory suggests that active learning, where students must engage with the material and apply it to concrete problems, provides deeper and longer lasting learning in students. If, in fact, what happens in a large classroom is that students sit passively in the room but quickly forget or cannot apply the information conveyed, then that large classroom setting may not be the most effective way to achieve student learning goals, even if it is less costly.

At many schools, teachers make use of teaching methods in the classroom setting other than straight lecture. To the extent that methods such as high engagement Socratic, in-class exercises, small group discussions, presentations, simulations or other methods of active learning are utilized, the transferable learning by students is probably increased and the value of the large class setting

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12 Differences among settings and methods will often correlate to some extent with the distinction between most doctrinally focused courses and more practice-oriented learning. But practice-oriented learning often involves learning doctrine, and, as several sections below emphasize, practice-oriented learning can take place in the doctrinally focused large class. See Chapter 6, Section A, Subsection 2, Integrating Professionalism into Doctrinally-Focused Courses, Section F, Social Justice across the Curriculum, and Section G, Subsection 2, Teaching Students to Be Problem Solvers and Dispute Resolvers, below.


14 See, e.g., Best Practices, text at notes 382-96; Chapter 4, Section A, A Review of Teaching & Learning Theory, below.

15 See Chapter 5, Section A, The Socratic Method, below.
is improved.\textsuperscript{16}

On the other hand, a small class or group work that focuses on discussion, collaboration, and consideration of actual problems may provide even more in the nature of lasting learning.\textsuperscript{17} And one-on-one interaction with a faculty member may provide the most effective form of student learning, if the individual student is responsible for what happens in that interaction and must engage actively in the interaction with the faculty member.\textsuperscript{18}

Faculty should be involved in discussing not only their perceptions, but empirical evidence of the effectiveness of these settings and pedagogies, with the goal of arriving at an optimal mix based on student learning goals and the school’s resources.

4. Balancing In-the-Building and Field Experiences

Law schools must also determine how to balance in-the-building and field experiences. Field experiences include externships, moot court programs, mentorship programs, student-run volunteer projects with volunteer lawyers providing supervision, or any other outside program involving practitioners who are not full-time faculty. Two issues arise in striking this balance: the setting and who is doing the teaching. The main focus of debates on in-building and field experiences tends to be who is doing the teaching.

Striking a balance between in-the-building and field experiences requires assessing the value that is delivered to students in each of these settings. Full-time law faculty members tend to be expert teachers. They provide value for their students in many ways, including providing expert perspective on the matters under consideration, and guidance in reflecting on the tensions, theories, alternatives, and reasoning relating to important legal issues. Some believe that outside practitioners cannot or will not provide the same sort of input. Additionally, some full-time faculty members also believe that they have an obligation to shield their students from the “bad examples” set by some practitioners and therefore must play a significant role in all of the programs or courses involving outside practitioners. Finally, using outside practitioners as teachers presents questions of how available they will be to students, with some faculty concerned that outside teachers will be less available.

Undoubtedly some basis exists for these beliefs. However, training programs for practitioners who supervise volunteer programs, and training in externship pedagogy for field supervisors have evolved to the point where such problems can be controlled and managed.\textsuperscript{19} And the benefits from the use of outside practitioners in externships and other programs — including their ability to bring a “real world”

\textsuperscript{17} Id., Chapter 7, at pp. 216–20.
\textsuperscript{18} See, e.g., id. at 97–105; 238–40.
\textsuperscript{19} See Chapter 5, Section F, Subsection 3, Delivering Effective Education in Externship Programs; Chapter 6, Section B, Pro Bono Programs, below.
perspective into their teaching — have been widely recognized to the point where nearly all schools make good use of them.

5. Conclusion

It is a best practice for curriculum planners to ensure that an appropriate balance exists among doctrinal and practice-oriented education, teaching settings and teaching methods, and in-the-building and field experiences. For most schools, a beneficial balance will require more practice-oriented learning, a richer mix of teaching settings, methods that include more small classes, group work and individual interactions, greater attention to bringing real-world perspectives and experiences into the classroom, and simultaneously arranging for quality student learning in the field. The appropriate balance will vary from school to school. Arriving at it will require experimentation and ongoing assessment.
B. **PATHWAYS, INTEGRATION, AND SEQUENCING THE CURRICULUM**

By Deborah Maranville with Cynthia Batt

1. **Introduction**

Law school course offerings have proliferated in recent decades. This development reflects the addition of specialized doctrinal courses, a growing emphasis on interdisciplinary knowledge, and the incorporation of practice-oriented courses. From the perspective of the individual student, an expanded curriculum may create exciting educational opportunities while posing trade-offs between a generalist education and specialization. Law schools face two key challenges. First, they must structure the curriculum so that the experiences of individual law students have some coherence, or, if you will, seem integrated. Second, they must incorporate the full range of what the *Carnegie Report* referred to as the apprenticeships of formal knowledge, professional skill, and identity and purpose and what the *MacCrave Report* and *Best Practices for Legal Education* previously articulated as knowledge, skills, and values.

This section discusses three approaches — not mutually exclusive — to structuring the law school curriculum. On-line pathways, perhaps accompanied by formal concentration tracks, can be used to provide structure to improve course advising. A second approach is to integrate the curriculum: connect the individual courses that a student takes, both those taken concurrently and across the years the student is enrolled in law school. The objective of integration is to help students understand that what they are learning in each course can relate to and reinforce their learning in other courses. A third approach is to engage in a particular type of integration: sequence the curriculum by structuring offerings from introductory to intermediate to advanced, so that later classes build on the concepts and skills learned in earlier ones.

Although scattered integration and sequencing efforts date back decades, empirical research is not available to definitively confirm their status as best practices. Thus, for now, the best practice is simply to experiment with integration and sequencing.

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1. Readers for this chapter were Russell Engler, Jeff Giddings, Rocky Cabagnot, and Judith Welch Wegner.
2. Often referred to somewhat pejoratively as “boutique” courses, specialized courses can reflect either the expansion of regulation throughout the economy and the polity, increasing specialization of law practice, or practices of allowing faculty to pursue their own research interests.
6. Some people find it helpful to think of sequencing as involving one temporal dimension — perhaps envisioned vertically and of integration as involving two dimensions, both a horizontal one and the vertical, sequencing one.
2. Providing Curricular Pathways and Concentrations

One approach to curriculum structuring is to build defined pathways through the curriculum, using internet advising or concentration tracks. As many schools have discovered, the internet can be a platform for providing detailed course advising information. Pathways can integrate career and course advising and provide recommended courses for students pursuing different careers. Pathways are moving toward the status of a best practice.

Concentrations have proliferated in recent years. These programs foreground a key question. To what extent should law schools be preparing students with a generalist education versus a specialized one? If well designed, concentrations can require some degree of breadth while immersing students more deeply in one field. That depth may well promote more effective learning, even for students who do not end up practicing in that field. To date, evidence is lacking that employers favor students who complete such programs, but tracks can provide useful course advice, even for students who do not complete them.

3. Providing an Integrated Curriculum

Curricular integration has become something of a buzzword, but “integration” is rarely well, or consistently, defined and can refer to differing aspects of legal education. For instance, individual teachers can integrate doctrine, skills, and theoretical perspectives within an individual course. Schools can consciously allocate exposure to certain skills or other content to specific courses, or teachers, to ensure that the overall curriculum, and perhaps the individual student’s experience, includes the desired range of content. A curriculum may be integrated by both individual teachers and the institution through consciously creating connections among different courses. This discussion focuses on the last of these.

Connections across courses can be driven by individual faculty members who reinforce students’ learning by cross-referencing doctrine, skills, or values addressed in other courses that the student is taking contemporaneously, or may take later in law school. Alternatively, connections can be administratively driven.

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7 Schools create concentrations through tracks, certificate programs, and other methods.


9 For a recent recommendation on how to accomplish this goal, see Cynthia Batt, A Practice Continuum: Integrating Experiential Education into the Curriculum, 7 ELON L. REV. (forthcoming 2015) [hereinafter Batt, Practice Continuum].

10 Deborah Maranville, Creating a Coherent Curriculum: Unpacking Integration (in draft).

11 This process is often done through curriculum mapping. See Chapter 2, Section B, Curriculum Mapping as a Tool for Improvement, above.
For instance, courses that resonate with each other can be scheduled in the same term in non-conflicting time slots and students can be encouraged, or even required, to enroll in them contemporaneously. This reinforcement can, of course, result from students’ individual course selections, but in that case, the student may have to perform all the work of identifying connections. It makes sense for the institution and individual teachers to assist through advising and course scheduling. The goal of reinforcing learning does not suggest that all courses must link in obvious ways — sometimes serendipitous pairings can facilitate rich and surprising connections, and sometimes variety is good for its own sake — but a conscious attention to achieving integration seems likely to help students transfer their learning to other contexts.

Law schools are often criticized for teaching doctrine in separate subject matter silos without presenting students with factual scenarios that implicate multiple areas of law. After all, clients often present problems that do not fall neatly into specific doctrinal areas or do not require just one form of remedy (e.g., torts, contracts, property). Thus, a basic form of integration is to teach multiple areas of substantive law in conjunction with each other. While individual teachers sometimes do — and should — integrate their courses with those of their colleagues, law schools can formalize these efforts.

In the first year, law teachers, and even schools, have experimented with “Contorts,” or similar courses that integrate teaching and learning of multiple subjects. Often driven by a desire to incorporate more theory, or practice, or both, they may integrate the legal analysis, research and writing course and a more explicit focus on theoretical perspectives. If these efforts also incorporate opportunities to apply the doctrinally integrated material in practice contexts, however, they may address Best Practices’ goal of integrating theory, doctrine, and practice. Despite the recurrence of such efforts, they have not succeeded in widely displacing the traditional 1L curriculum.

As discussed above, upper division integration efforts can be facilitated through concentration tracks and certificate programs, but absent conscious efforts by faculty to make connections among subject matter areas — for instance highlighting why tax law is relevant to family law — students may not perceive the connections on their own. Pairing a doctrinal course with an experiential course that will require the student to apply the rules in a practice context can be a step towards integrating theory, doctrine, and practice. This can be accomplished by faculty collaborations supported by the institution. For instance, the same students can be enrolled in an evidence and/or professional responsibility course paired with trial advocacy, criminal procedure and a criminal prosecution or defense clinic. Or a business organizations course can be paired with a transactional drafting course.

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Integration could also be achieved on a programmatic basis, for instance by pairing all of the first-year legal writing courses with the offerings of a doctrinal course.\footnote{James Etienne Viato, \textit{Legal Education’s Perfect Storm: Law Students’ Poor Writing and Legal Analysis Skills Collide with Dismal Employment Prospects, Creating the Urgent Need to Reconfigure the First-Year Curriculum}, 61 \textit{Caul. U. L. Rev.} 735 (2012). Viato argues in favor of integrating legal writing with 1L doctrinal courses, as has long been done by University of Iowa and recently at Washington & Lee. He bases the argument on perceived “softness” of current legal education and a move away from teaching analytical skills, rather than a desire for integration more generally. \textit{Id.} at 743-46.}

Newer course structures, such as the “lab course” provide alternatives for integrating doctrinal and experiential courses. The lab course is typically a one or two credit course offered simultaneously with a doctrinal course, often structured around a single complex simulation.\footnote{See Chapter 5, Section F, Subsection 1, \textit{Incorporating Experiential Education throughout the Curriculum}, below.} Students in the lab course encounter the concepts from the doctrinal course in a lawyering context and apply and work with the concepts as lawyers would.\footnote{Some schools have taken up the “lab” terminology but applied it to individual courses that are not paired with a doctrinally-focused course. Such courses might focus on simulations, such as the Evidence Lab offered by Southwestern as one of its skills-oriented intersession courses. \textit{Traditional Upper Level Division Curriculum Enhancements}, \textit{Sw. L. Scn.}, \url{http://www.swlaw.edu/academics/jd/newcurriculum2, archived at http://perma.cc/J8V5-A2NA}. Other schools have used the phrase lab course for law clinics. \textit{See}, \textit{e.g.}, \textit{Corporate Lab}, \textit{Univ. of Chicago L. Scn.}, \url{http://www.law.uchicago.edu/corporatelab, archived at http://perma.cc/BGZ9-DUEC} (using the lab designation for a program combining a transactional clinic and a speaker series); \textit{Vanderbilt International Law Practice Lab}, \textit{Vanderbilt L. Scn.}, \url{http://law.vanderbilt.edu/academics/academic-programs/international-legal-studies/international-law-practice-lab.php, archived at http://perma.cc/M5FE-AE42} (using the lab designation for a course in which students perform policy work for real-world clients).} While simulation based lab courses can be created for an individual course, a more ambitious effort can create a series of such courses on a systematic, school-wide basis.\footnote{At least two law schools have created such series. For Seattle U. Law School’s original upper division effort, see John B. Mitchell, et al., \textit{And Then Suddenly Seattle University Was on Its Way to a Parallel, Integrative Curriculum}, 2 \textit{C LIN. L. REV.} 1 (1995). In 2009, Gonzaga School of Law created a set of mandatory skills labs for the first-year curriculum. \textit{Skills Labs, Gonzaga Univ. Scn. of L.}, \url{https://www.law.gonzaga.edu/academics/curriculum/skills-labs/, archived at https://perma.cc/LHN3-SWHY}.}

4. Providing a Sequenced Curriculum: Layers and Spirals

In addition to building connections among courses taken at the same time, a law school should consider whether a particular sequence of courses will best facilitate learning. In the first year, students consider foundational concepts that ought to resonate with each other. Does the sequence matter?

For example, do students who take contracts in the first term do better in property in the second term because they are familiar with contractual issues that affect landlord-tenant analysis? Do students who take criminal law in the first semester understand torts better in the second semester because they realize how defenses are similar or different? Are there ways
in which business or litigation courses might be sequenced to help students understand what is expected of them when they graduate.  

A persistent criticism of legal education is that repeated use of the case method and Socratic dialogue in upper division doctrinal courses means that students are exposed to new and sometimes more specialized subject matter knowledge without necessarily moving from beginning to intermediate to advanced skill levels. In other words, the curriculum does not build students’ skills in a consciously sequenced fashion.

The widespread incorporation of theory and practice skills simulation courses and clinical education into the curriculum means that many students are now exposed to additional skills beyond analyzing and synthesizing cases and statutes. This development presents two questions, in addition to the possibility that doctrinally-focused courses might build in skill level. Can courses focused primarily on doctrine and practice-oriented courses be sequenced to provide optimal learning? Second, can different types of practice-oriented experiential opportunities be sequenced for optimal learning?

The metaphor of a cake suggests two primary approaches to sequencing, the layer cake and the marble cake models. The first option, with elements proposed by a number of commentators, is what may be termed a layer cake model. Each year of law school has a distinct curricular content and teaching method. Keep the first year essentially the same, focused on developing the skills of legal analysis, perhaps with some simulations incorporated to provide context. In the second year, add significant content around additional lawyering skills, using a teaching methodology built on student performance of lawyering tasks in a simulated case file. Add real lawyering experiences in the third year in a supervised practice experience. Best Practices’ “Components of a ‘Model’ Best Practices Curriculum” followed the layer cake model, but with the important modification that all first-year classes should include the use of simulations.

A second option is the marble cake. Rather than restricting the first year solely to doctrine and analytical skills, students are introduced to a broader range of knowledge, skills and values, or Carnegie’s three apprenticeships, in a simplified fashion in the first year, with an “early and often” approach to exposing students to client-focused real lawyering experiences as well as simulation-focused opportunities integrated into both doctrinally-focused and separate courses.

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20 See, e.g., Margaret Martin Barry, Jon C. Dubin & Peter A. Joy, Clinical Education for This Millennium: The Third Wave, 7 Clinical L. Rev. 1 (2000).

21 Best Practices, text at notes 821-870.

B. PATHWAYS, INTEGRATION, AND SEQUENCING THE CURRICULUM

Existing models for the layer cake approach are readily available. Some schools have developed courses that introduce students not only to legal writing, research, and analysis, but also to other foundational lawyering skills such as interviewing, counseling, and negotiation, with the idea that upper-level courses will build on that foundation for greater expertise and advanced skills. In recent years, other schools have experimented with their third-year curriculum, traditionally viewed by 3Ls as “more of the same.” Promising efforts include capstone courses that offer a culminating experience either in a specific doctrinal area, or in a practice context such as transactional work advising startups, estate planning, or litigation, or the “all-experiential” third year.

The attractions of the layer cake model are these: first, because this model typically assumes a required simulation course in the 2L year in which all students will be exposed to a common, prescribed set of skills, it has the advantage of consistency; and second, because students develop more knowledge and skills before they encounter clients, they will presumably be more competent and easier to supervise.

Models for the marble cake approach are less well developed, but many schools are moving in that direction by incorporating simulated, or even real, experiential education into doctrinal classes in all three years of law school, exposing first-year law students to real practice through legal writing collaborations with non-profit legal providers or well-structured volunteer opportunities, and offering a rich


mix of theory and practice skills, simulation courses, law clinics, and externships. The advantages of the marble cake model are threefold: first, students’ doctrinal learning is more contextualized, increasing the likelihood that the learning will transfer into practice; second, earlier and more frequent exposure to real legal practice will be motivating for most students, and this should improve their engagement in their second and third years; finally, students will have more opportunities to learn what types of legal practice might be a good fit for them, as they encounter a broader range of skills and practice contexts. The challenge is to provide sensible connections among the varied experiential opportunities.

5. Addressing Impediments to Integrating and Sequencing

Faculties face several challenges in adopting an integrated approach to legal education. Undertaking a major overhaul of a law school’s curriculum requires cooperation by the entire faculty. Expected objections include that such changes will infringe on academic freedom and will take substantial time and effort on the part of the faculty. Another challenge is that some faculty members may not be qualified for or comfortable with adopting this approach. Some members of the law school faculty did not practice law, did not practice for very long, and/or have not practiced for many years. As a result, they may feel unable to address issues beyond legal doctrine. Finally, even when a faculty is willing and able to embrace an integrated approach to legal education, there will be challenges of planning among faculty teaching similar courses, articulating goals of such an integration, and determining methods of assessment (particularly in large classes).

6. Conclusion

Efforts to integrate and sequence the law school curriculum remain to be fully developed. Thus, it is a best practice to attend to these efforts, but no one approach has risen to the status of a best practice.


28 For example, University of California Berkley Law has Student-Initiated Legal Services Projects (SLPS), Univer of Cal. Berkley Law, http://www.law.berkeley.edu/slps.htm, archived at http://perma.cc/VN8L-ELGX, and the University of Washington School of Law provides students with volunteer opportunities such as the Immigrant Families Advocacy Project, About, Univ. WASH. SCH. OF LAW, http://uwifap.wordpress.com, archived at http://perma.cc/EQK6-M5YS.
C. A THREE-YEAR CURRICULUM THAT ENGAGES LAW STUDENTS AND PREPARES THEM FOR PRACTICE
By Karen Tokarz

1. Introduction

The clamor for reform in legal education is precipitated by many factors including new insights about legal competencies and experiential legal education, the changing nature of law practice, rising law school tuition and debt loads, increasing demand for “practice ready” law graduates, and growing numbers of law graduates going into solo and small firm practice. Some of the current concerns echo long-standing criticism of the traditional upper-level curriculum, particularly the third year of law school, when, as the saying goes, law schools “bore you to death.”

In the face of potentially conflicting demands to improve the preparation of law graduates and to reduce the cost of legal education, some law schools are reconsidering not only law school’s curricular components, but also its optimal length. Best Practices for Legal Education\(^2\) did not address this topic directly, but did provide a “model” curriculum that proposed three years of instruction, including clinics or externships for all students.\(^3\)

American law schools have long required three years of instruction, and schools currently are being called on to teach an expanded set of knowledge, skills, and values. Yet some critics argue that law school should be reduced to two years, either compressing the current three-year curriculum into two full calendar years, including summers (which some law schools now offer) or reducing law school to two academic years of approximately 56 credits (which no law school currently offers).\(^4\) Others propose that law students should be permitted to take the bar

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\(^1\) “In the first year of law school, they scare you to death. In the second year, they work you to death. In the third year, they bore you to death.” Mitu Gulati, et al., The Happy Charade: An Empirical Examination of the Third Year of Law School, 51 J. LEGAL EDUC. 235, 235 (2001) (quoting an ancient law school proverb) [hereinafter Gulati, et al., The Happy Charade].


\(^3\) Id., text at notes 818-70.

exam before the completion of three years of law school (which is permissible in some states).  

Proposals to reduce the length of law school generally emanate from three primary concerns. Concerns about the opportunity costs of the third year center on high law school tuition and the resulting student debt loads caused by widespread financing of law school through student loans. Concerns about the repetitive nature of the traditional law school curriculum and consequent student disengagement are buttressed by empirical research demonstrating that “a very large proportion of third-year students at most schools do not regularly attend class . . . [and] among the third-year students who do attend class, there appears to be little engagement with course work — a complete turnabout, of course, from the intense first year of law school.”

Concerns about declining law school applications and post-graduate employment opportunities have led some schools to offer a shorter law school period as a way to recruit more applicants or as a way to give their graduates a competitive edge in the post-graduate employment market.

2. Why Three Years?

Better use of the current three years of law school is a superior alternative to a truncated, two-year legal education. The path to lawyering competency is a steep one and at least three years are needed to move students significantly along that path. Sufficient time is needed for students to benefit from doctrinal, simulation-based experiential, and clinical education, and ideally also two summer work opportunities. Two years are not sufficient to develop the necessary lawyering competencies and prepare new lawyers for practice in today’s legal market.

a. Law Schools Need Three Years to Incorporate Experiential Education that Will Effectively Prepare Students for the Practice of Law

For almost a quarter of a century, leading reports on legal education have articulated multiple, essential goals of legal education and, in the process, explained why two years are not sufficient to prepare students for the profession of law. The Carnegie Report endorsed a three-year curriculum that develops the three lawyering apprenticeships of knowledge/understanding, practice expertise, and

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5 See, e.g., Samuel Estreicher, The Roosevelt-Cardozo Way: The Case for Bar Eligibility After Two Years of Law School, 15 N.Y.U. J. LEGIS. & PUB. POL’Y 599 (2012). New York and Arizona have such programs in place, assuming certain other conditions are met.

6 Gulati, et al., The Happy Charade, at 243-44. The research shows that for a subset of students, in which women and minorities are somewhat overrepresented, “law school fits the oppressive, gloomy picture evoked so often by anecdotes and the narrative literature on legal education.” Id. at 266.


professional identity/judgment.\textsuperscript{9} Developing the three crucial apprenticeships of the legal profession requires an amalgam of (1) teaching legal doctrine and analysis, which provides the knowledge and understanding that is needed for professional growth; (2) introducing facets of lawyering practice, which leads to acting responsibly for clients; and (3) inculcating professional identity, values, and dispositions of the legal profession, which fosters ethical practice.\textsuperscript{10}

Multiple goals must be accomplished to inculcate and integrate these three professional apprenticeships, including: developing legal knowledge and research and analytical skills; providing opportunities for students to engage in complex practice and make judgments under conditions of uncertainty; teaching students how to learn from experience; and introducing students to responsible and effective professional community obligations, including the duty to provide public service.\textsuperscript{11} “The goal of greater integration means that the common core of legal education needs to be expanded in qualitative terms to encompass substantial experience with practice, as well as opportunities to wrestle with the issues of professionalism.”\textsuperscript{12}

In line with the strong recommendation of \textit{Best Practices} to include clinical education in law schools,\textsuperscript{13} commentators and regulators increasingly endorse significant experiential opportunities for all law students. The California Task Force on Admissions Regulation Reform\textsuperscript{14} and the Clinical Legal Education Association (CLEA)\textsuperscript{15} advocate for fifteen upper class experiential credits. Other commentators “urge law schools to require each graduate complete a minimum of twenty-one experiential course credits over the three years of law school, including at least five credits in law clinics or externships.”\textsuperscript{16} They highlight that twenty-one required credits (or roughly 25 percent of the eighty-three required credits for graduation from an American Bar Association (ABA)-approved law school)\textsuperscript{17} would bring legal education closer to, although still below, the experiential and clinical education.

\begin{itemize}
\item \textsuperscript{9} \textit{Carnegie Report} at 27-29.
\item \textsuperscript{10} \textit{Id.} at 194.
\item \textsuperscript{11} \textit{Id.} at 22.
\item \textsuperscript{12} \textit{Id.} at 194-95.
\item \textsuperscript{13} \textit{Best Practices}, Model Curriculum, text at notes 818-70.
\item \textsuperscript{15} \textit{Katherine R. Keuse, Clinical Legal Educ. Ass’n, Comment onDraft Standard 302(a)(3) & Proposal for Amendment to Existing Standard 302(a)(4) to Require 15 Credits in Experiential Courses 3–4} (July 1, 2013).
\end{itemize}
course requirements of other professions. Recent empirical research suggests that the argument that clinical legal education is too expensive to require for all students in a time of decreasing law school enrollments and revenues is not accurate.

b. Curriculum Changes as a Better Response to Student Disengagement

While “scores of scholars, judges, and practitioners have written withering critiques of law school, usually focusing on the latter half of school and usually suggesting fairly fundamental changes,” research shows that “third-year students have a hunger for applying what they have learned in law school to client problem solving . . . [and] seem to have a definite agenda that links career goals to serving clients and working on real-world problems.” In response to this widespread student disengagement in the third year, now demonstrated empirically, law schools can take a variety of steps, including making the third-year “all-experiential,” as one law school has done.

Proponents of retaining three years advocate sweeping reforms for the entire curriculum, including but not limited to the third year, to produce an integrated, significantly experiential, three-year curriculum that encompasses multiple methodologies and accomplishes the three apprenticeships. The authors of the empirical research on third-year disengagement recommend incorporating new experiential methodologies in traditional courses, expanding externships, developing hybrid clinics along the medical school model, and reducing alienation through public interest curricular programming. Another author suggests redesigning the three years of law school can be accomplished without increasing costs through “ditching” the casebook in upper-level courses, appending skills components or practice labs to core courses, infusing new experiential methodologies across the curriculum, and exploring increased capacity for law clinics and externships through hybrid, community collaboration models. The Carnegie Report proposes that the third year could be viewed as a “capstone” opportunity in which students engage in advanced clinical education and develop specialized training.

Doctrinal courses utilizing the case-dialogue method and other active classroom teaching methods, especially in the first year, make major contributions to accomplishing the Carnegie Report’s knowledge/understanding apprenticeship. Experiential modules and courses using simulations and hypothetical problems

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18 Crossroads at 15.
22 Gulati, et al., The Happy Charade, at 262-66.
expose students to the processes of fact development, problem solving, applied legal analysis, legal drafting, litigation, dispute resolution, and ethical decision making, and help foster the practice and professional identity apprenticeships. Clinics and externship courses, where students learn in role with real clients who have complex, real-world problems, present the indeterminate situations necessary for students to develop judgment; incorporate professional knowledge, skills, and values; internalize the attorney role; comprehend client responsibility; and learn how to learn from experience.

Each of these complementary yet distinct teaching methods makes important contributions to legal education, each imparts different skills, and each teaches doctrine and theory differently. Law students need all three approaches and need them intertwined throughout the three year curriculum in order to prepare them fully for the effective, competent, ethical practice of law.

c. The Limited Impact of Current Two-Year Proposals

Recent experiments with changing the duration of law school — or allowing earlier bar examination dates — have roots in short-lived initiatives from the late 1960s and early 1970s. To date, none of the experiments actually eliminate a third year of tuition costs, nor reduce law school to the eighteen-month duration of two academic years (approximately 56 credits), which they cannot do given current ABA accreditation requirements.

About fifteen law schools, including Northwestern, have in recent years adopted accelerated programs to allow law students to complete eighty-three required credits over two full calendar years, including summers. The programs do not reduce the cost of law school or the actual total number of required credits for graduation, but do allow graduates to begin law practice one year sooner. At least another two dozen law schools have adopted accelerated “3+3 J.D.” programs, also known as “B.A. to J.D.” programs, in which students earn both undergraduate and law degrees in six, rather than seven, total years.

State bar association changes that allow students to take the bar before completing the traditional number of credits facilitate earlier bar admission. Beginning in 2015, students accepted into the Pro Bono Scholars Program will be permitted to take the New York bar examination in February of their final year of study; they also must spend 12 weeks working full time in a pro bono placement, while also completing an academic component at their law school.
now allows candidates to take the state bar examination pre-graduation, in spring of the third year after students have completed all but eight credits of law school, but students still must complete the ABA-required eighty-three credits in order to earn a degree.29

The ostensible benefit of these approaches is that students gain admission to the bar a year earlier or by late spring of their third year, rather than late summer or fall after their third year, and thus can enter the market sooner. The potential downsides of such approaches are that they will: 1) undermine law clinics, externships, and other valuable, experiential education programs already offered by law schools by turning students to bar preparation during the times that under current legal education models students most often participate in supervised practice experiential courses;30 2) eliminate summer job opportunities that expose law students to practice; and 3) substitute shortened, post-bar exam law practice opportunities without the benefits of mentoring and instruction by qualified law faculty through well-supported clinical education.

Many commentators urge that experiential education should remain under the auspices of law schools.31 The value added by guided reflection, classroom instruction, close supervision, and skilled assessment makes all forms of law school experiential education more beneficial to emerging lawyers than a plan to reduce law school to two years of doctrine and leave experiential learning to the post-graduate practice of law, similar to the “apprentice” model. At a time when legal education is being urged to expand experiential education and better prepare new graduates for practice, a reduction in the number of years of law school simply does not allow students to be exposed to all of the kinds of courses and modes of instruction needed to become effective, competent, ethical practitioners.

Law school experiments to provide alternatives to the traditional three-year format of legal education and recent regulatory initiatives in large part seem to be rooted in compelling concerns over the rising cost of legal education. But current models do less to address cost than would initially seem. And, implicitly, both law schools and regulators recognize the need for more education than would be available in two academic years. If these experiments simply substitute a shortened law school period with no curricular reform and nothing to replace the lost clinic, externship, and law job opportunities, law schools likely will produce even less effective, competent, ethical practitioners than the current structure of which many are complaining.


30 See Chapter 5, Section F, Experiential Education, below.

3. Conclusion

Three years are needed to inculcate Carnegie Report’s three apprenticeships and expose students to the varied pedagogical approaches needed to accomplish that end. Three years of legal education also are needed to provide law students time to distill their legal education and to enhance their professional development through summer legal practice. In today’s market, few employers have the capacity to provide training for their junior lawyers. Employers increasingly seek graduates who have had multiple clinics, externships, and job experiences so that these new lawyers can truly “hit the ground running.”