

# Preserving Law School's Signature Pedagogy and Great Subjects

By Nelson P. Miller and Heather J. Garretson

**T**he Carnegie Foundation for Higher Education's groundbreaking report, "Educating Lawyers"<sup>1</sup> (Carnegie Report) examines the way that law schools develop legal understanding and form professional identity. Overall, the authors call for rethinking the law-school curriculum to better prepare graduates for the practice of law.<sup>2</sup> The central premise of the Carnegie Report is that the three dimensions of legal education—knowledge, skills, and ethics—must be better integrated if law schools are to help their graduates reach their full potential as practicing lawyers.

The Carnegie Report recognizes the value of law school's signature pedagogy—Professor Kingsfield's quasi-Socratic examination. The report also accepts the common criticism of legal education, which is that an over-emphasis on the Socratic method in first-year doctrinal courses tends to produce an overly analytical, amoral mindset, which in turn produces disenchanting students and disheartened professionals. The report concludes that the solution is to include skills and ethics components in first-year doctrinal studies. The integration of skills and ethics at the first-year level theoretically produces a lawyer schooled in all dimensions of the legal profession and grounded in the profession's purpose.

As with any fashionably new theory, the Carnegie Report's integration theme will be taken too far—misconstrued to unduly minimize or ignore law school's great subjects.<sup>3</sup> Some legal educators will conclude that the substantive doctrine taught in traditional

first-year courses, such as contracts, torts, property, and constitutional law, is not sufficiently practical and will abandon these first-term law-school subjects.

There is, however, a yang to the report's yin. The traditional first-year law-school subjects are more central to American life and consciousness and more suited to skills and ethics instruction than the Carnegie Report may have succeeded in communicating. The first-year subjects are the foundation of our society. We would not be the people we are without covenant (contracts), justice (criminal law), prosperity (property), and the Golden Rule (torts), and the embrace of these subjects by the consent of the governed (constitutional law).

The Carnegie Report urged the integration of skills and ethics into these first-year subjects to make legal education purposeful. This goal must be balanced with recognition of the importance of the subjects themselves. In these subjects we find the universal doctrines that exist in varying degrees and varying forms in most ordered societies. Integration of these subjects into the practice of law gives the profession its identity—one that continues to be critical to the American experiment.

A legal education built on an understanding of the law's fundamentals is critical to providing substance to the lawyer's skills

and ethics. Law schools must recognize that there is more to the law than practice. Skills exercised without the social constructs to inform them are purposeless, indeed perhaps more so than knowing the social constructs but not having the skills to impart them. To be effective practitioners, law students must understand the social functions of law, the integration of law and other disciplines, and the relationship of law to ethics. Knowledge of doctrine is critical to the effective practice of law, just as the effective practice of law is critical to communities and the nation.

That said, the Carnegie Report's premise remains true that there is value to placing a law student's doctrinal studies in their human and social contexts. Even as students are immersed in law school's great doctrinal subjects, they must also learn the practical skills of lawyers and an ethical sense that will guide them. The obvious way to accomplish that learning is (as the Carnegie Report asserts) to integrate the dimensions of legal education from the beginning of law school through its conclusion.

How, then, is integration accomplished, if not to dispatch with or subordinate the first-year subjects? Professional schools contextualize knowledge within skills and ethics settings in at least three ways. One is to mix knowledge, skills, and ethics courses

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throughout the curriculum. Law students might, for example, take research, writing, and ethics courses as part of the first-year doctrinal courses.<sup>4</sup>

Another way to integrate dimensions of legal education is to do so within each course. Doctrinal courses like contracts, torts, criminal law, and property can include skills and ethics dimensions in which students research, write, plan, resolve, and advocate.<sup>5</sup> Students can observe and practice political, social, economic, and moral counsel in doctrinal classes, while reflect-

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ing on their emerging professional identities. Saturating first-year doctrinal courses with practical skills and professional identity is a good approach because it is from that mix of doctrinal study with professional context that covenant, justice, prosperity, compassion, and consent take authentic rather than abstract shape.

A third way to integrate dimensions of legal education is by module carried across the curriculum. Students who participate in first-year moot-court competition as a co-curricular activity and then organize and lead competitions in the second and third years necessarily integrate knowledge, skills, and ethics within that module. Students also integrate program dimensions in other cross-curriculum modules comprised of public-service, law-journal, and student-organization leadership.

Law schools have traditionally offered most or all of these integrative activities. Less common are efforts to help students recognize and reflect on the value of this integration. It was another theme of the Carnegie Report that law schools have tended not to be sufficiently explicit with their program design. This failure of the educator

denies the educated the ability to see and understand the integration of skills and ethics throughout their legal education. Integration must therefore be accompanied by explaining its purpose to the student. At Thomas M. Cooley Law School, a portfolio program was developed and is used throughout the curriculum to make the integrative approach explicit for the student. Cooley's portfolio program, used by students from the first day to graduation, encourages students to see how skills and ethics permeate their studies and future careers.

Learning to think like a lawyer is alone not enough to make a competent lawyer. A lawyer must integrate skills and ethics into law's large and profound knowledge base. A truly successful program of legal education will be careful not to subjugate law school's great subjects to other pedagogical agendas. Catechisms usually arise for sound reasons. So, too, did law school's great subjects. ■

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## FOOTNOTES

1. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* (San Francisco, CA: Jossey-Bass, 2007).
2. The Carnegie Foundation for the Advancement of Teaching Press Release.
3. See, e.g., Zitrin & Langford, *The Moral Compass of the American Lawyer—Truth, Justice, Power, and Greed* (Ballantine, 1999), pp 235–237.
4. This is the practice at Thomas M. Cooley Law School, where first-year students must take professional responsibility and research and writing in addition to the traditional doctrinal classes such as torts, contracts, property, criminal law, and constitutional law.
5. At Stanford Law School, legal research and writing are taught to first-year students through simulation that includes mock client interviews, depositions, and exhibits. According to Stanford's course description, the purpose of this simulation is to situate legal-writing assignments in the context of legal problem-solving so that students learn through experience the interaction between fact investigation, legal research, legal analysis, and writing.