Curriculum Reform in Context, 1870-2008: Understanding and Overcoming the Limitations of Contemporary Legal Education

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ABSTRACT:

In 2006, the law schools at Harvard and Stanford announced plans to implement innovative reforms to their traditional legal curricula. While the two law schools’ reform programs are quite different from one another, they both proceed on the premise that legal education has not kept pace with the changes that have taken place in the law, the legal profession, and the global economy over the last several decades, and that the traditional form of legal education, centered around the “case method,” has long been due for an update.

This article places the curriculum reforms currently in the implementation phase at Harvard and Stanford, as well as the reforms implemented at Georgetown during the 1990s, within the context of the criticisms and calls for reform that have been voiced from within legal academia over the last century. It does so as part of an effort to understand why and in what areas contemporary legal education is in need of improvement, and to compare and contrast how the recent reforms at Harvard, Stanford and Georgetown have addressed these concerns.

The article begins by outlining the tasks of legal education, as well as some of the scholarship regarding the problems with the law school and with the legal profession that indicate a need to improve legal education. After laying out these “symptoms,” this article then discusses much of the scholarship regarding the root causes of the problems with legal education and the legal profession, beginning with the work of Oliver Wendell Holmes Jr. and the Legal Realists, and continuing through to recent years. This discussion highlights not only the ways in which legal education has become outdated in recent years, but also the ways in which it has been inadequate since 1870 – the time that the “case method” was first instituted – due to the limitations of an education overly focused on legal casebook-based instruction.

After exploring the various limitations to contemporary legal education, both in specific areas of technical and practical competency, as well as general areas of professional and personal self-development, this paper examines the reforms at Harvard, Stanford and Georgetown, and discusses the different ways in which each reform program addresses these issues.
CURRICULUM REFORM IN CONTEXT, 1870-2008: UNDERSTANDING AND OVERCOMING THE LIMITATIONS OF CONTEMPORARY LEGAL EDUCATION

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I. INTRODUCTION

This article will explore recent developments in law school curriculum reform within the context of the various critiques of legal education and proposals for reform advanced from within the legal academy over the last century. Through this exploration into past and present efforts – both those proposed theoretically and carried out in practice – to improve the law school, this article seeks to examine carefully the nature of legal education, and to arrive at a meaningful understanding of what happens to students at law school. This understanding will be pursued by discussing proposals for and recent implementations of curriculum reform, all stemming from criticisms of legal education and the underlying goal of improving “what happens to students” in law school.

With this goal in mind, this article will first explore the task of the law school and the goals of legal education. It will then evaluate recent curriculum reforms at three law schools within the context of past criticisms of legal education’s efficacy in fulfilling its various tasks, and the related calls for reform that have articulated the changes necessary in order to improve legal education and the lawyers it produces. This evaluation will demonstrate that, while law schools have, through recent curriculum reforms, made progress and undergone improvement, many important problems persist. This article can thus serve as an introduction to the limitations
of legal education, encouraging students to think about what is happening to them during the physically and mentally exhausting law school experience, and what will happen to them thereafter; to alert them to those tasks that legal education does not perform well, and to make it easier for students to identify those limitations and to address them independently in any way they deem necessary. This should serve to help students to not lose sight of the concerns that – according to its critics – the law school does not meaningfully and adequately address for its students.

This article proceeds in three additional parts. Part II will address the question of whether legal education needs reform in the first place, laying out some of the essential functions of legal education and examining some of the scholarship indicating a need for reform. Part III will discuss some of the various calls for reform in legal education over the last century. These criticisms and calls for reform are examined from the interrelated perspectives of “the specific,” focusing on lawyer competency training, and “the general,” focusing on professional and personal development. Emphasis will be placed on how these calls for reform derive from Legal Realism, a movement which fundamentally changed the way that lawyers and jurists understood the law, but ultimately failed in its attempt to reform legal education. Thus, while legal education remains much as it was when Christopher Columbus Langdell first instituted the case method in 1870, academics continue to echo the same criticisms and concerns initially expressed by the Realists, consistently highlighting the failure of the law school over the last century to address meaningfully those concerns. Part IV will explore the recent curriculum reforms undertaken by the law schools at Stanford, Harvard, and Georgetown, and will assess the extent to which they address the above-described problems with legal education.
II. MEETING THE GOALS OF LEGAL EDUCATION

A. THE TASK OF THE LAW SCHOOL: THE MEANS AND ENDS OF PRODUCING LAWYERS

The goals of a graduate school in law can be broken down into “the specific” and “the general.” That is, the educating and training of good lawyers can be thought of as encompassing two components: “the specific,” referring to the lawyer’s competency in performing the work that lawyers do, and “the general,” referring to the personal and professional development of the lawyer as a member of a profession that is important in society.1 While the goals are interrelated, the specific component essentially serves as the means to accomplish the ends of the general component, while the general component should guide the future lawyer in formulating and pursuing those ends. What the ends are will necessarily vary depending on the individual student, however they can be defined generally as the attainment of satisfaction and fulfillment through the pursuit of one’s “chosen path,” both in the personal and professional sense.2

The task of the law school can thus be summarized as (1) fostering professional competency through training in the specific skills essential to the lawyer’s work; and (2) providing the general atmosphere and the exposure to knowledge that will enable students to develop their interests in the pursuit of a fulfilling career that will bring them personal and professional satisfaction.

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2 See e.g., Eleanor M. Fox, The Good Law School, the Good Curriculum, and the Mind and the Heart, 39 J. LEGAL EDUC. 473, 482.
B. The Cause for Concern: The Law School and the Legal Profession

The initial question of whether or not it is desirable to reform legal education in the first place can be answered by looking at what is being written not only about contemporary legal education, but also about the legal profession, since the law school is responsible both for the training and the placement of lawyers into the various segments of that profession.

1. The Law School

In assessing the law school, criticisms and calls for reform have been consistent, numerous and diverse. These critiques have largely consisted of variations on a single theme: legal education has remained essentially unchanged over the last century – that is, since Langdell instituted the case method in 1870 – despite the fact that the legal system, as well as the way that law is understood by lawyers and jurists, has changed profoundly over that time. Wholly apart from the failure of legal education to account for the changes over the last hundred years is the familiar criticism that, despite its virtues, contemporary legal education as preserved since Langdell is inadequate even by 1870s standards because it teaches only one skill – legal reasoning, or, “thinking like a lawyer” – to the neglect of the various other skills that are essential to the work that lawyers do. Legal education is thus criticized as unsatisfactory in meeting its “specific,” or lawyer competency related tasks.

Legal education is also criticized for its inefficacy in meeting its “general,” or personal and professional development tasks. Paralleling the criticism that law school only teaches the skill of legal reasoning, the “general” critique emphasizes the failure of legal education to

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5 See e.g., Strachan supra note 4, at 524; Costonis, supra note 1, at 164.
address the broader issues regarding what students will do with the skills they are taught in law school. Indeed, the all-encompassing time constraints of the curriculum, in combination with the competitive atmosphere that emphasizes the mastery of dispassionate legal reasoning and objective methods of thinking and decisionmaking at the neglect of any broader concerns and subjective or personal methods of analysis and decisionmaking, are believed to inhibit rather than further students’ ability to develop personal and professional goals that will enable them to pursue fulfilling careers as lawyers.\(^6\)

2. The Legal Profession

The legal profession has been the subject of similar criticism, both in terms of the competency of lawyers with respect to specific skills, as well as the general professional and personal situations in which lawyers find themselves during their careers. Criticisms over lawyer competency, such as a diminished ability to solve contemporary problems\(^7\) as well as an inadequate ability to manage lawyer-client and other interpersonal relationships\(^8\) can be traced to the relative neglect of those skills in legal education.

In addition to “specific” critiques of lawyer competency, “general” critiques emphasize the difficulty among the legal profession in attaining and exhibiting a sufficient degree of professional and personal development. One common concern has been the challenges that lawyers face in maintaining and reconciling these two “identities” – the personal and the


\(^7\) Todd D. Rakoff & Martha Minow, *A Case for Another Case Method*, VAND. L. REV. [forthcoming].

professional – and the real or perceived tension or incompatibility between the two that has been observed as characteristic of the legal profession and the life of the lawyer.9

With regard to professionalism, criticism has focused on unethical and criminal behavior10 within the legal profession as observed empirically and through popular criticisms of the legal profession by non-lawyers,11 as well as on the inability of the profession to ensure its accessibility among the entire population in need of legal services.12

Writing in regard to the general state of the legal profession as well as the view of lawyers towards their role and their work, Professor Brian Z. Tamanaha notes that “there are manifold indications that the legal profession today is in a dire state.”13 Tamanaha cites various publications during the early 1990s noting that lawyers had lost “their former ideals and positions as pillars of the community” and as “preservers of the public good,” and had instead become “amoral technicians who do whatever their clients require, no matter how morally repugnant or socially harmful, pressing against the outer limits of legality (and sometimes beyond).”14 Tamanaha then points to another “wave of worries about the worsening state of the profession” during the late 1990s and the 2000s, characterized by brutish working conditions as well as unethical and criminal conduct – such as fraudulent billing practices including padding of

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9 See e.g., Himmelstein, supra note 8, at 519; Benjamin supra note 8, at 250; Kershen, supra note 6, at 791; Fox, supra note 2, at 482; Strachan, supra note 4, at 524.
10 See e.g., Patrick Schlitz, On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession, 52 VAND. L. REV. 871, 906 (1999); Brian Z. Tamanaha, LAW AS A MEANS TO AN END: THREAT TO THE RULE OF LAW (LAW IN CONTEXT) at 145 (Cambridge Univ. 2006).
11 Benjamin supra note 8, at 226.
12 See e.g., Patricia S. Abril, “Acoustic Segregation” and the Hispanic Small Business Owner, 10 HARV. LATINO L. REV. 1, 14, note 60 (citing George C. Harris & Derek F. Foran, The Ethics of Middle-Class Access to Legal Services and What we can Learn from the Medical Profession’s Shift to a Corporate Paradigm, 776 FORDHAM. L. REV. 776, 778 (2001); Talbot D’Alemberte, Calling the Role of Lawyers: Providing Service to All, 21 CAP. U. L. REV. 861, 863 (1992); Stephen Ellmarn, Lawyering for Justice in a Flawed Democracy, 90 COLUM. L. REV. 116, 117 (1990); Lawrence J. Fox, A Nation Under Lost Lawyers: The Legal Profession at the Close of the Twentieth Century, Money Didn’t Buy Happiness, 100 DICK. L. REV. 531, 541 (1996)); Tamanaha, supra note 10, at 139.
13 Id. at 134.
14 Id.
hours; as well as lawyers’ involvement in Enron and other corporate scandals, lawyer’s manipulation and avoidance of legal rules to create tax shelters, and a general lack of concern with the public good. As will be discussed in further detail below, Tamanaha attributes these problems to an attitude towards the law, and the role of the lawyer, that becomes “ingrained in students in law school.”

Perhaps most fundamental is the insight regarding the difficulties that lawyers face in attaining personal fulfillment with their careers and their lives. A scientific study entitled *The Role of Legal Education in Producing Psychological Distress among Law Students and Lawyers* noted that job dissatisfaction among lawyers, including dislike for their duties and difficulties with their clients, can be traced back to their experiences at law school. Similarly, Professor and former practicing lawyer Patrick J. Schlitz notes the relatively high rates of depression, anxiety, alcoholism, drug abuse, divorce and suicide among the legal profession, attributable to a job dissatisfaction that is “widespread, profound and growing worse,” making the legal profession “one of the most unhappy and unhealthy on the face of the earth.” Although Schlitz does not focus on law schools as the cause of this outcome, he does discuss the influence of law schools on the personal and professional development of the lawyer. These are only two of a number of studies that have observed decreased levels of well-being, life satisfaction and

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15 Id.
16 Id. at 139.
17 Tamanaha, supra note 10, at 145.
18 Benjamin supra note 8, at 248.
19 Schlitz, supra note 10, at 881, 903.
20 Schlitz, supra note 10, at 905.
happiness, as well as a loss of ethics and values among law students and practicing lawyers alike.\textsuperscript{21}

The above concerns regarding competency in performing specific legal tasks, as well as the general ability to pursue personal and professional fulfillment through legal work should be sufficiently convincing that the improvement of legal education through curriculum reform is worthy of further consideration.

\section*{III. The Call for Reform}

\section*{A. Langdell Institutes the Case Method, 1870}

As mentioned above, legal education has gone largely unchanged over the last century, and currently retains the framework instituted by Christopher Columbus Langdell in 1870.\textsuperscript{22} Langdell’s method of instruction consisted exclusively of appellate judicial opinions, the study of which would teach students the common law doctrines and principles that they could then apply mathematically – according to Langdell, “with consistent facility and certainty” – in order to answer any legal question. This conception of “law as a science” reflected the Formalism that was central to legal thought in the late nineteenth century, understanding “law as a series of interrelated objective rules motivated only by an internal logic of their own.”\textsuperscript{23} Although it was


\textsuperscript{22} See supra note 4 and accompanying text.

initially met with resistance, the case method was eventually adopted by other law schools, and by 1920 it became the dominant form of legal education, and remains so today.\textsuperscript{24}

\section*{B. The Impetus for Reform: The Legacy of Legal Realism}

\subsection*{1. Legal Realism Fundamentally Transforms Legal Thought}

The Legal Realist movement of the 1920s and 30s criticized, debunked and “finally killed” the Langdellian view of law as a science.\textsuperscript{25} The Realists conceived of the law as being equally if not primarily shaped by common law judges’ idiosyncratic value-judgments, as opposed to the common law doctrines and principles, which the Realists exposed as vague, manipulable, conflicting, and indeterminate with regard to complicated legal questions.\textsuperscript{26} Realism was in large part the legacy of the legal thought of Oliver Wendell Holmes Jr., who criticized Langdell for being “less concerned with his postulates than to show that the conclusions from them hang together,” and believed that instead of emphasizing “the explanation of dogma,” legal education should focus on “the ends sought to be attained and the reasons for desiring them.”\textsuperscript{27} Indeed, Holmes’ most famous quotation is part of his refutation of Langdellian “law as a science,” in which he wrote that

\begin{quote}
The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, institutions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow men, have a good deal more to do than the syllogism in determining the rules by which men should be governed. The law embodies the story of a nation’s development through many centuries,
\end{quote}

\begin{footnotes}
\footnotetext[25]{Stevens, \textit{supra} note 23, at 480.}
\footnotetext[26]{See e.g., Laura Kalman, \textit{The Context and Characteristics of Legal Realism}, in \textit{LEGAL REALISM AT YALE, 1927-1960} at 3 (Chapel Hill, 1986).}
\footnotetext[27]{Joel Seligman, \textit{The Early Assaults on the Citadel, and Roscoe Pound}, in \textit{THE HIGH CITADEL} at 49 (Boston, 1978).}
\end{footnotes}
and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics.\textsuperscript{28}

The Realists attempted to reform legal education to reflect the evolving 20\textsuperscript{th} Century legal thought that had rendered Langdellian “law as a science” obsolete. Like Holmes, the Realists believed that where the case law did not provide a clear answer to evolving legal questions, judicial decisions were influenced by the judges’ political, economic and moral biases.\textsuperscript{29} They also believed that legal education under the case method had the effect of duping unsuspecting students by obscuring how judges relied on value-judgments in resolving indeterminate legal questions, instead presenting judicial decisionmaking as a scientific and objective process whereby disinterested judges mathematically deduced the correct answers from a clear and consistent body of rules.\textsuperscript{30}

Rather than deceptively teaching the law as a neutral body of rules that judges applied mechanically regardless of the social and economic consequences, the Realists wanted to present law as a tool that could be – indeed, that often \textit{is} – harnessed to pursue external – whether individual or social – ends. As Justice William O. Douglas put it, the case method was overly “focused on the device used rather than the function which the device is intended to perform.”\textsuperscript{31}

Realists thus advocated the study of the law within the context of the social sciences, emphasizing the interrelationship between law and social realities. The aim was to train law students to understand fully how judges made decisions and to make them aware of the social, economic and ethical underpinnings and effects of those decisions. In presenting the legal system as closely connected to and highly influential upon social realities, the Realists hoped to

\textsuperscript{28} Oliver Wendell Holmes Jr., \textsc{The Common Law} at 1, (Little, Brown 1923).
\textsuperscript{29} Kalman, \textit{supra} note 26, at 7.
\textsuperscript{30} \textit{Id.} at 3
\textsuperscript{31} \textit{Id.} at 4
encourage and inspire students to view the law as embodying a fundamental commitment to preserve justice, and to instill among future lawyers a sense of responsibility to uphold the common good.\textsuperscript{32}

The promulgation of a deeper and more accurate understanding of law and its relationship to external realities was meant to improve law and the legal system, rather than undermine it.\textsuperscript{33} As Tamanaha notes, “the Realist reminder that judges are subject to subconscious influences was meant to help them be vigilant toward and overcome these influences, not a call to surrender to their inevitability.”\textsuperscript{34} Realism thus sought to educate students as to the vulnerability of law to manipulation towards various ideological ends, while simultaneously instilling a sense of duty among lawyers to remain faithful to a principled integrity in the law, founded on a commitment to justice and the common good.\textsuperscript{35} To this end, and in an attempt to provide students with a “big picture” understanding of the law and how it interacts with society, the Realists advocated that legal education be expanded to include public law subjects such as legislation, administrative regulation, comparative law, and legal theory, as well as subjects from the social sciences, such as economics, philosophy and political theory.\textsuperscript{36}

In addition to their criticism of the narrow focus on appellate opinions that treated the law as a science, the Realists also criticized the case method for confining legal education to the classroom and the library – Langdell conceived of the library as the “laboratory” of legal education\textsuperscript{37} – to the exclusion of the more practical instructional methods such as apprenticeships.

\textsuperscript{32} Kalman, \textit{supra} note 26, at 3, Tamanaha, \textit{supra} note 10, at 221
\textsuperscript{33} Kalman, \textit{supra} note 26, at 8.
\textsuperscript{34} Tamanaha, \textit{supra} note 10, at 239
\textsuperscript{35} Tamanaha, \textit{supra} note 10, at 238
\textsuperscript{36} See e.g., Costonis, \textit{supra} note 1, at 165; Seligman, \textit{supra} note 27, at 50; Kalman, \textit{supra} note 26, at 1.
\textsuperscript{37} Garvin, \textit{supra} note 24, at 58.
with practicing lawyers. 38 Finally, Realists critiqued legal education for resulting in unequal access to legal services, effectively denying representation to much of society. 39 In the interest of these ends, Realists also advocated for clinical education in law schools. 40

2. Legal Education Continues Unchanged

Although the insights of Realism had the effect of fundamentally transforming legal thought, they were ultimately unsuccessful in their attempt to reform legal education. The result is that the case method, complete with its exclusive focus on learning to replicate the type of detached and disinterested legal reasoning found in the text of appellate opinions, continues to dominate contemporary legal education. 41

Despite the view of “law as a science” that the case method was intended to teach, contemporary lawyers and jurists recognize that, although the skill of legal reasoning as taught by the case method continues to be an essential tool for lawyers, it remains that law is not a science, rather it is characterized by an indeterminacy and creativity that makes it more of an art. 42 As expressed by Judge Richard A. Posner,

[T]here is nothing on which to draw or decide constitutional cases of novelty other than discretionary judgment. To such cases the constitutional text and history, and the pronouncements in past opinions, do not speak clearly. Such cases occupy a broad open area where the conventional legal materials of decision run out and the Justices, deprived of those crutches, have to make a discretionary call . . . cases in the open area are not susceptible of confident evaluation on the basis of professional legal norms. They can be decided only on the basis of a political judgment. 43

38 Seligman, supra note 27, at 53.
39 Seligman, supra note 27, at 55.
40 Costonis, supra note 1, at 164.
42 See Rakoff & Minow, supra note 7.
A similar sentiment was expressed by Professor Cass Sunstein and co-authors in regard to federal courts of appeals, writing that “no reasonable person seriously doubts that ideology, understood as normative commitments of various sorts, helps to explain judicial votes.”

While this skepticism concerning judicial objectivity that is characteristic of Realism and the schools of legal thought it influenced (such as Critical Legal Studies, Law & Economics, Legal Pragmatism, Legal Process and Law & Society) has troubling implications for the integrity and legitimacy of the law and the legal system, the solution must certainly be found through awareness and understanding of the nuances of Legal Realism’s insights, and an embrace of the Realists’ reinvigorated commitment to overcome personal biases and to strive for objective analysis firmly rooted in the dictates of the law, and faithful to the law’s fundamental commitment to justice.

This responsibility to preserve the integrity and legitimacy of the law, and to respect the limits and constraints it places on judicial decisionmaking, was made clear by Holmes, who wrote that he derived pleasure in sustaining the Constitutionality of laws he did not agree with, since that allowed him to “mark the difference between what I would forbid and what the Constitution permits.” As exemplified by his dissent in *Lochner v. New York*, Holmes believed that judges had a duty to preserve the common good and to make decisions based on the law, rather than on their own personal policy preferences. In the end, it seems that students should be given a clear presentation of these issues and theories, and then be encouraged to come to

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45 See *Id.* at 118.
46 *Id.* at 238.
47 *Id.*
their own conclusions after thoughtful consideration, and discussion with their professors and with each other.

Indeed, in one sense, it is unnecessary to determine the final answer to the question of whether or not jurisprudential objectivity is an impossible enterprise. According to Tamanaha, the real threat to the integrity and legitimacy of law and the legal system is not the impossibility of an objective form of legal interpretation and decisionmaking that is bound by legal rules, but rather the perception of this impossibility. In other words, the real threat is that lawyers and judges will believe that objectivity is impossible, or will choose not to make the attempt. The rationale is that, so long as one does not rule out the possibility of objective decisionmaking, one may feel a sense of responsibility or obligation to restrain personal preferences and to uphold the integrity of the law by attempting to stay within its limitations. This is in contrast to the belief that objectivity is impossible or undesirable, and the subsequent belief that there is nothing to constrain or limit the actions of lawyers and judges.\footnote{Id. at 244.}

As will be discussed in further detail below, Tamanaha voices concern that legal education’s inadequate attention to these issues has contributed to a dominant – and insufficiently thought-out\footnote{Tamanaha attributes the threat that judges and lawyers will believe objectivity to be impossible or will choose not to attempt it to an inadequate consideration and understanding of Realism and the subsequent legal theories that have emerged since. “This skepticism is based on a widely shared misunderstanding of Legal Realism and postmodernism, neither of which deny that there is a real and meaningful difference between instructing judges to render decisions objectively, dictated by the law, versus instructing judges to make whatever decision they think right.” Id. at 237.} – view of the law that embodies this threat: a view of the law as an open-ended, indeterminate “empty vessel,” void of any binding quality, moral grounding, or duty to higher principles of justice and service to the common good, and thus open to manipulation in the service of self-interested, personal preferences and ends.\footnote{Id. at 249.}
In summary, with the persistence of the case method as the dominant aspect of legal education, the Realists’ calls for reform – from the presentation of the legal system as embodying a fundamental commitment to pursue justice and preserve the common good, to the integration of the social sciences and the focus on the ends rather than the means of the law, to the emphasis on clinical education – have gone largely unimplemented. The following sections demonstrate how the Realists’ initial concerns have persisted and evolved over time into many of the contemporary criticisms of legal education and calls for reform, both from the perspective of the specific – pertaining to lawyer competency, as well as the general – pertaining to lawyers’ professional and personal development.

C. PROPOSALS FOR REFORM: EDUCATING AND TRAINING BETTER LAWYERS

This section discusses many of the criticisms of contemporary legal education and the proposals for reform that largely derive from the legacy of Legal Realism. Like the Realists, modern advocates of reform seek to “update” legal education to better suit both the evolving modes of legal thought as well as the various needs of lawyers and of society. The criticisms can be divided into two separate albeit interrelated categories: (1) the specific, which is concerned with improving lawyer competency; and (2) the general, which relates to improving the personal and professional development of future lawyers. The specific is further subdivided into the issues of (i) technical competency, which refers to a future lawyer’s understanding of the legal system, its substance and its organization; and (ii) practical competency, which consists of training in the various skills that are necessary for the work that lawyers do. The general is subdivided into three criticisms concerning a future lawyer’s personal and professional self-development, consisting of (i) the lack of a broader context in legal education; (ii) the role of “the Game,” – that is, the competitive and compulsive law school atmosphere – in filling the
void left by the lack of broader context; and lastly (iii) the consequences for law students’ ability to form a sense of self and purpose, and thereby to develop the personal and professional goals that will enable them to pursue fulfilling careers as lawyers.

The common theme to all of these criticisms and proposals for reform is that contemporary legal education, largely resembling its original framework under Langdell, overly emphasizes the skill of doctrinal analysis and legal reasoning as taught by the case method, and thereby neglects to prepare students for the multitude of other aspects central to the work and life of a lawyer. These “other aspects” are discussed below.

1. The Specific: Lawyer Competency

This section focuses on those specific skills that are essential to the work of the lawyer, such as a comprehensive understanding of the legal system, and the ability to perform the basic tasks of legal work. The basic thrust of the criticism is that students do not receive adequate training in these skills during the course of a legal education that is overly dependent on the traditional framework of case method analysis.

i. Technical Competency: The Substance of the Legal System

The essence of the “substance” critique is that the dominance of the case method and its traditional body of “core” courses results in a disproportionate focus on common law adjudication and thereby provides an incomplete and inaccurate portrayal of the legal system.

As instituted by Langdell and still reflected in law schools today, the traditional curriculum focuses on the common law to the exclusion of other legal institutions.51 The problem with retaining this framework is that the common law is no longer central to the legal

51 Mary Ann Glendon, A Nation Under Lawyers at 246 (New York, 1994).
system in the way that it was during the time of Langdell. Indeed, since the early 20th century, the legal system has evolved considerably to account for the social changes ushered in by the second phase of the industrial revolution. This period, already underway when Langdell instituted the case method in 1870, marked the beginning of mass production and giant industrial corporations, and brought forth substantial social and economic changes. These developments led to an increase in the role of legislation and administrative regulation, able to deal with emerging large-scale social and economic concerns in ways that the common law could not. Presently, most significant social problems are primarily dealt with not through the common law, but rather through statutory or administrative agency regulation, or other complex legal institutions.52

The criticism is thus made that legal education presents to students a distorted and narrow picture of the legal system, overemphasizing the role of the common law while minimizing the role of other legal institutions. To correct for this, reformers advocate a comparable emphasis on the role of different regulatory institutions such as legislation, administrative regulation, private ordering, and alternative dispute resolution, and on the relationship of these institutions to the legal system as a whole.53 This would improve students’ fundamental, technical understanding of the legal system and how it works: rather than relying solely on common law litigation and adjudication to address social concerns and preserve law and order in society, the legal system selects among various alternative and interrelated regulatory institutions, all of which have their respective strengths and weaknesses and can thus be more or less suited to address particular issues.

53 Rakoff & Minow, supra note 7.
In order to present a more accurate understanding of the workings of the legal system, reformers advocate the inclusion of public law courses in legislation and administrative agency regulation among the required first-year curriculum. This would place these institutions on equal footing at the time when the legal system is first presented to students. The assumption is that students are most engaged and impressionable at the beginning of law school, and thus their initial educational experiences and exposures will shape the evolution of their legal thinking and will inform and color the subsequent installments of their legal education, setting the tone for how they approach future courses and how they will view the law in general. As Professor Todd Rakoff notes,

Students come to law school, now as always, with only a vague idea of what the law is, in substance, in form, or in process. What they learn first about the law assumes primacy, in part simply because it is first, and in part because they meet it while in the state of psychological mobilization characteristic of first-year students. A student’s image of what legal thinking is and ought to be is forever shaped by this initial experience. Indeed, the tradition is self-reinforcing; the tradition itself helps create the sense among students that what they learn in the first year is how to think about the law.

As a result, under the traditional first-year curriculum, law school is criticized as conveying inaccurately to students that the common law is the rule and statutory and administrative regulation is the exception.

Finally, there is also a political dimension to the critique that legal education inaccurately privileges common law over legislative and administrative regulation. The argument is that by structuring the first-year curriculum exclusively around common law courses that stress “law as a science”-style legal reasoning under the case method, and by deferring study of statutory and

54 Rakoff & Minow, supra note 7.
55 Rakoff, supra note 4, at 491.
56 Id.
57 See e.g., Wiestart, supra note 3, at 320 (citing Morton J. Horwitz, Are Law Schools Fifty Years Out of Date?, 54 UMKC L. Rev. 385, 286 (1986)).
administrative regulation to the comparatively amorphous second and third years, legal education conveys to students a sense of the superiority of private law over public law.\textsuperscript{58} It does this by structuring the core private law courses as a coherent whole to be studied during the rigorous first year, and characterized by the rational and precise legal reasoning emphasized by the first year as the principal legal skill and the sole key to success on the all-important first-year exams. Public law courses, by contrast, are relegated to the optional, unstructured and incoherent smorgasbord of second and third year electives. The underlying message is that private law is hard, rational, lawyer-like and judicious – the \textit{real} law – while public law, by contrast, is mushy, subjective, ad hoc and political – the exception or the outlier.\textsuperscript{59} Given this, the political critique is that legal education conveys to students the rationality and superiority of the nineteenth-century \textit{laissez faire} economic system, out of which the private law rules of contract, property and tort are derived. By presenting the legal system as it was before the end of industrialization and before the New Deal and the rise of the regulatory state – effectively filtering any discussion of the prevalence and desirability of public law regulation out of students’ initial exposure to the legal system – legal education thus instills upon students the one-sided view of economic theory that esteems free-market deregulation and private ordering as the central institutional basis for organizing society, while obscuring the validity or desirability of public law regulation.

As discussed above, this also results in an incomplete representation of the legal system – as well as of the relationship between law and economic policy – as it treats private ordering through the market – i.e., through the private law rules of contract, property and tort – as if it

\begin{footnotesize}
\begin{enumerate}
\item Klare, \textit{supra} note 52, at 337.
\item \textit{Id.} at 338.
\end{enumerate}
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were not itself a regulatory institution, when in fact it is one of several regulatory institutions\textsuperscript{60} that policymakers choose among when structuring the legal system and the economy. Thus, by emphasizing the role of private law regulation, and by omitting a discussion of the regulatory nature of these rules – that is, how they influence the market economy – legal education is criticized as instilling conservative and \textit{laissez faire} views of political and economic policy.

\textit{ii. Practical Competency: Lawyering Skills}

Legal education’s emphasis on the case method and legal reasoning reflects Langdell’s belief that the mastery of legal argument in the context of common law doctrines and principles was the fundamental skill for lawyers.\textsuperscript{61} Langdell thus believed that this should be the central focus of legal education, while the other lawyering skills, such as those conveyed in “hands-on” experiences such as apprenticeships, were to be learned after law school.\textsuperscript{62} As a result of Langdell’s influence, the principal venue for learning law shifted from actual law offices to the library, which, according to Langdell, was to lawyers “all that the laboratories of the university are to the chemists and the physicists, the museum of natural history to the zoologists, the

\textsuperscript{60} For a discussion of the common law, that is, the law of contracts, torts, and property, as a regulatory system, and of the different political and economic policy orientations influencing that system, see e.g., Jay Fineman, \textit{Un-Making Law: The Classical Revival in the Common Law}, 28 SEATTLE U. L. REV. 1 (2004-2005); Duncan Kennedy, \textit{The Stakes of Law, or, Hale and Foucault!}, 15 LEGAL STUDIES FORUM 327 (1991); Robert Hale, \textit{Coercion and distribution in a Supposedly Non-Coercive State}, 28 POL. SCI Q. 470 (1923).

\textsuperscript{61} Garvin, \textit{supra} note 24, at 58.

\textsuperscript{62} Id.
botanical garden to the botanists.” So it remains today, as law students in general spend a majority of their time studying case books rather than engaging in “hands-on” experiences.

The criticism of the emphasis on the case method is thus that legal education teaches only one skill – that of legal reasoning – out of the many skills upon which lawyers constantly rely. While law schools are increasingly integrating the instruction of other lawyering skills into the elective curriculum of the second and third years, these courses generally constitute a minority, if that, of most students’ law school experience. Thus, through its disproportionate focus on legal reasoning, legal education neglects training in some of the skills most important for lawyers, such as negotiating, counseling, strategizing, interviewing and fact-finding.

One concern this raises is that graduating students seem unprepared and unqualified for any job other than large law firm associate, judicial clerk, or law professor, leaving the majority of citizens, unable to afford legal representation from a large law firm, with substantially diminished access to the legal system. To cite one example, Tamanaha notes that during the late 1990s, more than four-fifths of the legal needs of the poor, and one-third of the legal needs of the middle class went unmet.

There is also a somewhat ideological critique of the focus on appellate litigation, which is that legal education undermines and devalues cooperation. According to former Harvard Law School Dean Derek Bok, “the singular purpose of most law school curricula was to prepare law

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63 Garvin, supra note 24, at 58.
64 Strachan, supra note 4, at 524.
65 Costonis, supra note 1, at 171.
66 See e.g., Duncan Kennedy, Legal Education and the Reproduction of Hierarchy, 32 J. LEGAL EDUC. 591, 601 (1982); Douglas G. Carnahan, Legal Internship: A Proposed Model, THE LOS ANGELES DAILY JOURNAL at 11 (Mar. 17, 1989); Seligman, supra note 27, at 55. For discussions of the lack of access to legal services among the general population, see supra note 12 and accompanying text.
67 Tamanaha, supra note 10, at 139.
students for adversarial conflict rather than for the gentler arts of reconciliation and negotiation.”

Indeed, the competitive mindset dominates in legal education under the case method, stressing the lawyer’s role as that of a dispassionate observer engaging in “zealous,” adversarial argument over the proper application of abstract legal principles to a predetermined set of facts. Students are thus prepared to function in an abstract, adversarial world where combat and competition (and winners and losers) are the norm in interpersonal interaction, and the role of lawyers is thus to provide zealous advocacy of clients’ narrow interests, regardless of the broader context of the dispute and any personal feelings that arise therefrom. The effect is to promote a one-sided view of the legal world that privileges individualism over community, competition over cooperation, and abstraction over context. This is said to be detrimental to a future lawyer’s practical skills, given the importance of the lawyer as a counselor that helps multiple parties work together, and often seeks to avoid litigation as an outcome altogether.

Related to the above insight regarding cooperation is the critique that legal education neglects the development of interpersonal skills. This results from the focus on the analytic skill of abstract legal reasoning under the case method, typically conducted through formal, one-on-one conversations between a professor and a single student at a time (the “Socratic method”). In addition, students are taught early on that legal reasoning and “thinking like a lawyer” is rigorous, disinterested, dispassionate and rational, while students must ignore any subjective, intuitive or emotional feelings that may arise when studying cases. A number of scientific studies have observed the subsequent psychological effects on students during law school, finding that students exhibited elevated levels of social alienation and isolation and intrapersonal feelings.

69 Benjamin supra note 8, at 251 (citing D. C. Bok, A Flawed System of Law Practice and Training, 33 J. LEGAL EDUC. 570 (1983)).

70 Spiegelman, supra note 68, at 249.
feelings of inadequacy resulting from difficulties with interpersonal relationships. The focus on the analytical and impersonal to the neglect of training through joint efforts in which students interact and work together promotes an emotionally isolating atmosphere, from which students emerge with underdeveloped interpersonal skills that make them ill-equipped at dealing with the emotional tensions intrinsic to the lawyer-client relationship as well as the many other interpersonal interactions amid the high-anxiety environments in which lawyers typically operate. Indeed, legal education offers little preparation for the many lawyer functions that require interpersonal skills, such as fact finding, interviewing, instilling the confidence of others, negotiating, understanding the viewpoints of others, and building relationships.

In addition to inadequate attention to interpersonal relationships, legal education is also criticized as fostering intrapersonal difficulties, again through its emphasis on the rational over the emotional, and on analytic skill and competition. Indeed, scientific studies have found that the law school atmosphere leads to elevated levels of depression, anxiety and social isolation among law students. This can then have detrimental effects on their work as lawyers, as Eleanor Fox explains:

Law school squeezes out nurturing relationships, intuitive problem solving, and personal interactions and as a result produces a high degree of stress, anxiety, hostility and compulsive behavior that follows the individual into the practice of law and may bear some responsibility for a pattern of personal shortcomings often observed in lawyers.

Students and lawyers may find it especially difficult to deal effectively with these feelings, as they have been conditioned to depend on their rational and analytical skills and to suppress the

71 Krieger, supra note 21, at 125; Benjamin supra note 8, at 229, 246.
72 Benjamin, supra note 8, at 250.
73 Id.
74 Benjamin, supra note 8, at 246; Krieger, supra note 21, at 114.
75 Fox, supra note 2, at note 47.
emotional and intuitive in the course of their daily work in law school, and this approach may inadvertently spill over into various other aspects of a student’s life.\textsuperscript{76}

The emphasis on analytic skill and competition is also criticized as training future lawyers that lack an awareness of the emotional elements and the broader human implications of their work. Students and lawyers may also apply this mechanical, rational and impersonal analytic approach to problems studied in the classroom, to their working relationships, evaluating situations and individuals in terms of their legal relevance rather than as human beings.\textsuperscript{77} This objectification of clients and general narrow-mindedness was observed by Gary Bellow in describing the conduct of young legal services lawyers:

What we have seen among our clinical students would surely give any educator pause: stereotypical thinking, limited knowledge, a low sense of the possibilities in particular situations, an unwillingness to take risks, domination of clients, a highly developed mode of rationalization, and acquiescence in some of the worst aspects of the legal system to a degree that surprises me every time I encounter it. Moreover, the young lawyers with whom I work in the legal service programs, and many of our own students in clinical programs, are by and large unaware of how they act or of the consequences their actions have.\textsuperscript{78}

As indicated above, the emphasis on rational, detached and disinterested thinking, and the subsequent lack of awareness and appreciation of the broader human elements of the legal system, is most harmful to those whose personal realities are the most difficult and unsettling – the disadvantaged and the vulnerable – both in terms of their ability to access legal representation and in the quality of the representation they are able to access. Indeed, while the above quotation describes the limited preparation that law school provides to legal services lawyers, the tendency toward rationalization, disinterestedness and detachment from difficult human realities lessens the likelihood that lawyers will chose to work in legal services in the first place.

\textsuperscript{76} Benjamin, \textit{supra} note 8, at 250.
\textsuperscript{77} Himmelstein, \textit{supra} note 8, at 537.
\textsuperscript{78} \textit{Id.} at 524.
Indeed, this aspect of legal education may contribute to the above-mentioned disparity in terms of access to the legal system among the general population. For instance, after citing the lack of access to legal services among poor and middle class individuals, Tamanaha notes that, in the late 1990s, less than one-third of the five-hundred largest law firms performed the ABA’s suggested amount of pro bono work.

To correct for the problems resulting from legal education’s emphasis on individual learning of analytical reasoning, advocates for reform propose an increased role in clinical education, as well as an increase in workshop-style courses in which students have opportunities to work closely and cooperatively with others. One of the pioneers and staunchest advocates of clinical education was Legal Realist Jerome Frank, who attempted to shift the focus of law school from case analysis to clinical education. While Frank’s early efforts did not succeed, clinics finally became significant in legal education during the 1970s and 80s. Despite this positive development, clinical education remains relatively insignificant in most students’ law school experience, and clinical programs are believed to be marginalized and considered “second-class” within legal education.

Finally, in addition to a greater emphasis on practical skill-training through “hands-on” experience, advocates for reform have also stressed a need for training in the substantive and practical issues of law student’s desired future clients. The concern is that as legal work becomes increasingly specialized, clients will place an increasingly higher premium on lawyers that understand their substantive issues and can thus be more effective counselors and problem-

79 See id. at 527.
80 See supra note 67 and accompanying text.
81 Tamanaha, supra note 10, at 139.
82 Costonis, supra note 1, at 164.
83 Fox, supra note 2, at 478.
84 Id.
solvers that are able to tell clients what they can do in addition to the more traditional view of lawyers as only telling clients what they can’t do. It is thus advocated that law schools offer courses in clients’ substantive issues, such as corporate finance, and science and technology, with the goal of training more effective lawyers that are able to “think like a client.” In addition to clients’ substantive issues, it is also recommended that law schools provide opportunities to gain knowledge of local industries and business norms in different regions, as well as foreign language abilities applicable to different regions where clients operate. In meeting this need, advocates for reform also recommend increased opportunities for studying abroad during law school.

2. The General: Professional and Personal Development

This section focuses on the general function that students presumably expect from law school: to enable them to pursue a fulfilling career that is relevant to their interests, and that will thus bring them personal and professional satisfaction. Because of the relatively young age of most law students, and because law students typically come to law school with relatively little knowledge of the legal system, it is also important for law schools to provide the opportunity and the exposure to knowledge that will enable students to explore and develop their professional interests. Because law permeates much of what goes on in society and societal life, the law can also be an apt forum through which to explore and develop one’s personal interests. Through the exploration and refinement of one’s personal and professional interests the student is better able to develop a strong sense of self and purpose, which can then guide students as they seek to

86 Kramer, supra note 41; Morgan, supra note 85, at 543.
87 Morgan, supra note 85, at 557.
coordinate professional and personal goals in the formulation a “chosen path,” along which they will be able to pursue a fulfilling career as a lawyer.

This section thus discusses some of the criticisms of legal education’s inadequacy at performing the above-discussed function of facilitating personal and professional development among students. The first criticism examined is that legal education is without a broader context, that is, law is studied as divorced from external circumstances, from a mindset that is incurious to how the law interacts with external realities, as well as questions such as the purposes and responsibilities, if any, of the legal system and of lawyers. The second criticism examined is the role of “the Game,” which refers to the competitive and compulsive law school environment that steps in to fill the void left by the lack of any broader context within legal education. Without the consideration of any overarching significance of what law students are doing in law school and why they are doing it, the primary motivation and overarching purpose becomes the pursuit of academic success, as well as other “objective,” externally-constructed measures of success and self-worth. Finally, the third criticism discusses the detrimental consequences of the law school environment that inhibit, rather than facilitate, law students’ ability to develop the strong sense of self and purpose that would enable them to pursue fulfilling careers as lawyers.

Considered together, these three sub-criticisms come to form a single, “general” critique. Crudely summarized, the premise of the “general” critique is that the detached and disinterested outlook characteristic of legal education under the case method – more specifically, its reification of the objective and rational and its devaluation of the subjective and the emotional – can have a “socializing” and lasting influence on first-year students. The socialization results from students’ spending what feels like every waking hour anxiously learning the new language of abstract analytical reasoning, the mastery of which is crucial for success on law school
examinations, as well as everything that depends upon one’s law school grades. The result is that a tendency toward the objective and the dispassionate and an aversion to the subjective and the emotional may spill over into other areas of a student’s thought process, instilling a general inclination towards “external” methods of rational evaluation and decisionmaking over “internal” methods. Indeed, the time pressure resulting from large amounts of dense reading assignments further undermines introspection and personal inquiry as there is little time available for self-reflection. In this way, students may be vulnerable to a process of “identity homogenization” which encourages them to adopt externally or socially-constructed values, motivations, measures of self-worth and definitions of success. Simultaneously, then, students are impeded from exploring and developing their own subjective and personal identities, values and aspirations, and consequently, from developing their own personal definitions of self-worth and definitions of success. The ultimate effect of this is an inhibition of students’ capacity to develop and coordinate professional and personal goals in the formulation a “chosen path,” thus undermining the student’s ability to pursue a fulfilling career as a lawyer. The following sub-sections will elaborate the three principal factors contributing to this ultimate effect, namely, (i) the lack of a broader context, (ii) the Game, and (iii) the ability to develop a strong sense of self and purpose.

i. Legal Education in a Broader Context

As mentioned above, the critique that legal education studies law in a vacuum and ignores external realities derives in large part from Legal Realism. The Realists criticized legal education for focusing on discrete legal arguments while ignoring the broader function that the law is intended to perform, or as Holmes put it, for emphasizing the “explanation of dogma” over

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88 See supra note 36 and accompanying text.
the “ends sought to be attained and the reasons for desiring them.” Similarly, contemporary advocates for reform emphasize the need to examine law in a broader context external to legal reasoning, including making use of the contributions of political, economic and social theories – theories which judges, lawyers and policymakers necessarily take into account in the course of their work – in order to arrive at a deeper understanding of the relationship between law and social realities. This not only enables students to formulate a comprehensive understanding of the law and the legal system, but also makes the study of law more interesting as it infuses it with meaning and impetus, namely the service of society and the preservation of the common good.

As Holmes wrote,

> No one will ever have a truly philosophic mastery over the law who does not habitually consider the forces outside of it which have made it what it is. More than that, he must remember that it embodies the story of a nation’s development through many centuries, the law finds its philosophy not in self-consistency, which it must always fail in so long as it continues to grow, but in the history and the nature of human needs.

Along similar lines, Legal Realist Karl Llewellyn emphasized “the need to reexamine the law constantly to ensure that it fit the society it claimed to serve.”

Despite these concerns, legal education continues to approach the study of law from within a vacuum, largely divorced from social context and the external realities that in fact the law derives from, and that continue to shape the development of the law. Beginning in the first year – profoundly influential upon students’ thinking, as discussed above – the dominant focus is on legal reasoning, learned from appellate opinions in which judges rationalize their decision

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89 Seligman, supra note 27, at 49.
90 See e.g., Fox, supra note 2, at 482; Costonis, supra note 1, at 169.
91 Seligman, supra note 27, at 48.
93 Stephen C. Halpern, On the Politics and Pathology of Legal Education (Or, Whatever Happened to that Blindfolded Lady with the Scales?), 32 J. LEGAL EDUC. 383, 384 (1982); Rakoff & Minow, supra note 7.
94 See supra note 55 and accompanying text.
of the case based on the relevant legal issues. While judges surely consider – and often rely on –
broader social considerations in reaching their decisions, appellate opinions in general do not
reflect this and are instead confined to a mathematical application of the legal rules to the facts of
the case (in other words, legal reasoning).

Because appellate opinions are the exclusive pedagogical method of first-year legal
education, students are thus trained to think of law as autonomous and apolitical, disinterested in
and divorced from any external realities and social circumstances, and unrelated to any higher
ideals of good and right.95 Thus, reading cases teaches students that any larger political, societal
or contextual questions, any personal or emotional reactions or interpretations that the facts of
cases may illicit, and the role of values such as justice, are irrelevant and inappropriate.96 This
notion is strongly reinforced through the analysis of the cases in lecture, and finally through law
school examinations, which essentially require students to recreate the judicial opinions and legal
arguments that they had been reading and discussing in lecture, scientifically identifying and
classifying the relevant legal issues and then mechanically reproducing the legal arguments that
both sides could be expected to make.

While legal reasoning is certainly one of the essential lawyering skills, and while legal
argument and judicial decisionmaking – as discussed above97 – should not be reduced solely to
political or social science, the above approach is criticized as incomplete in that it fosters a
mechanical, detached and superficial approach to the law and the legal system that ignores
important considerations. Although such difficult and open-ended questions such as the role of
law and its interaction with social realities do not yield conclusive answers, consideration of

95 Halpern, supra note 93, at 387; Tamanaha, supra note 10, at 140-143.
96 See e.g., Spiegelman, supra note 68, at 253; Himmelstein, supra note 8, at 534, Tamanaha, supra note 10, at 140,
143; Krieger, supra note 21, at 125.
97 See supra note 33 and accompanying text.
these broader issues should be allowed to illuminate and inform students’ legal education in order to promote a deeper understanding of the legal system and its close relationship with society. Reflecting on his law school experience, Professor David Reisman described the effect of neglecting these issues,

Most first-year law students (including myself) fail to see the woods for the trees when thrown into five case courses without an understanding of what the system means or what its objectives are. Indeed, they graduate with very little understanding of the development of the law, of its main figures, of its more general concepts.98 The criticism is thus that legal education, by hampering and discouraging consideration of fundamental questions, promotes a detached, superficial and incurious approach to the law.

In contrast to the incurious approach characteristic of contemporary legal education, Professor Drew Kershen advocates a questioning and self-critical approach that encourages considerations of open-ended and fundamental questions about meaning, values, ethics and culture, serving to promote a commitment to intellectual curiosity that stimulates the student to constantly ask why.99 Kershen writes that while these questions typically do not yield conclusive answers, their serious consideration helps students arrive at a clearer understanding of responsibility to self – that is, the formation of an identity which allows a person to act on personal values rather than social expectations; to society – that is, an appreciation of the common good, reciprocal obligation and the need for mutual trust and respect; and to history – that is, a debt of gratitude toward those who preceded us and a sense of duty toward those who will succeed us.100 This intellectually curious approach would thus bring context and

98 Seligman, supra note 27, at 66.
99 Kershen, supra note 6.
100 Id.
overarching significance to the legal system and to the role of lawyers, as well as to what students are doing in law school and why they are doing it.

Kershen contrasts this humanistic model with the professional model of contemporary legal education which “sharpens minds by narrowing them,” and emphasizes the practical – training students to ask how instead of why, and to value competency over curiosity. This approach foregoes deeper questions and instead promotes the routine and unfeeling execution of skills, fostering a feeling of being a mere means to the accomplishment of an end set by other persons. In this environment, meaning and satisfaction are found only through successful performance of assigned tasks, and thus professional competency becomes a substitute for personal fulfillment.

As Kershen emphasizes, professional competency is not an end in itself but rather a means that enables lawyers to pursue justice. Along these lines, legal education is sharply criticized as emphasizing competency in legal reasoning while ignoring or even actively avoiding broader questions of justice and responsibility. One heavily criticized consequence of the above-mentioned framework of legal education (namely, the exclusive focus, through appellate opinions, classroom discussion and examinations, on doctrinal argument, while excluding a broader contextual analysis) is that it conveys to students the message that their personal feelings and values concerning issues of justice, fairness, and a lawyer’s duty toward the common good are irrelevant and inappropriate. As observed by Legal Realist Karl Llewellyn, students are taught to “analyze coldly” and to “knock your ethics into temporary

101 “One heard Burke saying that law sharpens the mind by narrowing it.” Oliver Wendell Holmes Jr., COLLECTED LEGAL PAPERS at 164 (Harcourt Brace & Co., 1920).
102 Kershen, supra note 6.
103 Id. at 794.
104 Halpern, supra note 93, at 387.
105 See e.g., supra note 96.
anesthesia.\textsuperscript{106} The role of the traditional framework of legal education in excluding larger questions of justice and the common good is reflected by Todd Rakoff and Martha Minow’s characterization of the current method of legal instruction:

The imaginative teacher can work hard with cases to resurrect the unstable reality behind the result: felt injustices, injuries, justifications, beliefs, actions, but still the appellate adjudicatory setting will eliminate or make irrelevant much of what he or she wants to consider.\textsuperscript{107}

Indeed, while most appellate judges may be keenly aware of the social coercion and the real or perceived injustices that affect the parties of the cases and those similarly situated, these concerns are omitted from appellate opinions, which are – perhaps quite rightly – confined to doctrinal analysis. But it seems that legal \textit{education} should include not just the methods of appellate argument and legal reasoning, but also an awareness of the social consequence of the legal rules about which we are arguing, as well as the social conditions and settings in which the rules are implemented. The exclusive focus on appellate opinions, however, effectively filters out such issues as social relevance and questions of justice from students’ studies and classroom discussions. By implicitly deeming such issues inappropriate and irrelevant, legal education impedes the development among students of a sense of curiosity and an impetus to pursue justice, and this lack of curiosity and concern for justice can easily lead to ignorance, acquiescence (whether advertent or inadvertent), and thus the perpetuation of injustice in society.

For concerned lawyers, the obvious example of enduring social injustice is the unequal access to legal services, and thereby to the rights and liberties guaranteed by our legal system, among the general population.\textsuperscript{108} Additional access disparities permeate our society, from unequal access to knowledge, health, and education, to unequal access to participation in the market economy.

\begin{itemize}
\item \textsuperscript{106} Tamanaha, \textit{supra} note 10, at 139-150.
\item \textsuperscript{107} Rakoff & Minow, \textit{supra} note 7.
\item \textsuperscript{108} See \textit{supra} note 12 and accompanying text.
\end{itemize}
While appellate judicial opinions are probably not the appropriate venue to discuss these concerns, it remains that the preservation of justice and the common good in our society is dependent upon the actions of lawyers and the many other civic leaders and influential actors that law school produces.\(^\text{109}\) Indeed, if such individuals do not feel a sense of responsibility to be aware of and attempt to remedy disparities in access to justice and meaningful participation in civic life, such injustices will be perpetuated, to the detriment of our society as a whole.\(^\text{110}\)

With regard to law students themselves, the underlying message that the law is not concerned with any broader concerns of justice or the common good – transmitted through a first-year curriculum in which the case method is the sole educational instrument, and reinforced with a general culture that, as mentioned above, emphasizes individualism, competition and winning – can have the effect of diminishing the personal goals, convictions, and values about justice and collective responsibility that a student may have brought with them to law school. In place of an inspiration to serve society and pursue social justice, law school encourages a disinterested, professional consciousness that views law as autonomous and detached from these concerns. Once the connection to social realities and justice disappears, so too the responsibility among lawyers to promote a just society and preserve the common good.\(^\text{111}\) Indeed, one scientific study by Professors Kennon M. Sheldon and Lawrence S. Krieger found that, while students arrived at law school with strongly-held values and intrinsically-felt motivations, their “overall motivation and valuing patterns” shifted toward “external, imposed values and

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\(^{109}\) “About 40% of the members of the House of Representatives over the years have been lawyers by occupation, with a higher percentage for Senators. No other single occupational group is close. Their office staff and the staffs of congressional committees are dominated by lawyers. Executive branch departments and administrative agencies are filled with lawyers. Many lobbyists are lawyers. Washington is a lawyers’ town. Lawyers are also prevalent in parallel positions in state governments.” Tamanaha, \textit{supra} note 10, at 211.

\(^{110}\) “All that is necessary for the triumph of evil is that good men do nothing.” \textit{Attributed to Edmund Burke.}

\(^{111}\) \textit{See e.g., Howard Lesnick, Legal Education’s Concern with Justice: A Conversation with a Critic, 35 J. LEGAL EDUC. 414, 414 (1985); Halpern, \textit{supra} note 93, at 384.}
motives…with particular increases in the valuing of image and appearance and decreases in altruism and community orientation.”  

As mentioned above, this may contribute to the general lack of commitment to pro bono work that has been observed among lawyers (probably more of a symptom or a “bad sign” rather than a problem in itself), which in turn contributes to the lack of access to legal services among much of the general population.  

Without cultivating a strong commitment to justice and social responsibility, there is little to check the individualistic and competitive impulses that law school does cultivate. According to Tamanaha, legal education’s marginalization of notions of law’s moral grounding in principles of justice and the common good ingrains in lawyers an ethically-unsound vision of the lawyer’s job as “not to do what the law requires when pursuing the client’s end, but rather to do whatever it takes when pursuing the client’s end, including manipulating or circumventing law, stopping only at clear illegality.”  

Tamanaha quotes Robert Gordon’s description of the advocate model instilled by legal education: 

Lawyers should not commit crimes or help clients to plan crimes. They should obey only such ethical instructions as are clearly expressed in rules and ignore vague standards. Finally, they should not tell outright lies to judges or fabricate evidence. Otherwise, they may, and if it will serve their clients’ interest must, exploit any gap, ambiguity, technicality, or loophole, any non-obviously-and-totally-im plausible interpretation of the law or facts.  

Tamanaha attributes much of the current unethical and criminal conduct on the part of lawyers to this contemporary, cynical and instrumental vision of the lawyer’s role. Tamanaha cites to lawyers’ involvement in fraudulent billing practices such as padding of billable hours, corporate scandals such as Enron, the manipulation of legal rules to create tax shelters, and even the

112 Krieger, supra note 21, at 114, 122.
113 See supra notes 80-81 and accompanying text.
114 Tamanaha, supra note 10, at 145.
115 Tamanaha, supra note 10, at 146.
Department of Justice’s Office of Legal Counsel’s “torture memo” – which “twist[ed] the applicable law in an effort to authorize torture”116 – as consequences of the widespread view among lawyers that law is a tool to be instrumentally manipulated to serve the self-interested ends of lawyers and their clients, and that law is an “empty vessel,” lacking any limits to lawyer conduct based legal dictates, or on underlying notions of justice, responsibility and fidelity to the common good.117

To elaborate on the implications of divorcing law from its moral grounding and the discarding of the notion that law “must comport with standards of good and right,” Tamanaha quotes Joseph Raz’s description of what would be consistent with such a conception of the rule of law:

A non-democratic legal system, based on the denial of human rights, on extensive poverty, on racial segregation, sexual inequalities, and racial persecution, may, in principle, conform to the requirements of the rule of law.118

Thus, without any moral duty to pursue justice and preserve the common good, the “rule of law” is reduced to the requirement that the government provide stable, certain, general rules set out publicly and in advance, while the content or substance of the rules may be designed or applied to serve “any end whatsoever.”119 As Tamanaha writes,

As long as the formal or procedural requirements of law are met, there can be no legal objections against using law in an abhorrent or evil fashion. Moral opposition may be raised to such repulsive uses of law, but it will lack legal standing – a difference that matters mightily in the realm of symbolism and political discourse . . . . When the law has been deprived of its own integrity, there is little to separate law from any other tool or weapon.120

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116 Tamanaha, supra note 10, at 134.
117 Id. at 145-150.
118 Id. at 218
119 Id.
120 Id. at 219
Tamanaha argues that this vision of law as divorced from morality and social justice runs counter to an historical tradition of law in the service of the common good that dates back to the founding of our nation. Tamanaha illustrates this by citing to The Federalist Papers, in which the authors write that the success of the legal and governmental system would depend on our leaders and administrators’ “capacity to rise above partisan passions to act for the common good and remain faithful to constitutional limits.” The Federalist writers even placed a special faith in lawyers “to rise above the clash of special interests and work for the general welfare.”

These notions were echoed by Holmes, who, like the Federalist writers, was not an idealist. Holmes nonetheless thought that “law could and should promote sound social policy,” and advocated the cultivation of an “educated sympathy among dominant groups.” In this way, fostering awareness of broader societal conditions would temper powerful groups’ natural inclinations toward self-interested behavior, and invoke other natural human traits such as empathy and interdependence in an effort to further social justice and the common good.

Tamanaha concludes that “the notion that law is a means to an end would be a positive component if integrated within a broader system with strong commitments” to ideals such as preserving justice and serving the public good, but ultimately laments that legal education undermines these very ideals, leading to a vision among lawyers that law is an “empty vessel” and that legal rules are instruments to be manipulated in the service of self-interested ends. This

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121 Id. at 225
122 Id. at 221
123 Tamanaha enumerates four ideals fundamental to the legal system, which have deteriorated under the current vision of law as an “empty vessel,” heavily influenced by legal education. The four ideals are: (1) that the law is a principled preserver of justice; (2) that the law serves the public good; (3) that legal rules are binding on government officials (not only the public); and (4) that judges must render decisions in an objective fashion based upon the law. Id. at 249.
situation carries significant implications for society at large, given that lawyers occupy leading roles in society, business, politics, government and law.\textsuperscript{124}

In light of the above criticisms, advocates of reform, again, since the Realists, have called for the study of law in a broader context.\textsuperscript{125} This is typically pursued by studying law as a humanity rather than as a science, and thereby considering the broader questions of the role of law and its relationship to society. This can be done by integrating discussion of topics such as legal history and jurisprudential theory into traditional courses, or through separate courses. Similarly, interdisciplinary considerations informed by social sciences such as economics, political science, philosophy, social psychology and sociology could also be integrated into the curriculum in order to illuminate the broader context of law in the service of society.

Reform advocates such as Kershen stress the need for exposure to these ideas during the first year so that law students are able to cultivate a self-critical and intellectually curious and searching approach to their educational experience from the outset.\textsuperscript{126} Another possibility would be to integrate these issues into courses that are required during second-year.

While there exists a general unanimity regarding the need for a broader contextual analysis through a “law as humanity” or interdisciplinary approach in order to cultivate an awareness and understanding among students of the relationship between law and external realities, the curricular modifications that have taken place to date consist generally of the

\begin{footnotesize}
\begin{enumerate}
\item \textit{Id.} \\
\item Kalman, supra note 26, at 3. \\
\item See Kershen, supra note 6, at 792. Indeed, perhaps representing one end of the spectrum regarding the extent of this reform, Kershen proposes “that the entire first year of law school be devoted to the study of law as a humanistic discipline. As a first-year curriculum, a law school should offer courses in legal history, legal philosophy, jurisprudence, comparative law, sociology of law, anthropology of law, ethics, professional responsibility, and other courses that approach law as a humanity. . . . The law student can then undertake the last two years of law school with a questioning, self-critical attitude accompanied by a commitment to intellectual curiosity. He can then view law school as part of the unending humanistic quest for a fuller and deeper understanding of ourselves, society, and history.” \textit{Id.}
\end{enumerate}
\end{footnotesize}
insertion of certain courses into the multitudinous “smorgasbord” of non-required upper-level courses. As a result, these courses, seen by some as essential to a student’s educational development, may or may not be taken by second and third-year students who may or may not have become jaded by their first-year experiences. Indeed, there exists the danger that students will become disengaged and apathetic after the heavily detached, disinterested and impersonal tone of the first-year, and thus lack the motivation or interest to take advantage of some of the more contextual or practical upper-level courses. Instead, students may chose the path of least resistance, gravitating towards familiar, doctrinal courses that they expect to be less challenging and time-consuming, while declining to venture into new and different kinds of courses such as interdisciplinary, theoretical, workshop-based, or clinical courses that may be seen as more work than the credits are worth. In this way, the prevalence of doctrinal case-method instruction and its detached and disinterested outlook can follow a student during all three years of law school. As such, given the persistence of the traditional case method and its dominance over legal education and especially the formative first-year, legal education continues to present students with a narrow, incurious view of law divorced from a broader context.

**ii. “The Game” as Context**

This section describes how a compulsive and competitive atmosphere referred to as “the Game” steps in to fill the void left by the lack of any overarching context within legal education. That is, because legal education is largely divorced from any external context to provide a greater meaning and impetus for students, the Game inevitably becomes that context. The Game can be defined as a form of competition for competition’s sake – where the only goal is to

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128 Rakoff & Minow, supra note 7.
achieve a high score – which people can get “caught up in.” As applied to law school, the method of keeping score is law school examinations, and thus success at the Game is defined by grades. With the Game as the broader context of legal education, the overarching significance of students’ educational experience, and thus the ultimate goal that provides motivation and impetus, becomes academic success through top grades.

Of course, this phenomenon is not confined to law school. Indeed, among other venues, the Game is recognized as a prevalent feature characterizing the legal profession. In his article On Being a Happy, Healthy and Ethical Member of an Unhappy, Unhealthy and Unethical Profession, Patrick J. Schlitz offers an account of the Game among the legal profession that seems closely analogous to the law school experience. Schlitz describes a situation in which large-firm lawyers grind out “thousands upon thousands of billable hours, often toward no end other than getting rich and determining whether one huge corporation will have to write out a check to another huge corporation.” Schlitz explains that although the profession is “absolutely obsessed with money,” lawyers grind out billable hours not because of a true desire for more money, but because they are caught up in the Game, and money is how the score is kept. Lawyers are especially susceptible to the Game, Schlitz writes, because they have spent nearly their entire lives competing against others in various games that other people have set up for them, measuring their self-worth by how well they perform in these competitions. As evidenced by lawyers’ tendency to flaunt their money and to discuss their and others’ wealth, money is the way that lawyers keep score and determine whether they are successful. Schlitz

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129 Schlitz, supra note 10, at 903.
130 Id. at 922.
131 Id. at 905.
132 Id. at 906. Presumably, some of these competitions include the grades and SAT scores involved in the competition to get into a good undergraduate college, followed by grades and LSAT scores in college, and finally, competition over grades, law review admission and clerkships in law school.
attributes the “unhappy-unhealthy-unethical” problems that plague the legal profession to this “misguided view of money as the sole goal of practice, sole measure of success and sole measure of self-worth” among lawyers.\(^\text{133}\)

This is illuminating of the law school experience, as Schlitz’s analysis can be directly applied to law school simply by replacing “money” with “grades.” The parallel begins with Schlitz’s insight that lawyers have spent their entire lives competing in externally-devised games and measuring their self-worth based on their success in those competitions. Students come to law school having been selected based on their success in competitions over undergraduate admission and grades, as well as LSAT scores.

Despite the fact that they are accustomed to success in these externally-constructed competitions – and thereby, in a sense, drawn to them, it should not necessarily follow that law students will, as Schlitz observed among lawyers, make grades into their “sole measure of success and sole measure of self-worth.” After all, students make the choice to attend law school. This choice is presumably based at least partly on personal reasons, such as interests, aspirations and ideals that students wish to pursue, wholly independent of externally-constructed definitions of success such as prestige and money. The concern is that, given legal education’s emphasis on the rational and dispassionate and its exclusion of the subjective and personal, as well as any broader human and social concerns, students will not be able to express or nurture their initial personal interests, aspirations and ideals.\(^\text{134}\)

As noted above, a scientific study by Sheldon and Krieger found that students indeed underwent a shift while in law school, from initially exhibiting internal and personal motivations,

\(^{133}\) Id. at 903.

\(^{134}\) Dolovich, \textit{supra} note 6, at 2032; Himmelstein, \textit{supra} note 8, at 534.
values and goals, to increasingly pursuing external or socially constructed “objective”
motivations, values and goals.\textsuperscript{135} Krieger attributes this to legal education, in which success,
values and motives are “largely defined by grades, external recognition and money or
position.”\textsuperscript{136} According to Krieger, law school conveys the “sense that personal worth, the
opinions of one’s teachers and potential employers, and therefore one’s happiness and security in
life depend on one’s place in the hierarchy of academic success.”\textsuperscript{137} Thus, much emphasis is
placed on external motivations and measures of value and purpose, while trivializing and
marginalizing internal motivations and values. “The exclusive valuing of thinking like a
lawyer,” writes Krieger, “directly discourages students from being themselves.”\textsuperscript{138}

As a result of this educational atmosphere, students risk losing sight of their inner ideals
and personal goals in their effort to master the detached and dispassionate analytic framework so
critical to success on law school examinations, and everything dependent upon those
examinations. Indeed, success on exams is seen as essential to ensuring a meaningful
opportunity to participate in all of the most important things that law students do, from law
review to judicial clerkships to career placement.\textsuperscript{139} This competitive culture, combined with the
objective and impersonal mode of thinking that must be mastered in order to compete
successfully, creates a mutually enforcing emphasis on external motivations and measures of
success, and a concomitant devaluing of students’ personal, subjective and intrinsic goals and
values.

\textsuperscript{135} Krieger, \textit{supra} note 21, at 123.
\textsuperscript{136} \textit{Id.} at 122.
\textsuperscript{137} \textit{Id.} at 117.
\textsuperscript{138} \textit{Id.} at 118.
\textsuperscript{139} See e.g., Krieger, \textit{supra} note 21, at 122; Dolovich, \textit{supra} note 6, at 2033.
Thus, the dual effects of (1) the marginalization of the personal and subjective in legal instruction, combined with (2) the pressure of the Game to succeed on law school examinations, can lead students to abandon their initial personal and subjective definitions of success and self-worth, and replace them with grades – the externally-imposed means of keeping score in law school. This inevitably sets students up for perhaps their first experience of intense failure, as, necessarily resulting from the curve, the majority of students receive mediocre grades. The effect of this is to undermine students’ sense of self-worth, security and competence, all of which are seen as human needs essential to mental well-being and personal satisfaction. 140

While it may seem paradoxical that law students – having already achieved some measure of success and distinction by virtue of being accepted into law school – would feel insecure and incompetent, this is the inevitable result of getting caught up in the external measures of success promoted by the Game. Much like comparatively ultra-rich large-firm lawyers, if one is caught up in objective measures of self-worth, whether it be grades, status, or money, as an end in itself, one will constantly be surrounded by colleagues who are more “successful,” and thus a sense of security and self-worth – as well as fulfillment and satisfaction – can be illusory. This notion is expressed by Schlitz in reference to firms and money, and can also be thought of in terms of school and grades, or external motivations in general,

You cannot win the game. If you fall into the trap of measuring your worth by money, you will always feel inadequate. There will always be a firm paying more to its associates than yours. There will always be a firm with higher per-partner profits than yours. There will always be a lawyer at your firm making more money than you. No matter how hard you work, you will never be able to win the game. You will run faster and faster and faster, but there will always be a runner ahead of you, and the finish line will never quite come into view. That is why the game will make your clients and partners so rich and you so unhappy. 141

140 Krieger, supra note 21, at 119, 125.
141 Schlitz, supra note 10, at 921.
This diminished sense of self-confidence, combined with the undermining of students’ initial, subjective and personal motivations, in turn makes it extremely difficult for students to pursue the ideals with which they entered law school towards a “chosen path” in their legal career that will bring personal and professional satisfaction.\(^{142}\)

Part of the reason why personal fulfillment will be so difficult to attain is that, having abandoned personal notions of success and self-worth, students will be highly susceptible to the Game when they become lawyers, particularly so if they enter the highly competitive world of the large law firm. According to Professor Sharon Dolovich, the process of defining success based on grades actively leads students towards large law firms – for external rather than internal reasons – as law firm recruitment offers with it the prospect of success through a high-paying and prestigious job, the idea of which is especially compelling and relieving to most students after having failed in their attempt at success through attaining top grades.\(^{143}\) Indeed, firms court students at a time when students are especially insecure and vulnerable in the wake of the unexpected shock and psychological trauma experienced upon their first instance of not excelling. In contrast to their mediocre law school grades, the large amounts of money the firms spend on receptions, plane tickets and hotel reservations during the recruiting season conveys to the students that they are worth something. Contrary to the message sent to them by their law school, these firms make students feel important and valuable again, and the landing of a job at a high-paying, prestigious law firm thus becomes the students’ new definition of success.\(^{144}\)

The ultimate result of succumbing to these external markers of success and self-worth (or in the cynical parlance of students, “selling out”), Dolovich explains, is a diminished sense of

\(^{142}\) Krieger, \textit{supra} note 21, at 118, 123.
\(^{143}\) Dolovich, \textit{supra} note 6, at 2040.
\(^{144}\) \textit{Id.}
agency, loss of self-confidence, cynicism regarding earlier personal aspirations, a feeling of not having actively chosen one’s own path, and circumspection about taking risks and about one’s general capacity to control one’s own future.\textsuperscript{145}

Dolovich refers to this “breaking” of law students through drawing them into “the Game” and thereby setting the majority of students up for demoralizing failure, as the “pacification of law students” into “docile lawyers.”\textsuperscript{146} Dolovich illustrates how this process can lead students to lose sight of or fail to develop strong personal goals and motivations and instead pursue external markers of success, thus being more likely to make decisions such as working at a large law firm for external rather than personal reasons.

But the cultivating of “docile lawyers” also has broader implications both for the lawyers themselves and indeed for our society, in which lawyers occupy positions of leadership in business, politics, government and the law. In elaborating the need for greater engagement and political participation on the part of individuals in society, Professor Richard Parker writes about passivity as an unhealthy and defective state of mind, rendering individuals paralyzed rather than vigorous, isolated rather than connected.\textsuperscript{147} This situation is based in and reinforced by repression, “whether psychological repression of ordinary, self-assertive instincts or social repression of vitality by role-expectations, mandated explicitly or implicitly.”\textsuperscript{148} In addition to fostering other-directed rather than inner-directed behavior – paralleling Dolovich’s insight – Parker writes that this leads individuals to become submissive rather than vigilant, conformist rather than independent, and suggestible rather than critical.\textsuperscript{149} Such “pacification” is thus not

\begin{itemize}
\item \textsuperscript{145} Id. at 2042.
\item \textsuperscript{146} Id. at 2027.
\item \textsuperscript{147} Richard D. Parker, \textit{Here, the People Rule: A Constitutional Populist Manifesto} at 63 (Harvard, 1994).
\item \textsuperscript{148} Id.
\item \textsuperscript{149} Id.
\end{itemize}
only threatening to one’s personal liberty and vitality, but also to our society as a whole, since the healthy functioning of our legal, political and economic institutions depends on the ability and willingness of well-connected individuals to exercise sound ethical and moral judgments. Whether as corporate lawyers, legislators, or members of the judiciary, it is essential that such individuals remain *impassive* – as Parker describes, vigilant, independent, and critical – if we are to have any hope of preserving the integrity of our institutions, of the rule of law, and of our society. Indeed, when considered in combination with legal education’s above-discussed\(^{150}\) tendency to promote a lack of curiosity and social responsibility, this “pacification process,” along with the competitive impulses and emphasis on externals inculcated by “the Game,” begins to seem like something of a dangerous cocktail being administered to the future leaders of society.

Through this process of “pacification,” then, students are inhibited from pursuing individual goals and personal definitions of success in the course of a fulfilling career, and thus seem highly susceptible to becoming one of Schlitz’s “unhappy, unhealthy and unethical” lawyers.\(^{151}\) Thus, as the next section discusses, in order to avoid getting caught up in the Game, law students must be able to develop a strong sense of self and purpose, which will enable them to maintain their own personal definitions of self-worth and success, thereby enabling them to pursue fulfilling careers as lawyers.

### iii. Cultivating a Sense of Self and Purpose

This section discusses the importance of cultivating a sense of self and purpose while in law school. It first examines how contemporary legal education can inhibit a student’s ability to

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\(^{150}\) See *supra* note 110 and accompanying text.  
\(^{151}\) Schlitz, *supra* note 10.
pursue intrinsic motivations, namely through the presence of a cultural tension between professional and personal identities, which can have the effect of students’ sacrificing the personal for the professional. It then asserts that, instead of submitting to this tension and settling for one or the other, students must be able to maintain the personal and reconcile it with the professional if they are to be able to pursue a fulfilling legal career. It concludes that, in order to reconcile personal as well as professional aspirations into a fulfilling career that pursues both, students must be able to develop a strong sense of self and purpose while in law school, which will enable them to set personal goals and to define success for themselves.

In the law school environment as in life in general, students experience a tension between the professional and the personal. On the one hand is the need to obtain competency in practical skills that will enable one to earn a living, and on the other is the need to find meaning and enjoyment in what one does. While these interests are often viewed as conflicting, nothing requires that they be mutually exclusive or inconsistent with one another. Indeed, law students typically arrive at law school searching for a professional identity that will allow them to reconcile their personal and professional goals. They seek this through the pursuit of a legal career through which they will be able to express and pursue those personal feelings, aspirations and values that initially led them to apply to law school.

Nonetheless, reconciliation between the professional and the personal can be especially difficult amidst a law school environment that excludes subjectivity and emotion and emphasizes detached execution of disinterested legal analysis. In this way, law school can be seen as

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152 Himmelstein, supra note 8, at 555; Krieger, supra note 21, at 122.
emphasizing a division between the professional identity of “the rational technician,” and the personal identity of “the sentient human being.”

Students may in turn find themselves unable to find an outlet to express and engage their personal identity during their law school experience, and, unable to reconcile the personal with the professional, may thus be led to abandon some degree of their personal identity in exchange for the professional identity. This tendency to adopt a one-dimensional, professional identity at the cost of one’s prior personal identity is mutually reinforcing with the Game in law school, both emphasizing successful performance (in lecture and on exams) of detached and disinterested analytical reasoning.

As mentioned above, there is also a cultural influence independent of law school, behind the phenomenon whereby one’s professional identity consumes their personal identity. Professor Jack Himmelstein attributes this to our societal tendency, in professional life and in education, to place great emphasis on “externals” – or how we are supposed to appear to others according to social expectations. Himmelstein explains how this cultural preference for externally apparent professional skills over introspective personal meaning can, once they appear difficult to reconcile, cause one to sacrifice the personal for the professional,

It’s become socially accepted not to confront the human concerns – we’ve learned to focus on the pragmatic and technical in a society that has placed a high priority on such skills. Although combining an emphasis on meaning and an emphasis on skills is not necessarily incompatible, we often act and feel as if it were. Holding onto the importance of both can be hard, and we are tempted to sacrifice concern for meaning, which is not supported in our culture. This enduring conflict seems part of the human condition and human struggle.

153 Id. at 536 (citing Alan A. Stone, Legal Education on the Couch, 85 Harv. L. Rev. 392, 432 (1971-1972)).
154 Id. at 555.
155 Id. at 554.
While Himmelstein acknowledges that it can be difficult to reconcile the personal and the professional, sacrificing the former for the latter can be tragic in that it foregoes the enormous potential to be gained from a successful reconciliation of the two interests. Indeed, if students adopt a purely professional identity and abandon their prior personal ideals and aspirations, they will be prevented from “realizing the joys and satisfactions and excitement and value linked with being a law student and a lawyer.”\(^\text{156}\) This will occur because they will be unable to pursue personal and professional satisfaction through a career consistent with a definition of success that they have chosen for themselves.

Similarly, Krieger writes of the importance of personal goals and motivations, and how the valuing and the pursuit of internal or intrinsic goals is linked with one’s attainment of happiness and mental well-being.\(^\text{157}\) Krieger cites several scientific studies concluding that the pursuit of extrinsic goals, which are “embedded particularly deep in the culture of most law schools and law firms, does not produce a good life and in fact can very well undermine it.”\(^\text{158}\) These studies found that subjects who identified external or extrinsic goals (such as money, status, image, or influence) as important for life satisfaction consistently experienced lower levels of happiness and well-being. In contrast, subjects who valued internal or intrinsic goals (such as goals directed toward personal growth, intimacy and community integration, inherent satisfaction, affirmation of one’s deeply held values and beliefs, and “enthusiasm and the sense of relevance that results from engaging one’s inborn capacities”) experienced “enhanced well-being, increased meaning, and increased personal and social integration.”\(^\text{159}\)

\(^{156}\) Id. at 555.  
\(^{157}\) Krieger, supra note 21, at 121.  
\(^{158}\) Id. at 121.  
\(^{159}\) Id. at 119-121.
One explanation for this is that mentioned above—namely, that if one focuses on externals, one will always be surrounded by colleagues that are more “successful,” and thus one will always feel inadequate and never satisfied—it is impossible to “win” the Game. In contrast, if one focuses on intrinsic goals, one may be able to derive inherent, personal pleasure in the work that one chooses for oneself.

Krieger explains this correlation between pursuing internal ends and personal fulfillment by applying the insights of humanistic psychologists, such as Abraham Maslow and Carl Rogers, who understand that people naturally strive for personal functioning, actualization and authenticity. This natural pursuit of internal and intrinsic motivations—to be one’s best—is “linked with the experience of satisfaction and well-being,” while “the source of most psychological distress is the blocking of this movement toward personal and social integration.”

The importance to lawyers of being able to reconcile their personal and professional identities if they are to arrive at personal and professional fulfillment was perhaps best said, once again, by Holmes:

What is all this to my soul? You do not bid me sell my birthright for a mess of pottage; what have you said to show that I can reach my own spiritual possibilities through such a door as this? How can the laborious study of a dry and technical system, the greedy watch for clients and practice of shopkeeper’s arts, the mannerless conflicts over sordid interest, make out a life?

Contrary to the tendency criticized in the law school environment, law students should not be influenced to abandon their personal values and ideals, replacing their prior personal

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160 See supra note 141 and accompanying text.
161 Krieger, supra note 21, at 119-121.
162 Id.
163 Himmelstein, supra note 8, at 546 (citing Oliver Wendell Holmes Jr., SPEECHES 22 (1913)).
identity with a purely professional identity. Rather, students should be encouraged and empowered to find a way to reconcile the personal with the professional both during law school and as lawyers. This means that law students must be able to approach their studies and their careers in the larger context of personal and social meaning.164 For this to happen, legal education must promote the general atmosphere, provide the necessary exposure to knowledge, and encourage the kind of discussion that will enable students to develop and engage their personal interests. Above all, students must be encouraged and empowered to define success for themselves, endowing them with their own personal measure of self-worth, agency and self-confidence so that they will be able to avoid getting caught up in the Game. This in turn means that students must be able to explore, develop and nurture a strong sense of self and purpose, based on personal feelings, values and ideals that they care about. This will make students secure in themselves and perhaps because of this, more empathetic, supportive and open-minded towards others. Finally, it will enable students to pursue a career path that yields professional and personal satisfaction and fulfillment.

IV. RECENT REFORMS: STANFORD, HARVARD AND GEORGETOWN

This section examines recent curriculum reforms undertaken by the law schools at Stanford, Harvard and Georgetown. Given the above discussion of the various criticisms and proposals for curricular reform that have been voiced since the time of the Legal Realists, these recent reforms can be evaluated with something of a “checklist” in mind, in order to determine the extent to which reforms at these law schools alleviate the various problems, from the specific to the general, associated with contemporary legal education.

164 Id. at 553.
A. Stanford

Stanford Law School announced curricular reforms in the fall of 2006, to be fully implemented by 2009.\footnote{Unless otherwise indicated, this section is a summary of the description found on Stanford Law School’s website, A “3D” JD: Stanford Law School Announces New Model for Legal Education, http://www.law.stanford.edu/news/pr/47/} Stanford’s reforms represent a response to the critique that legal education only teaches one skill – that of legal reasoning, or, “thinking like a lawyer.”\footnote{Kramer, supra note 41.} The reforms thus attempt to better train students in other important lawyering skills, especially given the new demands placed upon modern lawyers in light of an increasingly globalized and specialized economy.\footnote{Id.} With a view to achieving this, the reforms seek to provide students with increased education and training in clients’ substantive issues, both technical and cultural, in areas such as business, medicine, government, education, science and technology. Consistent with this will be an emphasis on group work, especially in cross-disciplinary teams which include students from different graduate schools.

The actual changes occur exclusively in the second and third years, while the first year – according to Law School Dean Larry Kramer, the part that “really seems to work” – will remain unchanged.\footnote{Id.} The rationale is that the first year is successful in teaching legal reasoning, and since the first year completes that task, students should be able to study other skills during the final two years.\footnote{Id.}

The changes to the second and third-year curricula include the addition of two new types of courses, “concentration sequences,” in which students can study interdisciplinary topics; and “simulation courses,” in which students work through problem-solving exercises, in teams with
students from other graduate schools in fields such as business, engineering, medicine, and natural sciences.

The university also plans to make cross-registration easier by coordinating academic calendars, and to formalize more than 20 joint-degree Masters and PhD programs in fields such as engineering, education, environmental science, political science and economics.

Finally, the law school will expand the number and range of clinical courses, and will add a “clinical rotation,” where students have only a clinic and no additional classes during a particular quarter-term. This is based on the medical school approach and is expected to improve the clinical experience by allowing for larger ethics and writing components as well as for additional venues for clinics, including international settings.

\textit{B. Harvard}

Harvard Law School began implementation of curricular reform in the fall of 2007, to be fully completed by 2010.\textsuperscript{170} The goal of the reform is to give students a more comprehensive and accurate picture of the legal system, taking into account recent developments such as the increasingly important role of legislation and administrative agencies, as well as the globalization and internationalization of the legal system and law practice. In addition, the reforms also hope to provide students with better practical training in the practical “problem solving” elements of lawyering. Finally, the reforms attempt to provide a more meaningful second and third-year experience through increased guidance and shaping of upper level studies enabling students to focus on areas in their academic and professional interest.

The Harvard reforms change the first-year curriculum for all students, by adding a required course in legislation and regulation – introducing the students to statutes and administrative agencies and their relation to the other institutions that make up the legal system, as well as a required course in one of several areas of international and comparative law, and finally a required “problem-solving” course in which students work in teams on exercises that simulate practical issues and problems confronted by practicing lawyers. These three new required courses are in addition to the traditional body of first-year courses, which will remain part of the first-year curriculum for all students. The decision to include the new courses during the first year was a conscious effort to give students a more comprehensive and accurate understanding of the legal system during the formative first-year.171

The reforms also add upper level “programs of study,” designed to provide guidance to students that wish to focus on a particular area during second and third-year. These programs include Law & Government; Law & Business; International and Comparative Law; Law, Science & Technology; and Law & Social Reform, with other programs to be added depending on student and faculty interest. In pursuing a particular program, students are able to consult faculty and written materials that help students identify particular courses, clinical opportunities, fellowships and summer internships, relevant courses in other parts of the university, and research opportunities in their field. As with Stanford, Harvard will also coordinate academic calendars throughout the university in order to facilitate cross-registration and joint degree programs.

171 Rakoff, supra note 4, at 491; Rakoff & Minow, supra note 7.
C. GEORGETOWN

In 1991, Georgetown University Law Center introduced an alternative first-year curriculum that approximately one-sixth of Georgetown’s first-year students are able to opt into each year. The reason for the reform was to account for three important developments in legal practice and theory. First, the new curriculum reflects the increasing importance of legislation and administrative agencies in the legal system. Second, the curriculum recognizes the interrelationship and common themes that unite the traditional common law courses, and emphasizes their common problems of incentives, distribution and social control. Finally, courses are approached in an interdisciplinary context, integrating perspectives from economics, philosophy, history and political science into the first-year curriculum in response to these disciplines’ increasing importance to how modern lawyers practice and think about the law. In this way, the reform represents an attempt to present a comprehensive understanding of the legal system from a big picture, contextual perspective.

While each individual first-year course derives from one of the traditional first-year courses, every class is taught from the integrative and interdisciplinary approach described above. The actual courses are “Bargain, Exchange, and Liability,” – which combines the traditional torts and contracts courses; “Democracy and Coercion” – similar to the traditional Constitutional Law course but also including materials from Criminal Procedure, Political Philosophy, and other sources; “Government Process” – examining the relationship between various legal institutions including contract, tort, criminal law and administrative regulation; “Legal Process and Society” – similar to the traditional Civil Procedure course; and “Legal

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172 This section is a summary of the description on Georgetown University Law Center’s web site, [hereinafter, Georgetown], http://www.law.georgetown.edu/curriculum/documents/DescriptionofCurriculumB.pdf.
Practice: Writing and Analysis” – similar to the traditional Legal Research and Writing course. Finally, students also take a 15-student seminar in Legal Justice, in which students study different modes of American legal thought such as Legal Formalism, Legal Realism, Law & Economics, Rights Theory, Feminist Theory, and Critical Race Theory, while these theories are also taken up as part of the analysis throughout the other first-year courses.

D. ASSESSMENT

Examining the three reform programs at Stanford, Harvard and Georgetown illustrates the diverse possibilities and opportunities that exist for curriculum reform in legal education. Indeed, each program is quite different, each focusing on different concerns regarding different aspects and portions of the law school experience. When looked at in the context of the various criticisms and reform proposals discussed above it is apparent that each program has its relative strengths and weaknesses in addressing the various problems associated with legal education, while all three programs as a whole seem to address meaningfully the majority, if not all, of the above-described concerns.

Perhaps the most notable difference between the three programs is the specific student populations at which the reforms are targeted. That is, which students the reforms affect, and during which year of their law school experience. At Stanford, the first-year curriculum is left unchanged, while the changes to the second and third-year curricula seem to be the most substantial of the three programs. In contrast, Georgetown makes substantial changes to its first-year curriculum while leaving its second and third-year programs unchanged. Georgetown’s program is also interesting in that, since the introduction of the alternative first-year curriculum in 1991, Georgetown has maintained the traditional first-year curriculum for the majority of students, while only a small proportion of incoming first-years receive the new curriculum.
Harvard’s program affects all students in all three years, although perhaps not as profoundly as Georgetown’s reforms for first-years and Stanford’s reforms for second and third-years.

Taken together, the three programs address many or even all of the concerns with legal education mentioned above, both pertaining to the “specific,” which focuses on lawyers’ technical competency and understanding of the legal system as well as their practical competency in performing lawyering skills; as well as the “general,” which focuses on personal and professional development.

In terms of technical competency, both Harvard and Georgetown’s reforms account for the increased role of public law regulation through legislation and administrative agencies during first-year instruction, thus presenting first-years with a more accurate and comprehensive understanding of the contemporary legal system than that conveyed through the Langdellian curriculum dominated by private law adjudication under the common law.

With regard to practical competency, Harvard and most notably Stanford’s reforms demonstrate an increased commitment to practical skills-training and group work. Stanford does this through its new problem-solving elective courses for second and third-years, while Harvard does this through its new required problem-solving course for first-years. Both schools also provide increased opportunity for upper-level students to pursue specialized knowledge concerning the substantive issues of clients for whom students are interested in working. At Stanford, this is implemented through new interdisciplinary electives for second and third-years, while at Harvard it is achieved through the “programs of study” that attempt to connect students with the various law and other graduate school courses, as well as extra-curricular opportunities in each of the interdisciplinary programs.
Both schools make cross-registration and joint degrees easier by coordinating academic calendars across the university, while Stanford also hopes to formalize additional joint degree programs. Finally, Stanford’s reforms increase their students’ opportunities to receive practical training through the expansion of Stanford’s clinical program, as well as the creation of a “clinical rotation,” which allows students to pursue a clinical in-depth and without additional courses during one of Stanford Law Schools quarter-terms.

With regard to general concerns of personal and professional development, Georgetown’s is the only program that provides a broad contextual representation of the law and the legal system, allowing for discussion and exploration of the relationship between the law and external social realities during the formative first-year experience. The inclusion of legal history and theory, and of interdisciplinary study during the first year, as well as the emphasis on the interrelationship between individual substantive courses and the common problems that they address represents an attempt to provide a “big picture” view of the law and the legal system.

Indeed, perhaps inspired by reading Kershen, Georgetown’s official description of the curriculum notes its focus on “not just the ‘what’ of law, but also the ‘why.’” This big-picture presentation of law’s relationship with external realities should be helpful in fostering the intellectual curiosity and the sense of responsibility to the common good that, according to Kershen and others, should be instilled in future lawyers. Indeed, the broad, contextual exposure during first-year may serve to encourage and inspire more students to pursue some of the more diverse learning experiences – such as theory, interdisciplinary, group-work, or practical-training based courses, as well as clinical programs – that are already offered among Georgetown’s second and third-year electives.

173 Georgetown, supra note 172.
While certainly not as comprehensive as Georgetown’s reforms, Harvard’s new required first-year courses in legislation/regulation, international/comparative law, and problem-solving should reduce the dominance of traditional case-method analysis in the first year, and provide an increased outlet for the exploration of contextual and real-world concerns and issues. Finally, Harvard and Stanford’s upper-level reforms will benefit those second and third-year students with specific professional goals in mind by allowing them to pursue advanced substantive and practical study in those areas.

Each school’s program thus has its relative strengths and weaknesses when looked at from the “check-list” of the specific and general critiques and reform proposals concerning contemporary legal education. Of further interest might be to consider how these reforms will play out in terms of having a meaningful effect on any given student’s law school experience. For instance, what percentage of students will be able to take advantage of the new opportunities presented by Harvard and Stanford’s enhancements to their second and third-year programs, and how will their willingness to do so be influenced by their experiences during their first year? Will Georgetown’s innovative, big-picture-focused first-year curriculum inspire students to pursue new and diverse learning experiences during their second and third year? Or was the relatively small percentage of first-year students that chose to opt into the alternative curriculum more likely to do so anyway? The thinking behind this notion is that those already possessing a strong sense of self and purpose, and self-confidence to take risks in the pursuit of independently chosen goals, would be the most likely to opt for the alternative curriculum instead of the conventional, traditional and “safe” curriculum of old, the effect being that the new curriculum is offered only to those students that need it least.
Whatever the answers to the above questions, the three reforms demonstrate the many and diverse possibilities and opportunities for curriculum reform in contemporary legal education. Furthermore, these three programs, when taken together, demonstrate that advocates for reform and members of law school administrations recognize the entirety of the criticisms and proposals for reform discussed above, and that, for whatever reason, any one school’s reform program has only been able to account for these concerns to a limited extent, through partial, compromised reform that addresses certain concerns for certain student populations and not others.

V. CONCLUSION

This essay has provided a framework under which to analyze many of the criticisms and reform proposals regarding legal education. It has discussed the various concerns with the quality of contemporary legal education, many of them first voiced by Oliver Wendell Holmes Jr. and the Legal Realist movement. The fundamental problem that unifies all of these criticisms is that contemporary legal education continues to be overly dominated by traditional doctrinal analysis under the case method. This type of instruction, while effective in teaching the essential skill of legal reasoning, does not address many of the other concerns critical to a lawyer’s technical and practical competency, or a lawyer’s personal and professional development.

The limitations of such an education, and the consequences of neglecting those specific needs of future lawyers that traditional case analysis cannot address, were discussed in detail. Among the most concerning aspects of legal education were its tendency to instill a sense of intense competition over external measures of success and self-worth, as well as feelings of mediocrity, inadequacy, passivity and resignation that result from emphasizing external goals
and values. In contrast, personal or internal values, motivations, and measures of success and self-worth, were found to be inadequately cultivated, or even devalued by the law school experience. Similarly concerning was how the law school fails to instill – or even impedes the development of – a sense of intellectual curiosity that would provide students with the impetus to be critical, informed and aware of the ways that the law interacts with and influences the lives of groups and individuals in our society, along with an accompanying sense of responsibility to preserve justice and uphold the common good.

After elaborating the various critiques of legal education and proposals for reform, this article analyzed the recently implemented curricular reforms at the law schools at Stanford, Harvard and Georgetown. Taken together, the three programs addressed many or all of the concerns with legal education detailed above, however each individual program was only able to implement reform targeted at a limited number of the problems identified.

Thus, while gradual progress continues to be made, many of the problems and inadequacies of the law school model as instituted in 1870 by Langdell persist in legal education today. But a detailed analysis of the many shortcomings with contemporary legal education and recent curriculum reforms need not serve solely to decry our current situation. Nor must it serve no larger function than to criticize piecemeal reform as inadequate and to demand more. Rather, and most fundamentally, a discussion of these problems can contribute to the goal initially set out in the introduction to this article: to understand what happens to students at law school. Thus, while comprehensive curriculum reform addressing all of the concerns discussed above may remain elusive, an understanding and awareness of the problems with legal education can nonetheless translate into preparedness and empowerment. Understanding the various limitations of the skills-training that law school provides, students should feel an urge to pursue
initiatives outside of the lecture hall, such as clinical education and internships that offer valuable insight into, and preparation for, the type of legal career that the student is considering. Aware of the tendency of legal education under the case method to teach law as divorced from social context and external realities, students can make a conscious effort to consider and to explore this relationship in venues other than case-book courses; developing and following an intellectual curiosity that will inspire students to cultivate an awareness and understanding of the way that the law effects the lives of people and the society in which they live. Mindful of the impersonal, detached and objective tone of legal instruction, students can resolve not to lose sight of the personal, emotionally-invested, and the subjective, and can make an effort to continue to nurture their personal aspirations and values that initially inspired them to attend law school. Cognizant of the risks that the law school experience poses towards students, namely the socializing and professionalizing influence that may cause students to gravitate towards externally or socially-constructed goals, measures of self-worth and definitions of success, students can guard against this risk by continually asking themselves what they truly want for themselves in a career and a life, and continually considering and developing their reasons why. In this way, a student can take ownership over their legal education, and with ownership, take responsibility to become the most informed and competent lawyer possible, and to pursue passionately a career in a profession upon which our society depends. For, as noted by Kershen, this is a responsibility that we students owe to society, to history, and to ourselves.