

Practice-Ready Legal Education

The Four New Demands Law Schools Must Satisfy

By Gary S. Gildin

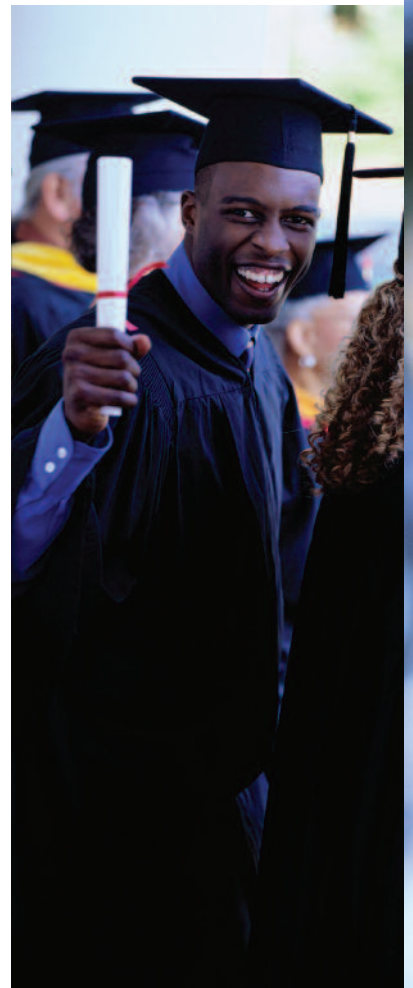
The prevailing method of instruction in American law schools, formulated in the late 19th century by Christopher Columbus Langdell, first dean of the Harvard Law School, teaches legal analysis and doctrine through dissection of the “cadavers” of past decisions. Likewise, law schools continue to educate their students in the fundamentals of case, statutory and constitutional analysis, policy and legal theory in a relatively uniform set of first-year courses: civil procedure, criminal law, torts, contracts, property and constitutional law. Incremental changes in law school curricula have accounted for scientific discoveries, responded to a technological revolution and threats to national security, and acknowledged that law does not hold a monopoly on truth divorced from wisdom gleaned from other disciplines. The core of the law school curriculum, however, has not dramatically wavered.

Now a new set of market forces has spurred law schools to implement more pronounced curricular innovations. The demand for legal services has not rebounded from the effects of the worldwide recession, with some commentators proclaiming a permanent structural downturn in employment of lawyers. Less certain job prospects have led prospective law students — generationally inclined to take a more utilitarian view of education in general — to question the wisdom of piling the cost to obtain a law-school degree on top of debt already

acquired during their years of increasingly expensive undergraduate education. Judges and lawyers have turned up the volume of their perennial complaint about the failure of law schools to prepare students for the practice of law, with one prominent lawyer — President Barack Obama — advocating for contracting the program of legal education into a two-year degree.

As a consequence, the latest trend in legal education is the marketing of the law school as a manufacturer of “practice-ready” lawyers. A newly adopted American Bar Association (ABA) accreditation standard requires that every law school mandate at least six hours of “experiential courses,” which may be satisfied through simulation, a law clinic or a field placement. A true commitment to profession-readiness, however, requires a curriculum that goes beyond mere compliance with accreditation standards to respond to four features of the 21st century legal marketplace.

First, because the American and global economies remain mired in the shadow of a recession, clients are understandably mindful of the bottom line. Private clients are no longer willing or able to pay legal fees for what amounts to on-the-job training of newly minted lawyers. Legal departments of governmental entities, working with less staff due to budget cuts, of necessity hire only lawyers who can immediately shoulder their portion of the workload. In turn, law schools must graduate students



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who arrive at the workplace practice-ready and billable-ready.

Law schools, however, cannot wait to confer the practical skills of lawyering until their students enroll in simulation courses, field placements or law clinics in the latter stages of their education. Law school curricula already recognize that learning to “think like a lawyer” — analysis of cases and codes, assessment of policy implications in an interdisciplinary fashion, situating arguments inside a larger theoretical construct — is an accretive process that must be taught and improved upon over the arc of three years of course work. Similarly, foundational practical skills must be taught astride analytical skills and doctrine in the first semester of law school, with subsequent courses sophisticating those skills across the curriculum.

Second, the current legal market demands not only a general readiness to practice but also preparation for practice in more specialized environments. Formerly, the principal career options for those newly armed with a law degree were practicing in a law firm or engaging in public service, either in the governmental or nonprofit sector. As American society has become more complex and technologically advanced, the settings in which graduates will apply their legal skills have diversified. For example, companies now organized around more exotic structures and subject to a wider array of regulation are expanding

their ranks of in-house counsel to manage both internal governance and compliance with externally imposed legal requirements. Law schools, then, must educate their students about the full range of contexts in which they may use their degrees and guide students to the electives that will best confer the unique knowledge and skills they will need to be hired and to practice in a specific professional field.

Third, the clientele of lawyers are more widely subject not only to domestic regulation but also to international and transnational law. Not long ago the practice of international law was the province of a handful of large corporate law firms whose multinational clients had a physical presence outside the United States. Today, even small, local businesses readily market and send their products across the globe. Just as every lawyer must be aware of nondomestic sources of regulation, law schools must acquaint their students with the ability to research and analyze the unique features of transnational and international law.

Finally, the contemporary day-to-day practice of law requires significant capabilities beyond the baseline lawyering skills of researching, understanding, applying and communicating constitutional, statutory, administrative and common law. To satisfy the needs of their clients in a cost-effective way, lawyers must be proficient in a growing set of extra-legal competencies such as financial literacy, emotional intelligence

and project management. And to meet the needs of legal employers, graduates must be conversant with best practices in law office management and business development. Just as law schools have incorporated knowledge from other academic disciplines into their curriculum, they must now expand training to the new extra-legal competencies their students will need to represent their clients effectively and provide added value for their employers.

Law schools seeking to produce practice-ready graduates need not and should not abandon the quest to teach the higher-order skills of thinking like a lawyer — analysis, policy, theory and the capacity to access, comprehend and integrate knowledge from nonlegal disciplines. But law schools cannot adequately prepare students for the four new demands of a radically changed legal marketplace by bare-bones compliance with the new six-credit, experiential-learning accreditation requirement. Rather, law schools must construct a curriculum that (a) from the first day of class pours a foundation of practical skills that will be developed across the curriculum; (b) educates students about and guides future course work in specific career paths; (c) exposes students to transnational and international law; and (d) instructs on competencies that lie outside legal analysis and doctrine. Perhaps most important, law schools must continue to innovate, pairing the best of the traditional Langdellian method with training in a constantly evolving set of skills and competencies necessary to render students ready for the legal profession. ☞

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Doing Things Differently



Having been granted separate accreditation for two law schools, Penn State last fall announced a new, “revitalized” curriculum for students of Dickinson Law starting in 2015. The revised curriculum includes the following:

- A more robust version of the ABA’s experiential-learning requirement: No one will graduate from Dickinson Law without earning 12 credits of experiential learning, at least six credits of which must include having practiced law in one of four in-house legal clinics, in an internship or in our semester-in-practice program.
- Introduction of practical training in the first semester, teaching baseline skills of legal argument, factual persuasion, interviewing and counseling, problem-solving and communication with clients.
- Focus in the first year on various contexts in which students might choose to employ their degree, with the upper-level elective curriculum organized around “The Lawyer As . . .” to guide students to the courses, clinics, internships and semester-in-practice options that will best situate them for practice in a particular setting.
- Recognition of the global nature of modern practice, with presentation of basic principles of international and transnational law in the first-year curriculum.
- Mandatory instruction in the array of extra-legal competencies that every 21st century lawyer will use as much as, if not more than, conventional legal skills.