

## LAW SCHOOL IN THE PREPARATION OF PROFESSIONALS

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PROFESSIONS OPERATE WITHIN AN EXPLICIT CONTRACT with society as a whole. In exchange for privileges such as monopoly on the ability to practice in specific fields, professions agree to provide certain important social services. In exchange for the privilege of setting standards for admission and authorizing practice, professions are legally obliged to discipline their own ranks for the public welfare. The basis of these contracts is a set of common goals shared by the public and for which different professions take responsibility. For example, medicine, nursing, and public health are chartered for the maintenance and improvement of society's health, just as education exists to promote the goal of an educated citizenry, law to regulate social transactions and secure justice, and engineering to develop technologies for the improvement of life. These are public values, and the core of professional privilege is based on the professions' willingness to commit to them.

On this basis, professions have been given significant grants of public trust. Lawyers, for example, are allowed—even required by law—to hold in confidence their communications with their clients to a degree far beyond what is legally allowable in ordinary social relationships. Professions are guardians of practices vital to society's well-being, in which all citizens have a stake. This responsibility and orientation toward the public good set off professionals as members of a distinct type of occupation, one directly pledged to ideals of service to their clients and the public as a whole. A significant mark of professional privilege and social responsibility is the authority that professions wield to require of their members

training in specialized institutions and to assess the fitness of candidates for admission to practice.

In our research on the professions, we have seen how this social contract shapes—and makes distinctive—professional training. Across the otherwise disparate-seeming educational experiences of seminary, medical school, nursing school, engineering school, and law school, we identified a common goal: professional education aims to initiate novice practitioners to think, to perform, and to conduct themselves (that is, to act morally and ethically) like professionals. We observed that toward this goal of knowledge, skills, and attitude, education to prepare professionals involves six tasks:

1. Developing in students the fundamental knowledge and skill, especially an academic knowledge base and research
2. Providing students with the capacity to engage in complex practice
3. Enabling students to learn to make judgments under conditions of uncertainty
4. Teaching students how to learn from experience
5. Introducing students to the disciplines of creating and participating in a responsible and effective professional community
6. Forming students able and willing to join an enterprise of public service

To be sure, the different fields emphasize some characteristics of a professional more than others. Professional education rarely gives equal attention to thinking, performing, and conducting oneself as a professional. (In legal education, as we shall see, the primary emphasis on learning to think like a lawyer is so heavy that schoolwide concern for learning to perform like one is *not* the norm.) And, of course, professions do not always embody all these core features well. However, it is impossible to organize or teach a curriculum to prepare future practitioners without at least tacitly commenting on what each of these six core tasks contributes to the profession's knowledge, skill, and attitudes.

Because, in essence, these tasks of professional education represent commonplaces of professional work (a normative model in which each feature is essential), we believe that the more effective the preparation for the profession is to be, the more consciously the educational program must address all these purposes.<sup>1</sup> As we have considered, over the course of our studies of professional education, the educational tasks that the nature of professional work imposes on professional schools, we have

found useful two key concepts: (1) the idea of signature pedagogies and (2) the notion of apprenticeship. As we explore legal education in this volume, drawing insights from contemporary understanding of learning, we use these two key concepts to illuminate what we believe are the major challenges—and great promise—of today’s legal education.

## Signature Pedagogies

The typical practices of teaching and learning by which professional schools induct new members into the field can enlighten us about the personalities, dispositions, and cultures of the fields they serve and partly embody. Moreover, to the extent that they serve as primary means of instruction and socialization for neophytes in a field, they are worthy of our analyses and interpretations, better to understand both their virtues and flaws. We call these key educational practices “signature pedagogies.”<sup>2</sup>

Some of these pedagogies are clearly visible to everyone. In the law, the quasi-Socratic dialogues so vividly portrayed by Professor Kingsfield and his students in *The Paper Chase* are the obvious candidate for a “signature”—readily identifiable and uniquely individual to the field. In medicine, the practice of bedside teaching is the clear candidate. There the formative teaching practice takes place not in a classroom but a hospital ward, in the context of daily clinical rounds, in which a senior physician or resident leads a group of novices from bedside to bedside, engaging them with questions and discussion about the diagnosis and management of the illness embodied in the patient.

Professional education is preparation for accomplished and responsible practice in the service of others. It is preparation for “good work.”<sup>3</sup> Thus the pedagogies of the professions must attempt to bridge and resolve tensions between the competing imperatives to which future professionals must respond. The students must learn abundant amounts of theory and vast bodies of knowledge, but the “bottom line” of their efforts will not be what they know but what they can do. They must come to understand thoroughly so they can act competently, and they must act competently in order to serve responsibly. Thus the most distinctive of the signature pedagogies—the case dialogue in law, the varieties of design and performance studio in engineering and architecture, bedside teaching and clinical rounds in medicine and nursing, the interpretation of texts and instruction in preaching in seminaries—are pedagogical attempts to build bridges between thought and action, between relative certainty and rampant unpredictability. These are pedagogies invented to prepare the mind for practice.

The concept of signature pedagogy is an analogue to an idea common in modern linguistics—that there is a distinction between the observable linguistic performance of speakers of a language and the deep structure of grammatical and syntactical knowledge that these speakers are presumed to have in order to be able to speak with competence. A signature pedagogy is a kind of language of a particular profession. It can be imagined to have four dimensions: (1) its observable, behavioral features—the surface structure; (2) the underlying intentions, rationale, or theory that the behavior models—the deep structure; (3) the values and dispositions that the behavior implicitly models—the tacit structure; and (4) its complement, the absent pedagogy that is not, or is only weakly engaged—the shadow structure.

Law's signature case-dialogue method plays out across all four of these dimensions quite clearly. The surface structure is a set of dialogues entirely focused by and through the instructor. In these dialogues about legal texts, students are expected to engage in intense verbal duels and competitions with the teacher as they struggle to discern facts and principles of interpretation within a case. By contrast, the deep structure of the pedagogy is that “thinking like a lawyer” is about processes of analytic reasoning and the grasp of legal “doctrine” and principles rather than learning a system of statutory or “black letter” law. This is modeled through the relentless confrontation of interpretations in the inherently competitive character of the classroom.

We find that in the case dialogue, the third dimension—the tacit structure—is consistent with the surface and deep structures. As we discuss in detail later in this volume, students are often disappointed or disillusioned to discover that legal understanding can diverge significantly from what they understand as moral norms or standards of fairness. So the tacit teaching of the pedagogy is that legal encounters are of a different order than everyday moral behavior. This is an important part of the hidden curriculum of case-dialogue teaching.

Finally, there is in legal education a weakly developed complementary pedagogy. With some important exceptions, the underdeveloped area of legal pedagogy is clinical training, which typically is not a required part of the curriculum and is taught by instructors who are themselves not regular members of the faculty. Compared with the centrality of supervised practice, with mentoring and feedback, in the education of physicians and nurses or the importance of supervised practice in the preparation of teachers or social workers, the relative marginality of clinical training in law schools is striking.

## The Impact of the Learning Sciences: Apprenticeship Reappraised

Research about human learning has recently brought back into prominence a term long connected to the preparation of professionals: *apprenticeship*. The most momentous change in professional training over the past century has been the movement of professional education into the academy. This has entailed a shift away from apprenticeship, with its intimate pedagogy of modeling and coaching, toward reliance on the methods of academic instruction, with its emphasis on classroom teaching and learning. The central role of academic methods and patterns of thought in professional training is today taken for granted. But the transition from on-the-job training by practitioners to instruction carried out far from the sites of professional practice and by full-time educators has transformed professional life. It has reduced the arbitrary and often haphazard nature of old-time apprenticeships. It has opened the induction of neophytes to a measure of quality control, as well as the likelihood that the knowledge imparted will be well tested and reasonably current. But it has also bequeathed a legacy of crossed purposes and even distrust between practitioners and academics, as well as between the academy and the public, which still besets the preparation of professionals.

Precise psychological analysis of experts performing, from scientists to musicians to chess players, has revealed that high-performing individuals share a set of cognitive skills that can be documented and compared. In this research, two features of expert performance stand out.

First, compared to novices, experts possess not only knowledge but highly structured knowledge. That is, they understand concepts basic to their domains, and they have mastered well-rehearsed procedures, or “schemas,” for thinking and acting. These schemas enable experts to bring their knowledge to bear on situations with remarkable speed and accuracy.

Second, expert knowledge is conditioned, or related to contexts. Experts can perceive aspects of situations in ways that are relevant to deploying their knowledge in ways beginners cannot. This finding has long been part of the lore regarding lawyers, doctors, nurses, and teachers. But it has now been documented for the law and other fields.<sup>4</sup> These two traits characterize measures of expertise regardless of domain, although the content of the knowledge and specific features of experts’ skilled perception and ability to act are highly specific to particular domains of activity.<sup>5</sup> In the language of the learning theorists, these features of expertise are what underlie the ability of experts to solve problems in their domains.

Learning, then, entails embarking on an effort to gradually grow into the complex abilities of an expert. This is where the idea of apprenticeship enters. Research suggests that learning happens best when an expert is able to model performance in such a way that the learner can imitate the performance while the expert provides feedback to guide the learner in making the activity his or her own. This describes an expert-apprentice relationship in its simplest form. Expertise, however, is always shared among members of a community who have mastered certain practices. When such communities organize ways of transmitting this expertise to new members, they create apprenticeships. A great contribution of modern cognitive psychology has been to place apprenticeship, so understood, once again at the heart of education.

Learning theorists talk about rendering the informal, interpersonal kind of knowledge transmission typical of apprenticeship into more publicly available patterns of activity. They call this a *creating* within the more formal contexts of classroom learning of a “cognitive apprenticeship”—an educational experience focused on teaching beginners and journeymen the more advanced knowledge of the domain. The emphasis is not on acquiring information, as such; rather, it is on learning the concepts and procedures that enable the expert to use knowledge to solve problems. This requires learning the “subject matter” of law, medicine, engineering, and so on, but in a way that is already structured for performance, according to the explicit norms of the professional community. In many professional fields, though less so in law, these insights into learning have given rise to the widespread use of simulation as a form of teaching and learning. Particularly in medicine, carefully developed simulation practices have improved student learning and performance over traditional apprenticeship techniques.<sup>6</sup>

Much of the learning in apprenticeship is by observation and imitation because much of what experts know is tacit. It can be passed on by example, but often it cannot be fully articulated. By carefully observing expert performance, however, learning theorists argue, it is possible to render important aspects of expert practice explicit. As in the case of the simulation techniques employed in clinical domains, these articulations of good performance can then become objects of imitation and practice for learners. By making explicit important features of good performance through various conceptual models and representations, teachers can guide the learner in mastering complex knowledge by small steps. These devices of representation serve as scaffolds (in the language of learning theorists) to support efforts at improved performance. Feedback from more accom-

plished performers directs the learner's attention, supporting improved attempts at reaching a goal.

Academic expertise is not the same, even in professional schools, as actual on-the-job performance. In a similar way, "thinking like a student"—a skill that all students entering professional programs have mastered—is not the same thing as "thinking like an apprentice" to the domain. In order to become expert in a profession, making good grades with minimal effort has to give way to a complete involvement with learning new ways of thinking, performing, and understanding oneself. Today's renewed interest in apprenticeship can direct the attention of educators toward providing for their students clear notions of what professional expertise entails, along with carefully worked-out approaches to acquiring it.

### **The Three Apprenticeships of Professional Education**

As understood in contemporary learning theory, the metaphor of apprenticeship sheds useful light on the practices of professional education. In these recent Carnegie Foundation studies and reports on professional education, we use the metaphor but extend it to the whole range of imperatives confronting professional education. So we speak of three apprenticeships. The signature pedagogies of each professional field all have to confront a common task: preparing students for the complex demands of professional work—to think, to perform, and to conduct themselves like professionals. The common problem of professional education is how to teach the complex ensemble of analytic thinking, skillful practice, and wise judgment on which each profession rests.

Drawing on contemporary learning theory, one can consider law, medical, divinity, or engineering schools as sites to which students come to be inducted into all three of the dimensions of professional work: its way of thinking, performing, and behaving. For the sake of their future practice, students must gain a basic mastery of specialized knowledge, begin acquiring competence at manipulating this knowledge under the constrained and uncertain conditions of practice, and identify themselves with the best standards and in a manner consistent with the purposes of the profession. Yet within the professional school, each of these aspects of the whole ensemble tends to be the province of different personnel, who often understand their function differently and may be guided by different, even conflicting goals.

The great problem for professional education is to square this circle by bringing the disparate pieces of the student's educational experience into

coherent alignment. These pieces fall roughly into three large segments, or apprenticeships, each based in different facets of professional expertise as the particular school teaches these and guided by a variety of distinct pedagogical intentions.

The first apprenticeship, which we call intellectual or cognitive, focuses the student on the knowledge and way of thinking of the profession. Of the three, it is most at home in the university context because it embodies that institution's great investment in quality of analytical reasoning, argument, and research. In professional schools, the intellectual training is focused on the academic knowledge base of the domain, including the habits of mind that the faculty judge most important to the profession.

The students' second apprenticeship is to the forms of expert practice shared by competent practitioners. Students encounter this practice-based kind of learning through quite different pedagogies from the way they learn the theory. They are often taught by faculty members other than those from whom they learned about the first, conceptual apprenticeship. In this second apprenticeship, students learn by taking part in simulated practice situations, as in case studies, or in actual clinical experience with real clients.

The third apprenticeship, which we call the apprenticeship of identity and purpose, introduces students to the purposes and attitudes that are guided by the values for which the professional community is responsible. Its lessons are also ideally taught through dramatic pedagogies of simulation and participation. But because it opens the student to the critical public dimension of the professional life, it also shares aspects of liberal education in attempting to provide a wide, ethically sensitive perspective on the technical knowledge and skill that the practice of law requires. The essential goal, however, is to teach the skills and inclinations, along with the ethical standards, social roles, and responsibilities that mark the professional.

Through learning about these different aspects of professional knowledge and beginning to practice them, the novice is introduced to the meaning of an integrated practice of all dimensions of the profession, grounded in the profession's fundamental purposes. If professional education is to introduce students to the full range of professional demands, it has to initiate learners into all three apprenticeships. But it is the ethical-social apprenticeship through which the student's professional self can be most broadly explored and developed.

The three apprenticeships reflect competing emphases within all professional education—a conflict of values that has deep roots in the history and organization of professional training in the university. In the chapters

that follow, as we describe how law school is experienced by aspirants to the profession, we use these three apprenticeships as metaphors or analytical lenses through which to see more clearly how the business of professional training is conducted in today's law schools. Although law schools have long been an object of study and criticism, approaching legal education as a threefold apprenticeship reveals, in the current organization of legal education, ambiguities that have not been examined before. As we shall see, today's legal education is sometimes able to marshal the three kinds of apprenticeship in support of the larger goal of training competent and committed practitioners. As we also note, however, in other ways the current system undermines that aim by failing to do justice to the full range of apprenticeship necessary to orient students to the full dimensions of the legal profession.

In their passage through law school, students apprentice to a variety of teachers, but they also apprentice to the aggregate educative effects of attending a particular professional school and program. That is, they are formed, in part, by the formal curriculum but also by the informal or "hidden" curriculum of unexamined practices and interaction among faculty and students and of student life itself. As is typical of organized apprenticeship, much of this informal socialization is tacit and operates below the level of clear awareness. However, abundant studies have confirmed socialization's great importance for the process of learning what it is to be a professional. Looking at law school from the perspective of the three apprenticeships reveals that the relation between the academic life and the demands of practice is seldom as straightforward and logical in reality as it is imagined to be by many of the faculty and administration. This will turn out to be especially true in the crucial apprenticeship of professional purpose and identity.

### **The Crisis of Professionalism: Recovering the Formative Dimension**

Many in our time regard with a skeptical squint the authority, even the legitimacy, of the professions. Crisis, scandal, weakening of public confidence, popular outrage—all have become familiar associations of the fortunes of medicine, law, accounting, the clergy, teaching, and the academy. Many, including some in government and positions of influence, question the point and value of the peculiar features of the professions, especially their guild-like structures of esoteric knowledge and their corporate monopoly over practice within an occupational domain, including the recruitment, training, and licensing of personnel.

Law has certainly not been exempt from this questioning. Deborah Rhode (2000) of the Stanford University Law School has provided an overview of how these trends have been played out in the law, both in declining public trust in the profession and the erosion of morale among attorneys. It is good that amid these signs of internal disarray, the American Bar Association has several times during the past decade called for major efforts to both strengthen the profession's sense of public purpose and to address these issues in a serious way in legal education. We will take up these issues in more detail in later chapters. For now, it is enough to emphasize that we believe that these problems have given a new urgency to the question of how best to educate future professionals.

The question is clearly a matter of wide importance to American society, as well as to the members of the professions themselves. Any revitalization of professional mission must take into account what goes on in the professional schools—one area in which professions have significant leverage. It is also the source of their future—in a literal sense. The starting point of this concern has to be the social contract between the profession and society, as embodied in the terms of licensing and the code of ethics by which the profession declares its intent to regulate its own life in order to maintain the trust and cooperation of the public. But codes and contracts, as every lawyer knows, rely, in the end, on the good faith of the parties. As the old adage has it, *leges sine moribus vanae*: effective laws need the support of everyday practice and belief.

For professional education, the question is how to provide a powerful experience of the best sense of what it means to take up a profession. The answer, we believe, lies in understanding the whole of student experience as a formative process—a time of apprenticeship, during which the novice starts on the road toward assuming the identity of a competent and dedicated professional. To be a professional in the full sense is to understand oneself as claimed by a craft and a purpose in whose service to use that craft. Yet precisely because that purpose is a public one, directed toward others, professionals can also be conscious of the limits and specificity of their domain. With this awareness, professionals can appreciate other ways of living and contributing to the larger life of their times. They can be citizens as well as experts.

Professional education is, then, inherently ethical education in the deep and broad sense. The distillation of the abilities and values that define a way of life is the original meaning of the term *ethics*. It comes from the Greek *ethos*, meaning “custom,” which is the same meaning of the Latin *mos, mores*, which is the root of “morals.” Both words refer to the daily habits and behaviors through which the spirit of a particular community

is expressed and lived out. In this broad sense, professional education is “ethical” through and through. Even to disparage any ethical intent is to declare one: the purely instrumental view of education as the acquisition of a set of tools by means of which to enhance one’s competitive advantage in life. Ethics in a professional curriculum ought to provide a context in which students and faculty alike can grasp and discuss, as well as practice, the core commitments that define the profession. It can also be a place where the alternative, instrumental view just described can be squarely reckoned with. For lawyers, just as for other professionals, the practices they learn give them extraordinary powers. But the meaning of the practices—and therefore the object to which the powers are directed—is never morally neutral. Ethics rightly includes not just understanding and practicing a chosen identity and behavior but, very importantly, a grasp of the social contexts and cultural expectations that shape practice and careers in the law.

The centrality of professional and moral identity is obvious but is easily taken for granted. A surgeon wielding a scalpel and a lawyer equipped with potent arguments are positive figures, not simply through what they can do but because of who they have become. It is because of their sense of who they are and how they understand themselves in the world that these professionals’ skills become positive assets for everyone rather than threats to well-being. Professions are communities committed to maintaining those positive moral identities. They are also obligated to disenfranchise any of their members who seriously betray this purpose. However, because identity is a comprehensive and integrative achievement, it is difficult to address in a specialized way, as one might address the study of calculus or Chinese language. The moral development of professionals requires a holistic approach to the educational experience that can grasp its formative effects as a whole.

The obstacles to improving this situation are quite real. There is evidence that law school typically blares a set of salient, if unintentional, messages that undercut the likely success of efforts to make students more attentive to ethical matters. The competitive atmosphere of most law schools generates a widespread perception that students have entered a high-stakes, zero-sum game. The competitive classroom climate is reinforced by the peculiarities of assessment in first-year courses. The ubiquitous practice of grading on the curve ensures that, no matter how talented or hard-working the students are, only a predetermined number will receive A’s. Such a context is unlikely to suggest solidarity with one’s fellow students or much straying from a single-minded focus on competitive achievement. What these instances point to is the way in which the hidden curriculum shapes,

or misshapes, professional education. The only remedy for this problem is greater awareness on the part of faculty and academic leaders. The issues of meaning and identity, so central to the time of life in which most students are in law school, provide a lens for examining and a potential handle for grasping this otherwise elusive, if often decisive, matter of the moral climate of the institution.

Given these realities, effective pedagogy to address the students' formative development must be a highly self-conscious, reflexive one. The pedagogy of the small-scale seminars used to teach lawyering and ethics seems well suited to enabling students to look at and analyze their law school experience, with an emphasis on connecting their current experience to their transformation into lawyers. For this effort, a great deal of knowledge, even theoretical knowledge, is essential, including the history of American legal education, legal practice, and professions more broadly. Like landmark cases, biographies of notable figures in the law are valuable as concrete manifestations of the principles under discussion. Contact with practicing lawyers is another important aid to this process.

These educational emphases—self-reflexivity, the development of understanding of how the past has shaped the present and how one's own situation is related to the larger social world, as well as entertaining and probing possible models of identity—are all important elements of a formative pedagogy for tomorrow's professionals. They are also central themes of liberal education. Writing as a working journalist who had lately become dean of Columbia's School of Journalism, Nicholas Lemann (2004) made a case that the professional school and liberal education do indeed have important links. "Professionals," Lemann argues, "have goals and ideals and purposes having to do with the history, the techniques, and the social role of their field, which rise above the daily demands of work . . . Professionals have to deal with complexity in their work, [they] do work that has a public purpose." Lemann concludes that there is a big difference between "job training and professional education," that "liberal education and professions make for a good fit . . . because they have crucially in common a transcendent quality, a commitment to a broad and not necessarily utilitarian perspective" (p. 15).

If this is so—and we strongly agree that it is—recovering the formative dimension of professional education for the law lies in forging more connections with the arts and sciences in the larger academic context. The point is to engage the larger academy around the perennial themes of liberal education, particularly focused on the formation of a life of the mind for practice. But placing common focus on formation almost certainly will require a searching examination of the importance of experience with all

three of the apprenticeships—cognitive, practical, and formative. Much of the humanizing and inspiring aspects of the law have always resided in actual contact with clients and their needs. It is difficult to imagine a stronger emphasis on formation that does not also require schools to place more relative weight on preparation for practice, including exploration of the ethical demands of the profession.

## The Opportunity for Legal Education

In most of this report, we focus on the practices of teaching and learning that are at the core of legal education. However, it is worth emphasizing that many of the features of today's legal education stem not from the desires of law faculty or educational imperatives but from powerful external forces. Many external factors constrain legal education. Most law schools, aside from the most illustrious, must worry about how well they are "teaching to the test," as schools are indirectly measured by the percentage of their graduates who pass the state bar examination. All schools also think a good deal, whatever they may say for public consumption, about how they are ranked by the annual *U.S. News & World Report* survey of law schools. Deans and faculty alike complain, and rightly so, about some of the criteria by which this influential survey assesses their institutions, but very few can simply proceed without trying to improve their rankings within the bounds of institutional integrity. Or consider the pressure exerted on many schools, especially those aspiring to institutional prestige—something needed to attract the most competitive student body and most productive faculty—by the hiring practices of leading law firms. If prospective students believe that they are less likely to be hired by such firms because they typically recruit fewer new hires from a particular school, few of the institution's intrinsic, educational virtues are likely to offset this disincentive to many desirable applicants.

Above all, perhaps, schools face the demand that they recover their costs from tuition. How much of their costs they must recover is, of course, related to the size of their endowments—another factor that is tied to their success in achieving prestigious standing. But the consistent effect is to keep tuitions very high indeed. The prospect of graduating with massive educational loans has long acted as a damper on the idealism of students as they consider their career choices.

These and other constraints weigh heavily on law schools, pushing all schools toward a single model. Efforts for change, reform, and innovation become struggles against these constraints. Thus the climate of legal education is always subject to the pressure of unending inter-institutional

competition, which drains energy and attention from the imaginative work of considering, creating, trying, and evaluating alternative possibilities.

In spite of these often daunting challenges, the range of variation and efforts at innovation apparent among law schools is striking. Differences in student bodies (especially the students' educational backgrounds and preparation), variations in consciously chosen missions, and various schools' efforts to respond to educational opportunities and needs as they see them—all these have contributed to making legal education a dynamic part of higher education. The vitality of legal education is manifest in the attention given to large questions about how legal education should adapt to changing conditions, improve performance, and respond to new potentials. From our perspective, many of the ongoing questions in legal education, such as how much uniformity is needed versus how much variation to promote or how broad a preparation for practice law schools should provide, concern relations among what we have called legal education's cognitive, practical, and formative apprenticeships. In our study, we were especially interested, for reasons that will become clearer in later chapters, in efforts to improve integration among the three apprenticeships—programs that strive to resolve the conflicts among theory and practice, technique and ethical engagement.

We encountered a number of examples of such efforts. In New York City, which many regard as a kind of microcosm of the United States, we found two of the longest-running integrative efforts. The City University of New York and New York University are very different institutions. But they are alike in that they have benefited from institutional leadership that has fostered intense faculty conversation and experimentation around integrating their students' educational experience. They are both imperfect examples, yet they provide “proofs by existence” of the feasibility of more intentional, more integrated educational strategies and programs in law schools.

*Lawyering to Advance the Cause of Justice:  
The City University of New York*

Consider the first-year experience at the City University of New York (CUNY). Although part of the CUNY system, the law school operates out of a former municipal building just south of Flushing, in the borough of Queens. A microcosm within the New York microcosm, Flushing is today a thronged meeting place of new Americans, not far from the site on which the 1939 World's Fair envisioned a very different “World of Tomorrow.” At CUNY, all first-year students take a two-semester series of

courses called a “lawyering seminar.” The number of students in each course is never greater than twenty. Several prestigious law schools provide one small-section experience for students in their first year. What is distinctive about the CUNY seminars is that they are part of the school’s requirement over a three-year curriculum of lawyering whose aim is to integrate the students’ learning of the skills of practice and the ethical demands of professional identity with the more typical courses in civil and criminal procedure, contracts, torts, and so forth. Each lawyering seminar is linked to a “doctrinal” or substantive course, and both are taught by the same instructor.

For example, in the lawyering seminar linked to a substantive course on family law—Law and Family Relations—the professor, John Farago, leads students through the development of a simulated case of child educational neglect under adjudication in family court. To give beginning students the experience of thinking and working in context, Farago assigns them to act as lawyers representing the various parties to the case, organizing the course around the task of developing strategies and writing briefs on behalf of their clients. He begins class by posing questions about the legal issue in dispute, asking students to formulate written answers on the points of law. Students work in pairs, questioning and coaching each other before presenting their formulations to the rest of the students. Farago next extends the questioning, posing hypothetical problems based on the argument the students are making.

He then changes tack, and the rhythm of the class changes as well. The students watch a short film that dramatizes a courtroom argument about the issue at hand. Farago then addresses the students directly, asking them to compare their work with what they have watched, noting similarities and variances. The class concludes with each student returning to the points at issue, writing a very short, revised version of his or her original approach to the problem. Farago then uses this short written piece as the basis for an assignment that students will bring to the next class.

What is the pedagogical purpose behind this meticulous effort at fostering students’ development of legal thinking, writing, and argument? CUNY law school, Farago notes, is committed to the proposition “that students learn law best by linking it to practice.” Behind that commitment lies the understanding that, as he puts it, “What I have and the students do not yet have is the professional culture, what an oral or written argument must look or sound like, how this legal culture has evolved through defining cases.” So the primary objective of law teaching for him is to make the forms of legal reasoning visible to students in ways they can imitate and gradually make their own. That includes grasping the narrative

and rhetorical forms of legal argument, as well as the social and communicative contexts within which lawyers must do their thinking. As another professor put it, the effort is to teach “writing in context, interviewing, counseling, negotiation in context, learning from doing.” With a background in theater and film, as well as the law, Farago is well positioned to provide a variety of ways for students to enter the legal imagination. But he notes that this kind of teaching and learning is premised on intense faculty involvement with students, meeting weekly or at least bimonthly for feedback and coaching, especially for helping students master strategizing and legal writing.

To carry out these ambitious goals, the CUNY law school has organized its building into a warren of small, simulated law offices for each “student associate.” In addition to traditional classrooms and seminar rooms, the offices adjoin to a number of library-conference rooms for the performance of a variety of simulations: students are coached in interviewing, counseling, and negotiating sessions. In the first year, students concentrate on simulation exercises, including writing and speaking, built around legal issues that arise from their doctrinal courses.

What is perhaps most remarkable about this approach is that while their counterparts at the other schools around New York are typically in class with up to seventy or eighty of their fellow first-year students, CUNY students spend much of their first year in seminar settings that are focused on linking legal theory to practice and in which contact between students and faculty is close and frequent. Asked how CUNY, hardly a well-endowed, affluent institution, can afford to provide such an introduction to legal study when their more affluent competitor institutions obviously seek the economy of scale afforded by large first-year classes, CUNY administrators answered, “We cannot afford not to do it.”

In part, they “cannot afford not to” because CUNY was founded in 1983 with a vision shaped by Charles Halpern, the first dean, to provide local students of limited means with access to a legal career, but particularly to serve the goals of social justice through the legal representation of the underrepresented, such as racial and cultural minorities and, increasingly, immigrant groups. The often weak academic preparation of such students places special burdens on faculty. At the same time, it seems to have been the stimulus to much of the creativity in teaching that is evident in the lawyering curriculum.

Where many law schools emphasize aspects of legal training of value for careers in business and corporation law, at CUNY the lawyering curriculum focuses on public interest law, family law, civil rights, mediation, immigration, health law, and elder law. This emphasis is continued through

the second year of the curriculum and reaches its culmination in the third year of lawyering. Then students experience real-world lawyering in either a supervised field placement or through the school's on-site legal clinic, Main Street Legal Services, Inc. There students handle actual cases under the tutelage of faculty.

Faculty who teach in the clinical program at CUNY combine considerable practical experience with theoretical expertise in various areas of legal practice and teaching. Clinical courses are team-taught, often by a full-time faculty member and an adjunct professor who spends most of his or her time in practice. The faculty emphasize that clinics "teach a lot of law" simply because, in the words of one, "students learn to practice best by linking their activities to substantive law." The crucial factor for learning in this context is really the depth of student involvement with the issues of practice. For this reason, the elder law clinic insists that students parallel their actual work with clients by directed research in the area, involvement in legislative advocacy, and active dialogue with practitioners in order to expand their conception of the lawyer's role, as well as to see the larger nonlegal, social context that bears importantly on their clinic work.

Professor Susan Bryant, a former academic dean who was one of the formative figures in developing the clinical program, gives the example of how trying to obtain justice for clients from different cultural backgrounds not only enhances students' practical skills but also enriches their understanding of the deep structure of American legal thinking. A Spanish-speaking client—a recent immigrant—brought her brother to an important case conference. The student handling the case was at first dismayed. Why was the brother there? Did he expect to be involved in the interview? Would his presence compromise confidentiality? How to explain this to the client? What this student was up against was the difference between the individualistic assumptions of American law embodied in the confidentiality concerns and the more collectivist ethos typical of many cultures in which immigrants have been formed. In order to fulfill her fiduciary responsibility to her client, the student had to find ways to negotiate this conflict without, she hoped, either losing her client's trust or devaluing her client's dignity. In coaching this student, Bryant urged her to draw on not just her formal legal knowledge but her ability to "imagine alternatives, to work in parallel cultural universes and so always to ask questions—and to think expansively!"

This imperative to use ingenuity in pursuing justice through the law is what ties together the CUNY experience. Even during their orientation period, beginning students visit real courtrooms. They are asked to watch and listen carefully and then to describe, to faculty and each other, what

they have seen. They are asked point-blank whether they could discern justice being done. The aim of their three-year experience is that, by the time they graduate, students are well on their way to being able to advance the cause of justice by serving their clients as competent professionals.

*Lawyering on Washington Square: Integrating Theory and Practice at New York University*

The elegant neo-Georgian main building of New York University's (NYU's) law school looks onto Washington Square in lower Manhattan. In style and setting it could hardly be more different from the utilitarian Flushing campus of the law school of CUNY. However, NYU announces in its catalogue that it is "the only top tier law school committed to giving sophisticated, in-depth attention, from the first year of legal study, to interactive, fact-sensitive and interpretive work that is fundamental to excellence in practice." It is the lawyering program, the catalogue continues, that "makes good on that commitment" by complementing NYU's "superior doctrinal classes, giving every first-year student closely structured, collaborative experiences of law in use." The concern that "collaborative experiences of law in use" be made integral to the learning of legal reasoning for the sake of "excellence" in practice resonates clearly with the focus of CUNY's curriculum on lawyering in order to train effective professionals.

The catalogue's reference to the school as a "top tier" institution is a subtle boast of NYU's recent ascent to the highest peaks of eminence within American legal education. "Top tier" designates a distinguished, well-published faculty that includes leaders of the field. It also means a highly selective admissions process. Unlike CUNY, the law school of NYU admits only students who are very high performers on the LSAT and high achievers in their undergraduate schooling. NYU students are drawn from across the nation and beyond. They come from all sorts of majors and backgrounds, but a large number have attended prestigious private colleges and universities where they majored in the liberal arts. So they are familiar with the ways of elite higher education and are typically much closer to faculty attitudes and culture than are most CUNY students, many of whom are the first in their family to graduate from college. The faculty uniformly note that NYU students are poised, highly articulate, ambitious, and competitive.

NYU impresses on entering students that its curriculum deliberately links theory to practice. Students take required courses in the usual first-year doctrinal subjects, but they also must do work in the area of lawyer-

ing, an involvement that often culminates in the third year with a variety of experiences in clinical legal education. Doctrinal and lawyering courses are mandatory for all students. Work in the clinic is widely available and promoted but is not required. A major aim of the lawyering program is to move students with demonstrated academic talents and interests in the direction of what one professor called “an enthusiasm for legal practice, a love of lawyering.”

Within this broad purpose, the first-year lawyering program is intended to equip students with the tools and the vocabulary that will enable them to learn from their legal experience both in and beyond their three years at law school. Professor Peggy Cooper Davis, the director of the program, explains that the first-year lawyering program, which is typically taught by special faculty employed on the basis of three-year contracts, “consists of a series of exercises in which students are (1) given concepts and vocabularies for thinking about an aspect of practice, (2) given a related lawyering problem and guided through the process of working collaboratively to plan and execute a response, and (3) engaged in intensive collaborative critique of their planning and execution.” The ultimate goal is to lay the groundwork for “a lifetime of professional self-reflection and improvement.” In order to do this, Davis contends, “it is important that students see expertise in a sense broader than the competent manipulation of a body of rules, which is what some students take away from their doctrinal courses. They need to understand expertise within interdisciplinary, ethical perspectives that have to do with the role of law and lawyers in society.”

The course is graded pass-fail. This means that lawyering runs the risk of being treated as less than serious by highly competitive, ambitious students. At a place like NYU, this is a particular problem in the first year, when the stakes represented by final grades are highest. (In law schools, key future career possibilities of clerkships and legal teaching are available more readily to the students at the top of their class after their end-of-first-year examinations.) So, Davis argues, it is important to engage students as early and as fully as possible in the intrinsic rewards offered by the lawyering experience. One of these is confidence in writing: “When students arrive, legal writing often seems intimidating to them, but by the time they are developing full briefs, their confidence has risen . . . they can see the benefits of the course.”

Simulation of legal tasks in context—what NYU faculty like to call working in role—is the core pedagogical practice in lawyering courses. The announced aim is to provide every student the opportunity to think critically about practice as they develop legal arguments, develop facts, interview and counsel clients, negotiate a transaction or a dispute, mediate a

claim, and plead a motion before a simulated court. Furthermore, students are judged on their adherence to the program's "Code of Lawyering Standards and Responsibilities," which is modeled on the American Bar Association Code of Ethics. The program's own code stipulates the expectations that faculty hold for student performance, but it also specifies the norms to which students are to hold each other. Because so much of the work is done in small groups, the code takes on reality as students often see each other's work and ask and answer questions about it.

The hope is that with so much feedback, including videotapes of simulated student interviews, as well as lots of writing, the lawyering program eases some of the peer-generated competitive pressure that typically develops during the first year. Does this work? Davis argues that "by working together, students begin to focus more on the prospect of client and public service and less on competition. They also come to see how important collaborative planning and preparation really are for lawyers." All the while, this is anything but divorced from the students' doctrinal study of contracts, torts, civil procedure, and so forth. As an instructor in the program pointed out, in order to have students engage the simulated cases used in the courses, "we [faculty] must also teach a lot of substantive law, just so students can do the assignments." And, as Davis repeatedly insists, a student's capacity to understand and interpret doctrine is inevitably deepened as the student attempts to use it in the service of a client or a cause.

In contrast to the faculty, students approach their first-year experience from a variety of points of view, often shaped by their academic lives before coming to law school. Where the case-dialogue classes work to enforce homogeneity of viewpoint and reasoning, molding diverse beginners into a corps of legal apprentices, the lawyering seminars seem to allow students to sort it all out, working to relate these new parts of their identity to their developing professional biographies as lawyers. This seemed to be the case for a group of students who met with us as they approached the end of their first year. In that meeting, the students offered a range of different perspectives on what they had learned and its significance to them.

Prior to law school, several of the group had been in Ph.D. programs—one in history and another in the sciences. Other students had tried high school teaching or social services. None had come directly from college. All agreed that their case-dialogue classes had taught them a useful way to "approach problems." It had also provided common ground by giving all students "a shared experience." Some found this exhilarating: "Legal reasoning is framed objectively," said one. Another commented that "the

emphasis is on formally structured arguments. That's refreshing compared to the mushiness of many of my undergraduate seminars. It's great to be in a class where your personal experience doesn't get emphasis!" To which another student countered, "But that, too, is a box. The creative process is extremely limited. I'm eager to place legal reasoning into an interdisciplinary context."

When asked how the lawyering seminars had worked for them, however, these otherwise contentious students showed surprising unanimity. As one student put it, they "provide time to try to find out how to use this kind of reasoning that you're learning in the [case-dialogue] doctrinal classes." They also provided "a good deal of feedback," said another, "so, you could really get into a groove with writing assignments. . . . I found I had an affinity with legal composition and arguing." Still another student focused on the way the simulations supplemented the more formal processes of the substantive courses: "It's easy to get lost in cases, which can seem like just one following another. [In the seminar] I found myself discovering new skills and I enjoyed that—applying the ideas and seeing them in different ways. Everything really started to come together."

As at CUNY, many students at NYU see the high point of learning to practice law in the clinical legal experiences available to students in their later years in law school. Although NYU does not require clinical experience, it does offer an exceptionally large number of clinical courses and has tried to link clinical experiences with doctrinal courses—an effort to ensure that students hear, as one of the clinical faculty put it, "echoes across the street." The clinical program is indeed housed "across the street," tucked away it seems, behind the main academic building that faces Washington Square.

The clinical program, however, is not simply an add-on. The core of the clinical program is full-time faculty. Furthermore, it has developed a sophisticated, cross-disciplinary theory of its learning practices under the rubric of "problem solving." Promoted by a series of former deans, the program has also benefited from the groundbreaking work of a professor, Anthony Amsterdam. One of the distinctive features of this program is its team-taught, small-group seminars, where faculty and students are, in the words of another professor, Robert Mandelbaum, "always working with new material and in the process learning from experience." The high morale of the clinical faculty is perhaps indicated by Mandelbaum's judgment that teaching clinics there "keeps you young." One of the school's vice deans, Steven Gillers, described the value of the clinical experience as enabling students to grasp a basic truth: "much of becoming a lawyer is really a long-term process of developing performance skill." In experiencing work

with real clients, sometimes in collaboration with professionals from outside the law, students report a new realization. As lawyers, they may often find that they are “someone’s only link” to survival in an often-threatening or baffling legal system.

The lawyering and clinical curriculum at NYU has served as a kind of laboratory for the testing of theories about how best to train legal professionals who are at once scholarly, competent, and ethically committed. In 1991, the school began a faculty research colloquium led by Davis, along with Amsterdam, who had already been working to develop more theoretically grounded approaches in the clinical area, and Jerome Bruner, a noted cognitive psychologist who had recently come to NYU on a joint appointment in psychology and the law school. (The innovation of joint appointments with the School of Arts and Sciences was the device invented by the law dean, John Sexton, to breach the isolation of the law school. Subsequently, Sexton, in effect, reversed the direction of cross-fertilization by going on to the presidency of the university.) The colloquium brings together theorists and practitioners of all the areas of legal education. It was catalyzed by years of interchange with faculty colleagues, lawyers in full-time practice, and the feedback of students. Taken together, these efforts have produced a curriculum and set of teaching practices that, as an ensemble, is remarkably self-conscious about its aims and means. Its gradually developing scope has resulted in a plan for integrating the education of lawyers during their three years in law school.

At the center of the pedagogical process in NYU’s lawyering curriculum is Amsterdam and Bruner’s insistence that the narrative structure of legal reasoning provides a natural deep structure capable of uniting theory and practice. Simulation of legal activity “in role” is very important here. It is through the experience of actually making and criticizing legal arguments, in light of precedent and exemplary cases but also under the constraints of uncertain outcomes, that beginners can grasp the fundamentals of legal reasoning. That reasoning, argue Amsterdam and Bruner, always begins from some particular event that disrupts the expectations members of a community have of each other. Legal proceedings are therefore always narratives—stories—about the nature of the problem at hand, usually offered from competing, adversarial perspectives. The aim of legal activity, whether adjudication, negotiation, or mediation, is always to either bring matters back into accord with previous expectations or to adjust those expectations so as to create a new equilibrium in practice.

Seen this way, the deep structure of all legal argument follows a standard plot: there is a beginning—an earlier stable state. This state is disrupted, leading to the story’s middle phase: a problem caused by a

disruption that has to be precisely defined. Legal thinking, that is, the law's "artificial reasoning" about categorizing facts, finding plausible precedents in previous legal actions, and wielding proper procedures to attain goals in an adversarial context, is concentrated in this phase. Crucially, however, there is an end: an authoritative holding or account of how the balance is to be restored and why that conclusion is the right one. Despite the formidable esoteric language and technical precision used in legal proceedings, this narrative structure is not peculiar to the law. It is rooted in our shared culture as a society. Therefore, law is more than a trade or esoteric specialty. It is concerned with very widespread understandings and values, without which complex social life would simply be impossible.

Amsterdam and Bruner (2000, p. 140) write:

[Practicing the law is therefore about ingenuity in] maintaining continuity in value judgments across time and changing conditions . . . it is centrally concerned [not with all value judgments] but with those that are seen as affecting the stability of a community. . . . Such value judgments must evolve through a process of repeated applications in which they are simultaneously reaffirmed and tested, made to fit anew through mutation and thereby preserved.

The point of legal education, in this vision, is to induct students into an understanding of how this complex system of society's self-regulation works—or should work—to uphold and extend socially vital ends and values, and to put students on the path toward developing expertise as practitioners of the legal art.

### **Why Study Law Schools? Defining the Challenge of Professional Education**

From this brief encounter, it is obvious that the CUNY and NYU law schools are very different sites for preparing professionals. Yet across their obvious differences—in location within the New York metropolis, their relative positions within the national system of law schools, their student bodies, and the emphases of their faculty—each presents the compelling spectacle of a struggle to invent and sustain a well-defined educational mission in the face of strong contrary forces. Enlivened by these missions, the schools have been able to form communities of learning in which the form of curriculum and pedagogy follows, or anticipates, their students' future professional functions.

At CUNY, the effort has been to devise means to equip students from groups underrepresented in the law to work effectively in a great cause: social justice and wider inclusion in U.S. society. NYU's law school has moved out of its relative isolation toward greater involvement with the rest of the university, seeking to employ the expertise of the academy to discover and teach insights into law and its potential for bettering life in modern society. Both missions have led their communities to concern with improving the teaching and learning of law. The ways their faculty have engaged their missions differ. At CUNY, individuals find their direction by contributing to a powerfully collective educational enterprise. NYU's larger mission provides a context within which individual scholars can craft distinct niches as part of a larger ensemble. But both schools show the power of intentionally designed institutional pedagogy: for students, it is in both cases the school as a whole that educates, making teaching and learning more a shared concern than is typically the case in many other law schools.

Lawyers fill a bewildering variety of roles in American society. Early in the twentieth century, the great jurist Karl Llewellyn tried to analyze the field by gathering all "law jobs," as he called them, under three great functions of counselor, judge, or advocate (Llewellyn, 1940). But what unites them? The very diversity among law jobs has long been a matter of heated dispute within the profession. Today's law jobs remain in form much as Llewellyn described them. Today, as then, most young lawyers begin their careers in private practice; the majority begin in firms, though a small percentage strike out solo. Today, however, 16 percent enter government service, with two-thirds employed by state and local government and the remainder in federal employ. Nearly 10 percent of law graduates go to work directly for businesses, and 2 percent either do not practice law in any form or proceed directly to law teaching. As we will note later, these gross statistics conceal great diversity in the kinds of work done and, especially, the differing kinds of satisfaction and dissatisfaction experienced by new lawyers across this range of work setting (Dinovitzer and others, 2004).

Even before Llewellyn, Reed's 1921 study of legal education unwittingly created a firestorm in the American Bar Association. Reed was an educator rather than an attorney; he was commissioned by The Carnegie Foundation for the Advancement of Teaching to improve legal education the way its Flexner report had influenced medical training a decade earlier. Reed argued for acceptance of America's *de facto* division into two kinds of legal profession. One, to which entrance was through the major university law schools, was a world of big firms that dealt with large cor-

porate clients, government, and the wealthy. The other, much larger bar of solo practitioners and small partnerships served most people's day-to-day legal needs. These practitioners were often children of immigrants and studied in ad hoc institutions such as the YMCA night law schools.

In the context of the anti-immigrant sentiment widespread in the early 1920s, Reed's proposal for accepting this diversity of mission, and its implicit effect of enhancing the upward mobility of immigrants through entry into the nation's most prestigious profession, was vigorously overruled by the leading figures of academic law and the practicing bar. Led by former secretary of state Elihu Root, the American Bar Association endorsed the view that the nation needed but one standard of legal expertise and training and that it should be defined by the leading law schools of the great Eastern universities whose graduates dominated the legal world. Root and his colleagues were not above making the claim that non-Anglo Saxons should not be trusted to handle the precious legacy of English law.<sup>7</sup> That conflict has never entirely faded away, however. We will encounter its echoes throughout this study.<sup>8</sup> We may depend on the fact that Root would have vigorously protested a school such as CUNY, perhaps regarding it as a latter-day return of the repressed.

Today, despite—or perhaps because of—the great diversity of careers for which legal education prepares its graduates, law schools exemplify in a particularly vivid way the challenge that defines all forms of professional education. This is how to draw on the genius of academic life, with its urge toward intellectual elaboration, without drifting away from the specific profession's defining focus. In the case of law schools, this focus is provided by engagement with the complexities of the law and its functions in the society in which lawyers must practice. The challenge is to align the practices of teaching and learning within the professional school so that they introduce students to the full range of the domain of professional practice while also forming habits of mind and character that support the students' lifelong growth into mature knowledge and skill.

## NOTES

1. For fuller explication of these six commonplaces, see Shulman (2004).
2. Shulman provides a fuller treatment of this notion in "Searching for Signature Pedagogies: Teaching and Learning in the Professions," in Shulman (2005).
3. The importance of the idea of professional activity as "good work" in the contemporary moral landscape has been powerfully illuminated in the study by Gardner, Csikszentmihalyi, and Damon (2001).

4. For example, see the work on clinical expertise in nursing practice by Benner, Tanner, and Chesla (1996). Blasi (1995) has provided an account for law.
5. These features of the research literature are laid out in a widely influential summary of the new learning theory (Bransford, Brown, and Cocking, 1999), published by the National Research Council.
6. See Groopman (2005) and also Velmahos and others (2004).
7. See the discussion of this argument in Lagemann (1999), pp. 75–84.
8. An updated picture of today's profession, including the diversity of the practicing bar, is provided by two studies sponsored by the American Bar Foundation. These were studies of legal practice in the Chicago metropolitan area conducted about ten years apart, but they are suggestive for the nation as a whole. See Heinz and Laumann (1994), and Heinz, Nelson, Sandefur, and Laumann (2005).