2022

What Law Schools Must Change to Train Transactional Lawyers

Stephanie McMahon

What Law Schools Must Change to Train Transactional Lawyers

Stephanie Hunter McMahon*

Abstract

Not all lawyers litigate, but you would not know that from the first-year curriculum at most law schools. Despite 50% of lawyers working in transactional practices, schools do not incorporate its legal doctrines or skills in the foundational first year. That the Progressives pushed through antitrust laws and the New Dealers founded the modern administrative state reframed how people use the law, particularly in transactional practices, and should be given equal weight as the appellate-based common law in any legal introduction. Nevertheless, the law school model created by Christopher Columbus Langdell in the 1870s remains dominant. As this review of fifty-four law schools' required curricula shows, law schools have largely retained Langdell's curriculum. This negatively affects young transactional lawyers because their critical first year does not show them the law as a preventative, problem-solving practice. This Article proposes fundamental changes to the way law schools prepare students to be transactional and other types of attorneys by reframing the first year from various common law topics to a focus on practice areas. This Article argues that it is faculty, fear, and funding that prevent fundamental change to the first year and other required curriculum even as change is necessary for the health of law schools and the legal profession. This Article concludes that, in the face of curriculum stagnation, the ABA accrediting body and bar examiners should recognize these changes by requiring and testing these "new" areas of law.

*Professor of Law, University of Cincinnati College of Law. I would like to thank my colleagues at the University of Cincinnati College of Law, both those who served on the Curriculum Committee with me and those who participated in our two-year endeavor, and the faculty (unsurprisingly too many to name) at other institutions that answered questions about their schools' curricular choices. Additionally, I owe a special thanks to Staci Rucker, who served as Cincinnati's Associate Dean of Students, and Joel Chanvisanuruk, who was Senior Assistant Dean of Academic Success and Bar Programs, both of whom showed tremendous desire to find the best solutions for our students in analytical and thoughtful ways throughout this process.

I. INTRODUCTION

Welcome to your first year of law school! This year you will be taking courses in contracts, torts, property, criminal law, and civil procedure. In each of these classes, you will read a lot of appellate cases. The year could be 1870 or 2022.[1] What law schools teach today remains eerily similar to what was taught in the 1870s, despite the dramatic shift in the law to statutory and regulatory forms.[2] Much, if not most, of our law today is not common law, but law schools are hesitant to recognize that fact in their curricula.[3] This is particularly troubling for future transactional attorneys who may be disengaged with the first-year curriculum and are forced to wait until upper-level electives and clinics to learn about the profession.

Problems with this approach can be illustrated by thinking about the beginning of the COVID-19 pandemic. First-year law students may have thought about the constitutional ramifications of quarantines and vaccine mandates, or the criminal results of violating them. They were unlikely to think about how lawyers lobbied for or against or

1. *See* Russell L. Weaver, *Langdell's Legacy: Living with the Case Method*, 36 VILL. L. REV. 517, 518 (1991) ("Christopher Columbus Langdell introduced the case method of teaching at Harvard Law School in 1870 and dramatically altered the course of legal education in the United States.").

2. *See* Edward Rubin, *What's Wrong with Langdell's Method, and What to Do About It*, 60 VAND. L. REV. 609, 617–18 (2007) ("[B]y 1914, it was clear to everyone that the regulation spawned by the Progressive Movement would define the contours of the American legal system for a long time to come.").

3. *See id.* at 617.

drafted the legislation, implementing regulations, or business policies answering the questions of who, when, how long, or how could compliance or violations be proved.[4] They would not have been trained to think through the administrative issues of what limits could effectively be imposed and how long it would take to create them. They would not have learned in law school how businesses decide whether to comply with or to fight rules regarding tax benefits and business restrictions.

More troubling, is that few students in the first year would have been taught to approach the pandemic or other issues raising legal concerns from the perspective of a problem solver. First year law students are rarely tasked with asking what is the client's problem and how can a lawyer most effectively, and inexpensively, redress it? Those questions guide most practicing lawyers, particularly transactional lawyers. Unfortunately, the focus in law school is all too often on teaching the law as a theory and does not include analysis on how to use the law to confront real world problems for real people.[5] Instead of this approach, law students need broader exposure earlier in their education to the different types of legal practice focusing on how members of the legal profession work to solve problems.

Part II looks at why changes need to be made by looking at the current job market for law school graduates and the long-term career trajectory most attorneys develop.[6] No longer are we, if we ever were, a profession of litigators.[7] More than half of lawyers are transactional attorneys, and over their careers many attorneys move out of traditional legal roles and into business roles.[8] Their educations should prepare them for these realities. Additionally, this Article examines the new type of law schools' programs, namely master's programs and certificate programs, and the need for law schools to provide functional information about the law to these students.[9]

The Article then turns to how little law schools have responded to this professional reality. Most law schools have been reluctant to

4. *See, e.g.*, *J.D. Program and Curriculum: First Year Foundation Curriculum*, COLUM. L. SCH., https://www.law.columbia.edu/academics/jd-program-and-curriculum (last visited Dec. 23, 2022) (providing the first-year curriculum of Columbia Law School and noting that Legislation and Regulation, a course that would expose students to these ideas, is not a requirement, but an elective).

5. *See infra* Part II.

6. *See infra* Part II.A.

7. *See infra* Part II.A.

8. *See infra* Part II.A.

9. *See infra* Part II.B.

make the changes necessary to address the narrowness and insufficiency of their curricula.[10] Part III examines the curricular requirements of fifty-four law schools in four bands of 2022 rankings according to the U.S. News & World Report to determine what requirements are most often imposed on law students.[11] These law schools' required curricula teach students to think like judges.[12] Students work alone, not to solve someone's problem, but to apply a disconnected law to an abstract set of stated facts.[13] Clients value "expertise, judgment, problem-solving abilities in areas beyond doctrine," and law schools need to help students foster these skills early in their educations.[14] Traditional sources of law, as a predominately common law practice, must coexist in the critical first year of law school with the skills and sources of law that have grown in importance in the last century and a half.

Part IV proposes a realigned first year curriculum that builds legal education around legal practice without forsaking the need to introduce students to the basics of the law.[15] Thus, transactional law, administrative law, civil litigation, criminal justice, and public interest law should be given equal time in the first year and not minimized or sequestered into elective courses, practice teams, or clinics.[16] The changes proposed in this Article would address the needs of transactional attorneys and also recognize the value of transactional skills and accompanying knowledge for all students in law school. To teach beyond the appellate-based common law is necessary to ensure that to "think like a lawyer" includes the ability to think "in deeply contextual and sophisticated ways about how they might—or might not—use the law to help a client solve her problem."[17] Students need critical thinking skills not in an abstract sense, but in order to use them, and that is what law schools need to teach before graduates enter the market.

---

10. *See infra* Part III.A–B.

11. *See infra* Part III.A.

12. *See* Benjamin H. Barton, *A Tale of Two Case Methods*, 75 TENN. L. REV. 233, 237 (2008).

13. *See id.* at 239 (discussing how traditional law school exams require students to "issue spot" in a long factual scenario).

14. Gary L. Blasi, *What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory*, 45 J. LEGAL EDUC. 313, 315 (1995).

15. *See infra* Part IV.

16. *See infra* Part IV.

17. Kristen Holmquist, *Challenging Carnegie*, 61 J. LEGAL EDUC. 353, 356 (2012).

As discussed in Part V of this Article, for law schools to teach beyond the appellate-based common law will not be easy.[18] While some schools have adjusted their curricula, the great majority, as shown by this sample, have not.[19] Most law schools have devoted significant resources, including tenure-track positions, to building the current curriculum. The risks for changing a curriculum to better reflect the reality of the law and meet the educational needs of transactional and other students are not insignificant. Part V catalogs some of the major obstacles to enacting transformative curricular reform as the three Fs—faculty, fear, and funding—but neither these complaints nor recognition of law school's fallibility is new.[20] What is new is the recognition that it will take the ABA, as law schools' accrediting body, and state bar examiners to shift the first-year curriculum to a broader array of law.[21]

This author does not purport to have all the answers; however, the structure of the current first-year curriculum teaches students to think of law as a zero-sum, litigation-focused practice and provides little systematic exposure to preventative law.[22] Students may happen upon transactional specialties in their upper-level years, not having seen it in their first year.[23] Although some professors introduce these concepts in their first-year courses, it is generally not required or expected that they do so. This Article looks at why this system exists and how to overcome the obstacles to achieve a post-Langdellian curriculum.[24]

---

18. *See infra* Part V.A.

19. *See infra* Part III.A. For a good synopsis of some schools' changes, see generally, Lewis D. Solomon, *Perspectives on Curriculum Reform in Law Schools: A Critical Assessment*, 24 U. TOL. L. REV. 1 (1992); Gregory M. Duhl, *Equipping Our Lawyers: Mitchell's Outcomes-Based Approach to Legal Education*, 38 WM. MITCHELL L. REV. 906 (2012); Earl Martin & Gerald Hess, *Developing a Skills and Professionalism Curriculum—Process and Product*, 41 U. TOL. L. REV. 327 (2010). It is beyond the scope of this paper to examine what confluence of factors made change possible for those institutions at that time.

20. *See infra* Part V.A.

21. *See infra* Part V.B.

22. *See infra* Part III.A–B.

23. *See* Lisa Penland, *What a Transactional Lawyer Needs to Know: Identifying and Implementing Competencies for Transactional Lawyers*, 5 J. ASS'N LEGAL WRITING DIRS. 118, 121 (2008) (noting that the number of schools offering contract drafting, transactional clinics, and transactional externships for upper-level classes have risen).

24. *See* Rubin, *supra* note 2, at 610–12 (discussing Langdell's method and the need to redesign the educational approach in law schools).

II. NEED FOR CHANGE

The legal market has changed dramatically since the late nineteenth century when law schools widely adopted the case method and the majority of the first-year curriculum.[25] In this modern market, attorneys need different skills and knowledge to be the adaptable problem-solvers client need them to be.[26] Law schools responded to the changes, if at all, by adding new requirements rather than rethinking established methods and the long-lived curriculum.[27] There is little guarantee in this system that students gain an appropriate foundation to enter the job market.[28] The legal market needs law schools to recognize and respond to twentieth century (much less twenty-first century) changes.

A. Job Market

For students, a law school's purpose is not in attendance but in the employment opportunities available to students after graduation.[29] Many requirements imposed on law schools help ensure that schools remember this.[30] For ABA accreditation, law schools must provide students with career counseling and disclose recently graduated classes' employment outcomes to perspective students.[31] Perhaps more poignant to many law schools, employment rates at

25. *See id.* at 617–18.

26. *See* Joseph William Singer & Todd D. Rakoff, *Problem Solving for First-Year Law Students*, 7 ELON L. REV. 413, 427 (2015) ("Legal education should do as good a job at teaching students the basic skills needed to serve clients, and that requires an understanding of the basic components of problem solving that lawyers use.").

27. *See id.* at 414 (discussing the Problem Solving Workshop that Harvard Law School added to their first-year curriculum in order to teach students skills from the start).

28. *See* Elí Salomón Contreras, *The Skills We Wish We Learned in Law School*, A.B.A., https://www.americanbar.org/groups/young_lawyers/publications/after-the-bar/professional-life/the-skills-we-wish-we-learned-in-law-school/ (last visited Dec. 23, 2022) (discussing content that practicing lawyers wish they learned in law school to better prepare them for their post law careers).

29. *See* Ilana Kowarski, *40 Law Schools Where Grads Leave With Law Jobs*, U.S. NEWS & WORLD REP. (May 25, 2022), https://www.usnews.com/education/best-graduate-schools/top-law-schools/slideshows/law-schools-with-the-highest-full-time-employment-rates ("Experts say schools where the vast majority of students graduated with lasting full-time legal jobs are a safer bet than those where graduates often struggle to find law-related employment.").

30. *See* STANDARDS & RULES OF PROC. FOR APPROVAL OF L. SCHS. Standard 509 (AM. BAR. ASS'N 2022) (stating the required disclosures accredited law schools must make to the ABA, which includes employment outcomes and bar passage data).

31. *See id.* Standard 508–09.

graduation and after nine months are used by the U.S. News & World Report's ranking system, and the Princeton Review has a career rating for how confident students are that their law school will help them find jobs.[32] Therefore, law schools have very powerful reasons to care about students' job prospects. For many students, this will be in transactional practices.[33]

For law school rankings purposes, not all post-graduate employment is given the same weight.[34] For the U.S. News & World Report ranking, maximum value is awarded for long-term, full-time jobs, not funded by the law school, and where a J.D. degree is an advantage or bar passage is required.[35] Pinpointing current and future jobs that meet these requirements can be difficult. To do this, law schools must understand where their students will go to find employment, whether regional or national, and in what types of law-related jobs; this depends in part upon the rank or perceived aptitude of their students.[36] Thus, the legal market is not one-size-fits-all for law schools.

Some important information regarding employment outcomes can be gleaned from reported data. First, graduates from schools outside of the top fifty have less than a 50% chance of working at a law firm at graduation.[37] For those who go to law firms, ranking greatly influences the size of the starting law firm.[38]

---

32. *See* Robert Morse et al., *Methodology: 2023 Best Law Schools Rankings,* U.S. NEWS & WORLD REP. (Mar. 28, 2022), https://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology ("Employment rates for 2020 graduates 10 months after graduation [constitutes 14% of a law school's rank] and at graduation [is 4%]."); *Best Career Prospects*, PRINCETON REV., https://www.princetonreview.com/law-school-rankings?rankings=best-career-prospects (last visited Dec. 23, 2022).

33. *See* Penland, *supra* note 23, at 118 ("At least half, if not more, of all attorneys engage in transactional practice.").

34. *See* Morse et al., *supra* note 32 (noting that differing weight was assigned to forty-five different types of post-J.D. jobs).

35. *See id.* ("The 100% weighted jobs were those who had a full-time job not funded by the law school or university that lasted at least a year and for which bar passage was required, or a full-time job not funded by the law school or university that lasted at least a year where a J.D. degree was an advantage.").

36. *See infra* Figures 1–3.

37. *See infra* Figure 1.

38. *See infra* Figure 2.

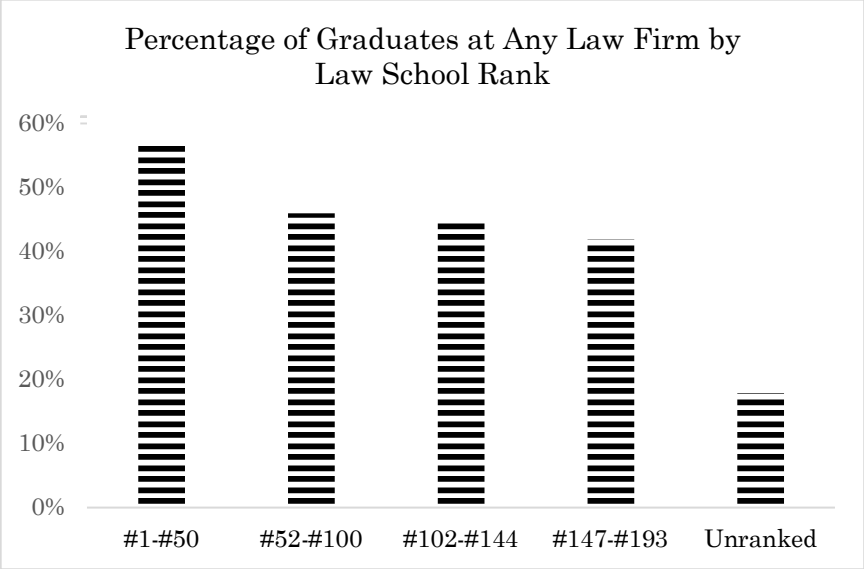

Figure 1 [39]

39. For access to data that was used to create Figure 1, see *ABA Required Disclosures: Employment Outcomes*, A.B.A., https://abarequireddisclosures.org/EmploymentOutcomes.aspx (under "Compilation-All Schools Data" select class year "2020"; then click "Download Complete Employment Data"; then open downloaded spreadsheet). See also *infra* Appendix A for a list of the fifty-four schools sampled from this data.

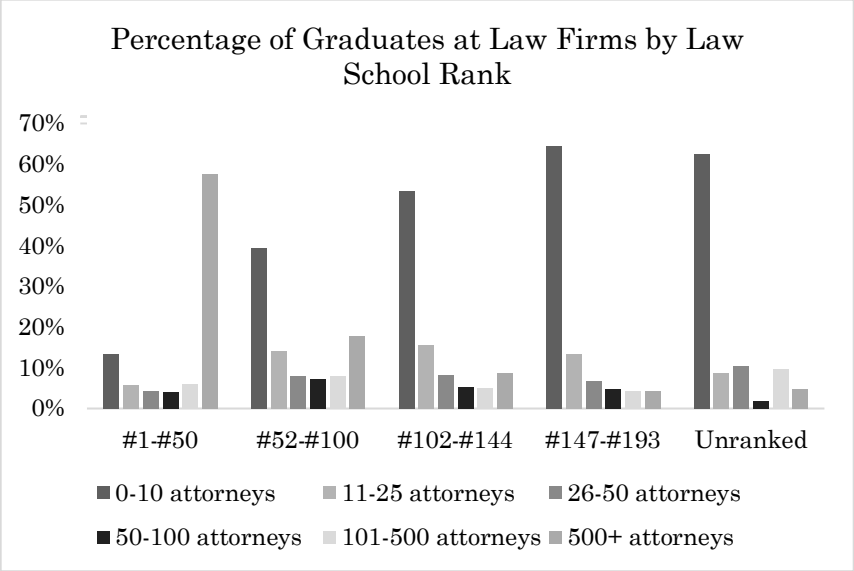

Figure 2 [40]

Additionally, other post-graduate employment is also affected by the rank of a graduate's law school.[41] Some of this information may be surprising. A significant number of schools outside the top fifty should expect over 20% of their graduating class to start in business, industry, and government, and although many of the top students at top law schools' clerk, it is only 12% of their graduating classes.[42] If different forms of employment require different skills, the range of employment opportunities would indicate there is no one-size-fits all education.

40. For access to data that was used to create Figure 2, see *ABA Required Disclosures: Employment Outcomes*, A.B.A., https://abarequireddisclosures.org/EmploymentOutcomes.aspx (under "Compilation-All Schools Data" select class year "2020"; then click "Download Complete Employment Data"; then open downloaded spreadsheet). See also *infra* Appendix A for a list of the fifty-four schools sampled from this data.

41. *See infra* Figure 3.

42. *See infra* Figure 3.

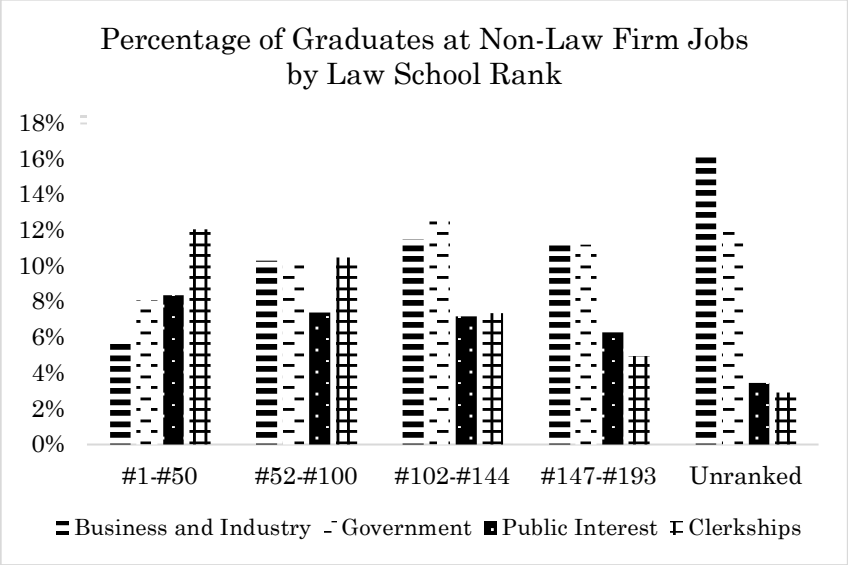

Figure 3 [43]

This data about the types of jobs that law graduates obtain should influence what law schools teach. To the extent that rank results in different occupational outcomes, a school should tailor its curriculum to likely future employment.[44] It might be fine to say that all law schools should teach students to "think like a lawyer" but what that means is very different for students from different schools.

For example, some have argued that law schools should teach "the art and science of creating and operating a sustainable law firm."[45] This is a more pressing need for law schools ranked 100 through unranked because their students are more likely to begin at small law firms where graduates will quickly need a broad array of business ownership skills often untaught at law schools.[46] For higher-

43. For access to data that was used to create Figure 3, see *ABA Required Disclosures: Employment Outcomes*, A.B.A., https://abarequireddisclosures.org/EmploymentOutcomes.aspx (under "Compilation-All Schools Data" select class year "2020"; then click "Download Complete Employment Data"; then open downloaded spreadsheet). For a list of the fifty-four schools sampled from this data, see also *infra* Appendix A.

44. *See supra* Figures 1–3 (depicting the likely employment opportunities for graduates based on their law school's rank).

45. Richard S. Granat & Stephanie Kimbro, *The Teaching of Law Practice Management and Technology in Law Schools: A New Paradigm*, 88 CHI.-KENT L. REV. 757, 758 (2013).

46. *See supra* Figure 2.

ranked schools, it may be more appropriate to offer this type of education on a post-graduate CLE basis and, in law school, focus on client development and the ability to function in a larger firm or business setting.[47] While nearly two out of three U.S. practitioners work in firms with five or fewer lawyers, or "virtual law firms" whose members collaborate entirely online, those taking this approach initially are relatively easily identified by school.[48]

Despite this information, many questions are unanswerable for particular schools with currently published data. Although disclosure has improved over the last decade, the data continues to lack the precision necessary to truly aid the development of law school curricula. For example, included in the ABA-required disclosure of job status is the size of an employing law firm but not the type of work conducted at the firm.[49] These broad categories do not provide sufficient detail as to what law school graduates do for purposes of curricular planning, although they are useful for the purpose of helping perspective students broadly understand likely employment outcomes.

In particular, the reporting lacks detail in whether graduates' legal practice is transactional and planning or litigation and appellate work,[50] but, regardless of the exact numbers, it is no longer reasonable to maintain a litigation-dominated curriculum.[51] Everyone's practice may not be one or the other but for many they are. Estimates are that at least half of attorneys engage in transactional practice,[52] and that in middle or large-sized law firms one-third works in litigation, one-

47. *See supra* Figure 2.

48. *See* Granat & Kimbro, *supra* note 45, at 770.

49. *See* STANDARDS & RULES OF PROC. FOR APPROVAL OF L. SCHS. Standard 509 (AM. BAR. ASS'N 2022); *see also ABA Guidance Document: Employment Protocols for the Class of 2021*, A.B.A. 51 (Sept. 2, 2021), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/Questionnaires/2021/2022-employment-protocols-for-the-class-of-2021-september-2021.pdf. Some schools go further. The law school I work for, for instance, collects data for summer employment but lists "private sector" without differentiating it further. *See* Data for Summer Employment, Univ. of Cincinnati Coll. of L. (March 2020) (on file with author).

50. *See ABA Guidance Document: Employment Protocols for the Class of 2021, supra* note 49, at 50–56 (providing the protocols for reporting different types of employment).

51. *See* Penland, *supra* note 23, at 119 ("[A] 2000 survey of the Young Lawyers of the American Bar Association supports the premise that a significant number of attorneys are engaged in transactional practice.").

52. *See id.* at 118 ("At least half, if not more, of all attorneys engage in transactional practice.").

third in transactional, and one-third in regulatory work.[53] A 2015 Thomas Reuters report found that although litigation has "traditionally been the largest" practice, litigation "has been in a slow, steady decline" in Am Law 100 and 200 law firms.[54]

Additionally, current reporting does not disclose lawyers' new career lines.[55] Legal faculty are unlikely to be aware of or even to be able to define "the legal knowledge engineer; the legal technologist; the legal hybrid; the legal process analysts; the legal project manager; the ODR practitioner; the legal management consultant; and the high risk manager."[56] These new areas will likely demand new and specialized skills. As new fields or types of legal practice develop, law school curricula need to respond by providing the skills necessary to operate in these professions.

Statistics of graduated students also do not tell much about the many students who are unemployed ten months out.[57] Despite a good labor outlook,[58] legal unemployment continues and is a difficult thing for law schools to admit.[59] The Institute for the Advancement of the

53. *See* Rubin, *supra* note 2, at 651; *see also* MARY ANN GLENDON, A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY 40–41(1994) (discussing the rise of transactional practices).

54. *See* Thomson Reuters, *Rise of the Transactional; How Transactional Practices are Increasingly Assuming Leadership for Law Firm Growth*, PEERMONITOR.THOMSONREUTERS.COM (2015), https://peermonitor.thomsonreuters.com/wp-content/uploads/2015/06/Transaction-Practices-Spotlight_2015.pdf.

55. *See ABA Guidance Document: Employment Protocols for the Class of 2021*, *supra* note 49, at 50–56 (defining employment types for reporting purposes).

56. Granat & Kimbro, *supra* note 45, at 765.

57. *See infra* Figure 4.

58. *See* U.S. Dep't of Lab., *Occupational Outlook Handbook: Legal Occupations*, U.S. BUREAU OF LAB. STATS. (Apr. 18, 2022), https://www.bls.gov/ooh/legal/home.htm ("Overall employment in legal occupations is projected to grow 10 percent from 2021 to 2031, faster than the average for all occupations; this increase is expected to result in about 131,000 new jobs over the decade."); *see also* U.S. Dep't of Lab., *Occupational Outlook Handbook: Lawyers*, U.S. BUREAU OF LAB. STATS. (Sept. 9, 2022), https://www.bls.gov/ooh/legal/lawyers.htm (noting that the 2021 median pay for lawyers was $127,990 per year, with 833,100 jobs, and 48,700 openings are projected annually). This should ensure continued demand as United States law schools reported 34,420 graduates in 2020 and 35,712 graduates in 2021. *See Employment Outcomes as of April 2022 (Class of 2021 Graduates)*, A.B.A. (Apr. 18, 2022), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2022/class-2021-online-table.pdf.

59. Over-reporting employment led the ABA to tightened reporting rules. *See* Kellie Woodhouse, *ABA Tightens Rules on Employment Reporting*, INSIDE HIGHER ED (Aug. 4, 2015), https://www.insidehighered.com/quicktakes/2015/08/04/aba-tightens-rules-employment-reporting#.YxdzEUsvPtY.link; *see also* Rick Seltzer, *Law Schools Flagged for Job Data*, INSIDE HIGHER ED (Nov. 1, 2016),

American Legal System (IAALS) reported that almost 40% of 2015 graduates did not obtain full-time jobs requiring a law license, and only 70% obtained one that required or even gave preference to the J.D. degree.[60] For 2020, although better, the numbers remained stark when looking at unemployment by law school ranking.[61]

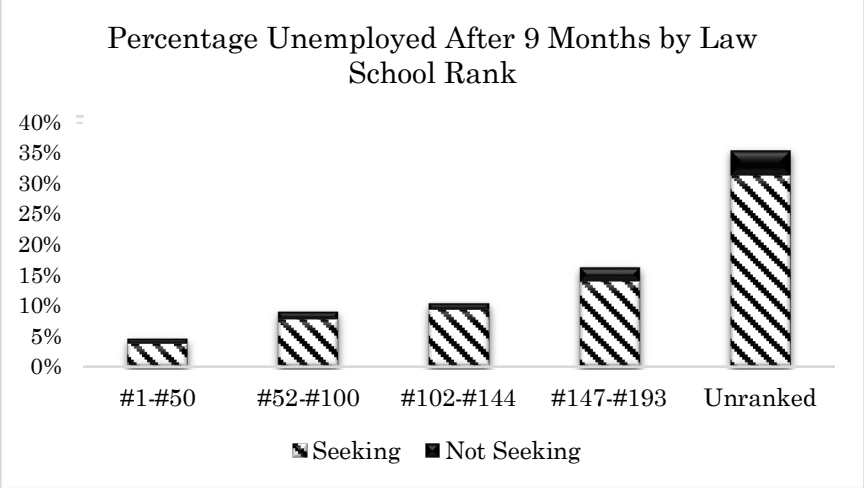

Figure 4 [62]

Unemployed graduates must forge their own paths and will need a

https://www.insidehighered.com/news/2016/11/01/initial-audit-finds-flaws-some-law-school-employment-reporting-practices#.Yxd1ShpPxg4.link ("A random review finds five of 10 institutions fell short on backing up claims about graduates' job placement success."); Yanan Wang, *Is a Law School Lying About Employment Data? A Struggling Grad Sues, and an Unprecedented Trial Begins*, WASH. POST (Mar. 8, 2016, 5:44 AM), https://www.washingtonpost.com/news/morning-mix/wp/2016/03/08/are-law-schools-lying-about-employment-data-a-struggling-grad-sues-and-an-unprecedented-trial-begins/ ("15 lawsuits have accused law schools of exaggerating alumni employment figures, allegedly misleading students about their job prospects when they were just as likely to end up as waitresses as they were attorneys.").

60. *See* ALLI GERKMAN & LOGAN CORNETT, INST. FOR ADVANCEMENT OF THE AM. LEGAL SYS., FOUNDATIONS FOR PRACTICE: THE WHOLE LAWYER AND THE CHARACTER QUOTIENT 1 (2016), https://iaals.du.edu/publications/foundations-practice-whole-lawyer-and-character-quotient.

61. *See infra* Figure 4.

62. For access to data that was used to create Figure 4, see *ABA Required Disclosures: Employment Outcomes*, A.B.A., https://abarequireddisclosures.org/EmploymentOutcomes.aspx (under "Compilation-All Schools Data" select class "2020"; then click "Download Complete Employment Data"; then open downloaded spreadsheet). See also *infra* Appendix A for a list of the fifty-four schools sampled from this data.

wide variety of skills to find and succeed in their post-graduate careers.

Moreover, even those who start with legal jobs will need many different skills as their career paths change. Studies show that many who begin as legal practitioners will leave the profession with books, if not their prior legal education, to guide them on alternative careers.[63] They need the skills to do their first job well but also the skills to help them secure and succeed at the jobs they later want. One survey of more than 5,000 lawyers found that over one-half changed practice settings and not just jobs within three years of graduation.[64] At three years out, 70% worked in private law firms, 16% worked in government, and about 9% were in business settings, of which one-third were doing primarily non-legal work.[65] A second survey found that roughly seven years into their careers, 83.5% practiced law in their primary positions and those working in private law firms had decreased from 70% to 55%.[66] In a last survey conducted twelve years into their careers, 36% had changed jobs in the prior five years but only 7% had changed settings.[67] By this point, less than 40% of women and 49% of men worked in private law firms, most leaving for business organizations as inside counsel, or in non-legal positions.

---

63. For suggestions on alternative careers outside of the legal profession, see generally ADELE BARLOW, LEAVING LAW: HOW OTHERS DID IT AND HOW YOU CAN TOO (2015); AMY IMPELLIZZERI, LAWYER INTERRUPTED: SUCCESSFULLY TRANSITIONING FROM THE PRACTICE OF LAW—AND BACK AGAIN (2015); LIZ BROWN, LIFE AFTER LAW: FINDING WORK YOU LOVE WITH THE J.D. YOU HAVE (2013); MONICA PARKER, THE UNHAPPY LAWYER: A ROADMAP TO FINDING MEANINGFUL WORK OUTSIDE OF THE LAW (2008). For choices within the profession, see generally LARRY RICHARD & TANYA HANSON, THE NEW WHAT CAN YOU DO WITH A LAW DEGREE: A LAWYER'S GUIDE TO CAREER SATISFACTION INSIDE, OUTSIDE & AROUND THE LAW (2012).

64. *See* RONIT DINOVITZER ET AL., AFTER THE JD II: SECOND RESULTS FROM A NATIONAL STUDY OF LEGAL CAREERS 14, 54–55 (2009), https://www.americanbarfoundation.org/uploads/cms/documents/ajd2_final_for_distribution.pdf [hereinafter AFTER THE JD II].

65. About one-quarter of new lawyers in private practice were in offices with more than 100 lawyers but 48% are in offices of twenty or fewer lawyers and, while some who worked in small offices were connected to large law firms, about 80% of lawyers in small offices were in standalone offices. *See* RONIT DINOVITZER ET AL., AFTER THE JD: FIRST RESULTS FROM A NATIONAL STUDY OF LEGAL CAREERS, 25–26 (2004), https://www.law.du.edu/documents/directory/publications/sterling/AJD2.pdf [hereinafter AFTER THE JD I].

66. *See* AFTER THE JD II, *supra* note 64, at 25.

67. *See* RONIT DINOVITZER ET AL., AFTER THE JD III: THIRD RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS 17, 58 (2017), http://www.americanbarfoundation.org/uploads/cms/documents/ajd3report_final_for_distribution.pdf.

Consistent with the 7-year survey, roughly 19% no longer practiced law.[68]

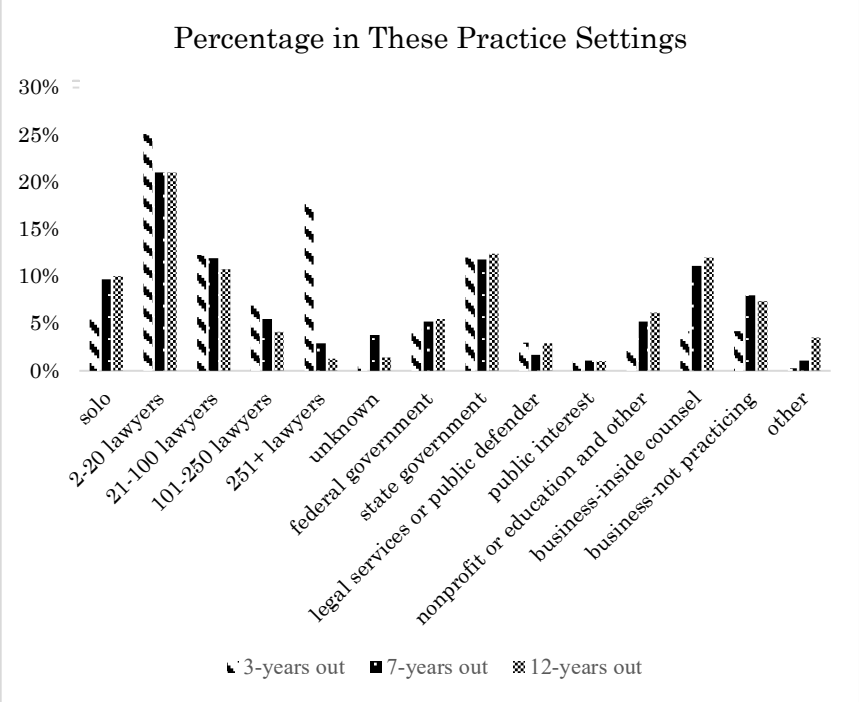

Figure 5 [69]

Within each of the settings, lawyers report themselves as specialized, although the area of law was not described, with 82.4% as of three years out but only 75.5% by twelve years out, showing a more generalizing skill set as careers mature.[70]

68. *See id.* at 17.
69. *See id.* at 29.
70. *See id.* at 37.

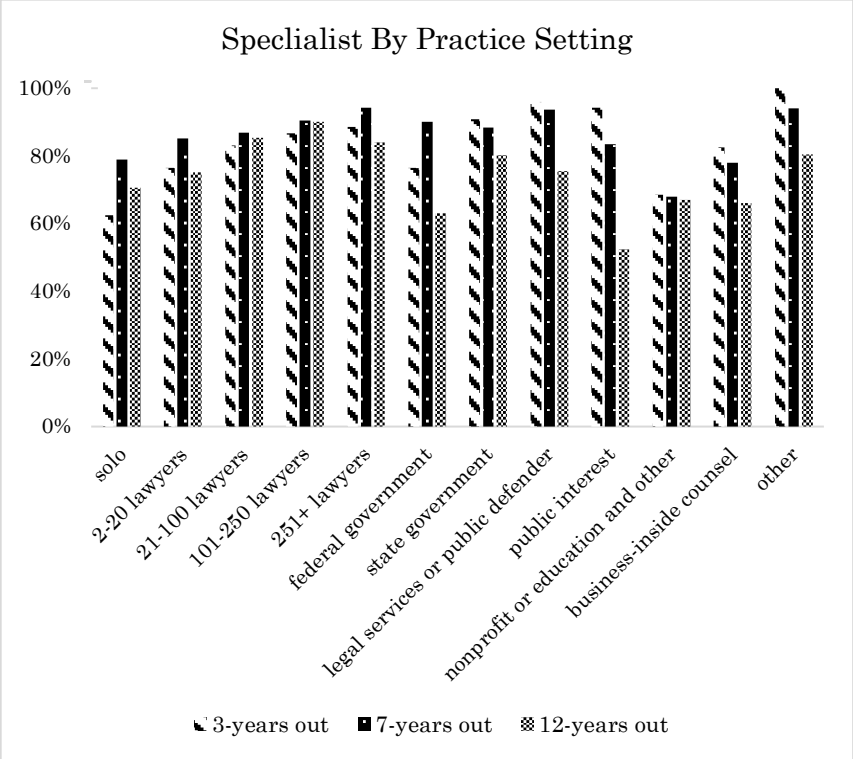

Figure 6 [71]

The pervasiveness of specialties belies the sense that all lawyers need the same skills, although there is certainly overlapping foundational material. The existence of specialties and the changes attorneys make between job settings makes it critical to define the core skills and knowledge needed in different practice settings to teach to all students so that graduates can adapt to the different paths they may choose.

The changing conditions of graduates' employment underscores that law schools should think both short- and long-term about their students' educational needs. Most students are unlikely to know what they will need because they have not yet entered the profession and should not be expected to forecast their occupational choices. With such high rates of change within the profession and out of it, students should not be expected to anticipate their future needs. Therefore, law schools should make filtering choices for students to maximize

71. *See id.*

the likelihood that students are prepared for their own preferred careers and the evolving market.

B. New Type of Students

Employment outcomes have likely grown more diverse in part because law school enrollments have moved beyond traditional J.Ds. to include a wide array of other learners.[72] In maintaining J.D. admission standards, non-J.D. programs are a source of revenue that few schools can afford to pass up.[73] Thus, students can help fund a law school by getting an LL.M., a master's degree, or a certificate. Not all of these students have prior legal knowledge, stretching what law schools ask their faculty (whether full-time or adjuncts) to do.

Law schools offer a wide array of programming to many non-J.D. students. In 2021, 21,044 non-J.D. students had increased from 7,727 in 2002, a 170% increase.[74] According to the ABA, 172 schools have post-graduate degrees that are not "approved" or even regulated by the ABA so that they "vary in content and rigor."[75]

---

72. *See infra* Figure 7.

73. *See, e.g.*, Frank H. Wu, *Where Law Schools Get Their Money*, ABOVE THE LAW (Oct. 3, 2013, 3:56 PM), https://abovethelaw.com/2013/10/where-law-schools-get-their-money/ (noting that most law schools are dependent on tuition). Further, state subsidies at public schools have significantly decreased. *See id*.

74. *See Statistics: 2021 JD/Non-JD Enrollment Data*, A.B.A., https://www.americanbar.org/groups/legal_education/resources/statistics/ (under "2021" choose "2021 JD/Non-JD Enrollment Data"; then open excel spreadsheet that downloads (last visited Dec. 23, 2022) (data pulled from excel spreadsheet linked on webpage); *Statistics Archives: First-Year-Enrollment/Total Enrollment/Degrees Awarded 1963-2013*, A.B.A., https://www.americanbar.org/groups/legal_education/resources/statistics/statistics-archives/ (under "Longitudinal and Historical Data" choose "First-Year-Enrollment/Total Enrollment/Degrees Awarded 1963-2013) (last visited Dec. 23, 2022) (data pulled from excel spreadsheet linked on webpage) [hereinafter *Statistics 1963-2013*].

75. *See LL.M. and Post-J.D. Degrees by Category*, A.B.A., https://www.americanbar.org/groups/legal_education/resources/llm-degrees_post_j_d_non_j_d/programs_by_category/ (last visited Dec. 23, 2022) [hereinafter *Post J.D. Degrees*]. The number of programs reported by the ABA contains some flaws. *See id*. For example, as my home institution, I know that the University of Cincinnati's LL.M. program is only for international students, however it is not listed as such. *Compare id.* (providing a list of the programs for international students without including the University of Cincinnati's LL.M program), *with LLM Application Requirements*, UNIV. CINCINNATI COLL. L., https://law.uc.edu/admissions-aid/llm-program/apply.html (stating that the University of Cincinnati's LLM program is for students who received an international degree). The author did not correct for these inaccuracies.

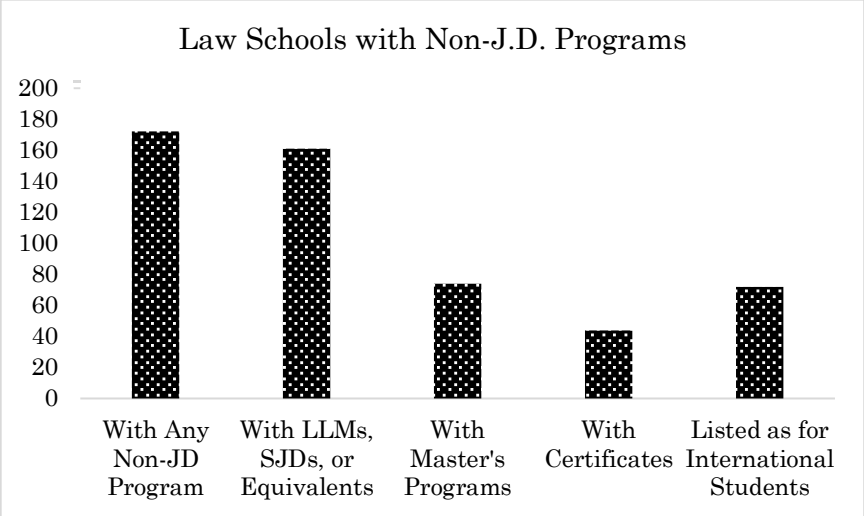

Figure 7 [76]

The ABA permits law schools to offer additional degree programs if the Council acquiesces to the program and it does not interfere with the law school's ability to comply with its accreditation standards and carry out its J.D. education program.[77]

Probably the largest program remains the LL.M. program, and the ABA reports that approximately half of LL.M, students have degrees from foreign law schools and "an increasing number" seek admission to a U.S. state bar.[78] Currently, thirty-four states plus the District of Columbia permit graduates of foreign law schools to sit for the state bar exam and, of those, twenty-one states include as a requirement some additional education at an ABA-approved law school.[79] New York, California, Washington, and Wisconsin permit foreign

76. For access to the data that was used to create Figure 7, see *Post J.D. Degrees*, *supra* note 75. Again, please note that there are flaws in the ABA data that the author did not correct for.

77. *See* STANDARDS AND RULES OF PROC. FOR APPROVAL OF L. SCHS. Standard 313 (AM. BAR ASS'N 2022) (providing the requirements for a law school to offer a degree program in addition to its J.D. degree program).

78. *See Post J.D. Degrees*, *supra* note 75 ("[R]oughly half of all the individuals currently enrolled in LL.M. programs are graduates of foreign law schools. Upon graduating, many of these individuals return to their home country without seeking or obtaining bar licensure in the United States. However, an increasing number of these individuals seek to be admitted to a state bar.").

79. *See* Nat'l Conf. of Bar Exam'rs, *Chart 4: Foreign Legal Education*, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS, https://reports.ncbex.org/comp-guide/charts/chart-4/ (last visited Dec. 23, 2022).

lawyers to test on the basis of an LL.M. degree alone.[80] This creates value for the LL.M. degree for some students beyond any knowledge that they may acquire. However, for the large sums that LL.M. program cost, students are certainly justified in demanding education tailored to their particular needs.[81]

Additionally, some specialties have long used LL.Ms. for specialized training.[82] Perhaps most notable is the LL.M. in tax.[83] Many tax practitioners obtain LL.Ms. in the field, although it is by no means required.[84] The value of the degree has also been debated.[85]

Master's degree programs have proliferated in the last couple decades, and many have less clearly defined value.[86] Those that operate as an off-ramp for first-year law students who decide that they do not want to continue with their law degree give students a placeholder on their résumé to explain the lost year. However, as the first year generally lacks practical training, this degree holds little practical value. As the Carnegie Report lamented, students in the first year learn the substance of law and formal legal systems without any understanding or grounding in how the law works with real people, problems, and consequences.[87]

---

80. *See id.*

81. *See, e.g.*, *J.D and LL.M. Tuition and Fees*, COLUM. L. SCH., https://www.law.columbia.edu/about/departments/financial-aid/jd-and-llm-tuition-and-fees (last visited Dec. 23, 2022) (noting the total university charge for the 2022-2023 academic year is $82,467 for an LL.M. program).

82. *See* Ilana Kowarski, *8 Key Distinctions Between an LL.M. and a J.D.*, U.S. NEWS & WORLD REP. (May 30, 2018), https://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2018-05-30/8-key-distinctions-between-an-llm-and-a-jd ("Experts say that attorneys looking to advance in complex, highly regulated areas of law like environmental law can benefit from an LL.M., because it bolsters the credibility of their resume.").

83. *See* Steven Chung, *Is Getting A Tax LL.M. A Good Idea?*, ABOVE THE LAW (Dec. 12, 2018, 2:14 PM), https://abovethelaw.com/2018/12/is-getting-a-tax-ll-m-a-good-idea/.

84. *See id.*

85. *See* Paul L. Caron et al., *Pursuing a Tax LLM Degree: Why and When* 19–21 (Univ. Cincinnati Pub. L. & Legal Theory Rsch. Paper, Paper No. 10-11 & Loy. L. Sch. L.A. Legal Stud. Paper No. 2010-09, 2010), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1577966; *see also* Chung, *supra* note 83; David van den Berg, *How Valuable is a Tax LLM? It Depends*, TAX ANALYSTS (Sept. 26, 2011), https://taxprof.typepad.com/files/tnt-1.pdf.

86. *See* Elie Mystal, *The Value of the L.L.M. Degree? Still Low,* ABOVE THE LAW (Jan. 11, 2012, 11:11 AM), https://abovethelaw.com/2012/01/the-value-of-the-ll-m-degree-still-low/ (discussing the continued low value of LL.M. programs).

87. *See* WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 187 (2007) [hereinafter THE CARNEGIE REPORT].

Other master's degree programs offer specialized training for those who want greater understanding of how the law operates but do not need a J.D. degree. For this group, content must be conveyed quickly as students often complete the program in one year, made manageable because the substance is often, but not always, circumscribed to a narrow topic, such as compliance or cybersecurity.[88] For example, programs could expose people in regulatory fields to how the legal regime operates and how to decipher regulations and other guidance without teaching students other areas of law.[89]

A newer variety of program is the certificate program of which forty-four schools have at least one program for a total of sixty-seven programs as of May 2022.[90] These programs do not rise to the level of a master's program.[91] Some are intended for post-J.D. students in specialized areas and others are for those who want exposure to the law but presumably not enough for a master's degree.[92] It is possible that these programs are intended as a revenue source for institutions and résumé-padding for students.

As law schools cater to a wider variety of students, one difficulty will be managing the needs and expectations of each group. Some

88. *See Post J.D. Degrees, supra* note 75 (providing the narrow categories of programs that students can complete).

89. *See, e.g.*, *2022-2023 Course Catalog: Regulation, Sustainability, and Compliance Concentration, LLM*, UNIV. ILL. URBANA-CHAMPAIGN, http://catalog.illinois.edu/graduate/law/master-laws-llm/regulation-sustainability-compliance/ (last visited Dec. 23, 2022) ("Each Concentration provides (1) specialized training in the Concentration field of law, (2) guidance to students in developing a program of study with the courses deemed most useful and relevant to the Concentration, and (3) a Concentration designation on their transcripts that will better allow them to market their expertise, thus gaining a competitive advantage in the legal employment market.").

90. *See Post J.D. Degrees*, *supra* note 75 (noting the certificate programs offered at each school).

91. *Compare Certificate Programs*, FORDHAM UNIV. SCH. L., https://www.fordham.edu/info/25747/certificate_programs (last visited Dec. 23, 2022) ("Fordham Law offers a range of short-courses, seminars, and other programs for attorneys, business professionals, current and prospective law students, judges, and academics . . . . After completing one or more of these programs, you'll receive a certificate to document your learning and demonstrate your professional development."), *with LLM Degree Specializations*, Fordham Univ. Sch. L., https://www.fordham.edu/info/22143/llm (last visited Dec. 23, 2022) ("The nine LLM degree programs are designed to help students expand their knowledge of a particular area of law. Fordham Law students obtain a degree that proves not simply that they succeeded in Fordham's rigorous program of academic study but, more importantly, that they are a critical legal thinker prepared to succeed in a world of ever shrinking borders.").

92. *See Certificate Programs*, *supra* note 91.

LL.M. and master's programs require participation in first-year J.D. courses.[93] Other programs create special content for the intended audience.[94] The new audience provides an opportunity. Reaching new students with new educational expectations may push law schools generally, and professors in particular, to rethink their teaching styles. In other words, if non-J.D. students resist a straight Socratic approach that teases out material from appellate cases over the course of a semester, professors may learn that they can, in fact, use more direct styles.

III. STAGNATED CURRICULA

As described in Part II, the legal market has changed dramatically since the late nineteenth century when law schools widely adopted the case method and the majority of the first-year curriculum.[95] A survey of law schools shows that they have adapted to these changes, if at all, by adding requirements rather than rethinking established methods.[96] Unfortunately, this curriculum does not guarantee that all students gain an appropriate foundation of knowledge with adaptable skills for a twentieth-first century legal practice. Therefore, in place of current requirements, law students deserve an updated curriculum

93. *See, e.g.*, *Juris Master Online Program,* FLA. STATE UNIV. COLL. L., https://law.fsu.edu/academics/academic-programs/juris-master-online-program (last visited Dec. 23, 2022) ("Students are required to take foundational courses in Legal Studies and Research, Contracts, Torts, Legislation and Regulation, and Regulatory Compliance. Beyond these requirements, students may personalize their curriculum within their chosen concentration."); *see also Master's and LLM Degrees,* UNIV. DENVER STURM COLL. L., https://www.law.du.edu/d7/law-masters-and-llm-degrees/masters-degrees/mls/mls-requirements (last visited Dec. 23, 2022) (requiring, "[a]t least one of the following courses: Administrative Law, Civil Procedure, Contracts, Torts, Legal Profession, Criminal Law, Property and Constitutional Law" for a general Master of Legal Studies degree).

94. For example, University of Cincinnati's Master of Legal Studies program has special courses, but its LL.M. requires some first-year courses. *See Curriculum: Master of Legal Studies*, UNIV. CIN. ONLINE, https://law.uc.edu/ (choose "Academics" from dropdown; then choose "Academic Programs"; then choose "Master of Legal Studies (MLS) Program"; then click "Curriculum") (last visited Dec. 23, 2022). On the other hand, University of Arizona's Master of Legal Studies program requires students to take some first year law school courses. *See MLS Program Details*, J AMES E. ROGERS COLL. L., https://law.arizona.edu/mls-program-details (last visited Dec. 23, 2022).

95. *See* Rubin, *supra* note 2, at 611; *see also supra* Part II.

96. *See generally* John O. Sonsteng et al., *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 WM. MITCHELL L. REV. 309 (2007) (describing the history and development of legal education in the United States).

with greater exposure to modern legal sources and modern practices of law.

A. Results From Survey

Studies have repeatedly shown the insufficiencies of American legal education.[97] The dominance of private law and the case method has remained largely static since 1870, despite the shift of the law from common law to an increasingly statutory and regulatory field.[98] In particular, as shown from this survey of fifty-four law schools, little has changed in the first year, and most schools stick to ABA requirements in the upper-level curriculum.[99]

Central to the required curriculum is the first year. For many law schools, the first-year curriculum is the only time all students take the same courses at the same time, as students develop the foundation and context for further study.[100] By the end of that year, students are generally expected to possess a broad array of legal research, writing, and analytical skills, as well as knowledge about the law and the government's regulation of people and private entities.[101] However, the scope of that foundation remains a narrow one not attuned to the breadth of J.D.-required and J.D.-advantaged careers and, perhaps because of this fact, the first year is not particularly valued by graduates.[102]

A review of fifty-four law schools along the spectrum of U.S. News and World Report's 2022 ranking shows a dedication of the first year to traditional doctrinal courses: Civil Procedure, Constitutional Law,

97. *See id.* at 364-88.

98. *See* Rubin, *supra* note 2, at 617 ("When Langdell developed his curriculum in the 1870s and early 1880s, his assumption that American law consisted essentially of common law was tenable. It remained so until 1887, when Congress passed the Interstate Commerce Act, creating the first federal regulatory agency.").

99. *See infra* Appendix A (listing the schools considered in this study based on their 2022 U.S. News and World Report ranking).

100. *See* Edward Rubin, *Curricular Stress*, 60 J. LEGAL ED. 110, 111 (2010) (discussing the first-year law school curriculum).

101. *See* Melissa Castan & Ross Hyams, *Blended Learning in the Law Classroom: Design, Implementation and Evaluation of an Intervention in the First Year Curriculum Design*, 27 LEGAL EDUC. REV. 143, 145–47 (2017).

102. Within the first two to three years, young attorneys reported whether their experiences in law school were helpful or not in practice. *See* AFTER THE JD I, *supra* note 65, at 81. It found clinical courses the most helpful, then legal writing, internships, upper year lectures, course concentrations, first year curriculum, legal ethics, and, finally, pro bono. *See id.*

Contracts, Criminal Law, Property, and Torts.[103] As the chart below shows, all law schools continue to require Criminal Law, Contracts, and Civil Procedure in the first year of law school.[104] The outliers are notable but few. For example, Property is not required by four of the top eleven law schools,[105] one of the same does not require Constitutional Law,[106] and five that require Constitutional Law do not require it in the first year.[107] At the other end of the spectrum are the schools ranked 98 to 102 that tend to require more of the traditional doctrinal courses, for example more than one semester of Civil Procedure, Constitutional Law, Contracts, and Property, even though their students are less likely to find jobs as traditional attorneys.[108]

103. *See infra* Figure 8.1; *infra* Figure 8.2.

104. *See infra* Figure 8.1; *infra* Figure 8.2.

105. The four top eleven schools in the fifty-four school sample that do not require Property Law are Yale Law School, University of Pennsylvania Carey Law School, UC Berkeley School of Law, and University of Michigan Law School. *See infra* note 110 and accompanying figure; *see also infra* Appendix A (listing the schools considered in this study based on their 2022 U.S. News and World Report ranking).

106. The one top eleven school in the fifty-four school sample that does not require Constitutional Law is UC Berkeley School of Law. *See infra* note 109 and accompanying figure; *see also infra* Appendix A (listing the schools considered in this study based on their 2022 U.S. News and World Report ranking).

107. The five schools in the sample that require Constitutional Law, but not in the first year are NYU Law, Texas A&M University School of Law, University of Nebraska College of Law, University of Hawaii at Manoa William S. Richardson School of Law, and University of Louisville Brandeis School of Law. *See infra* note 109 and accompanying figure; *see also infra* Appendix A (listing the schools considered in this study based on their 2022 U.S. News and World Report ranking).

108. *See infra* Figure 8.1; *infra* Figure 8.2; *see also supra* Figure 3 (providing the percentage of graduates at non-law firm jobs by law school rank).

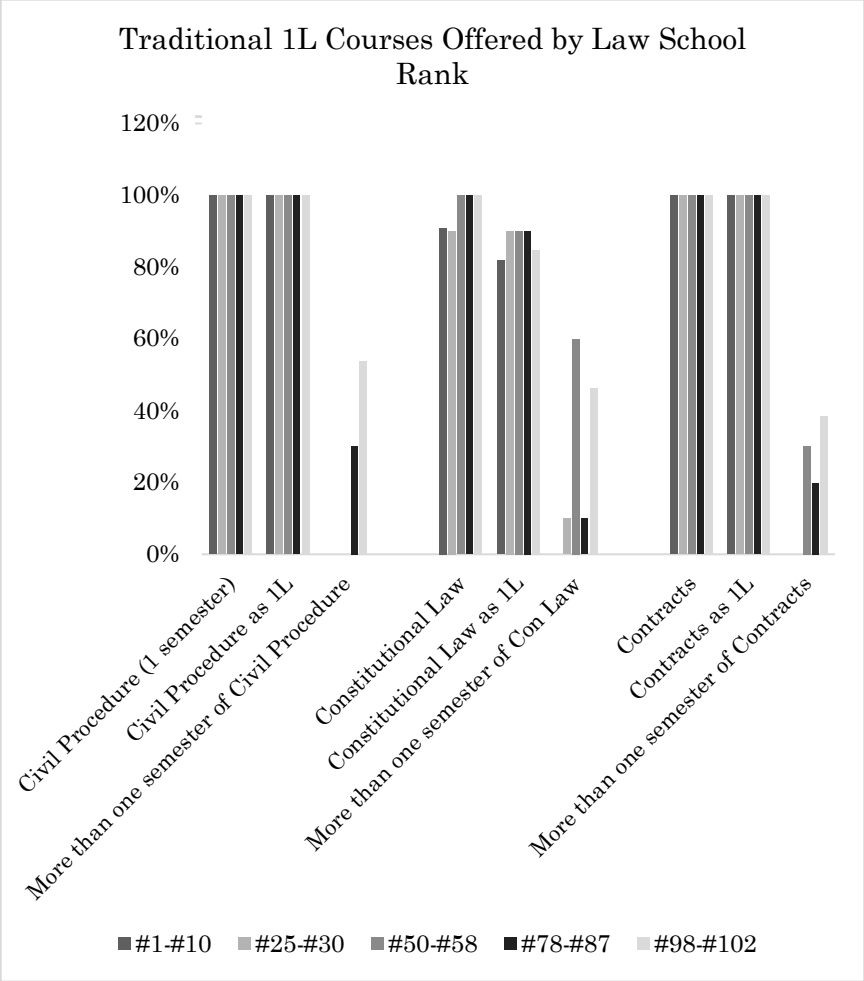

Figure 8.1 [109]

109. Data for Figure 8.1 was compiled from each law schools' required first-year curriculum (March 1, 2022) (on file with author). For a list of the schools sampled, see Appendix A.

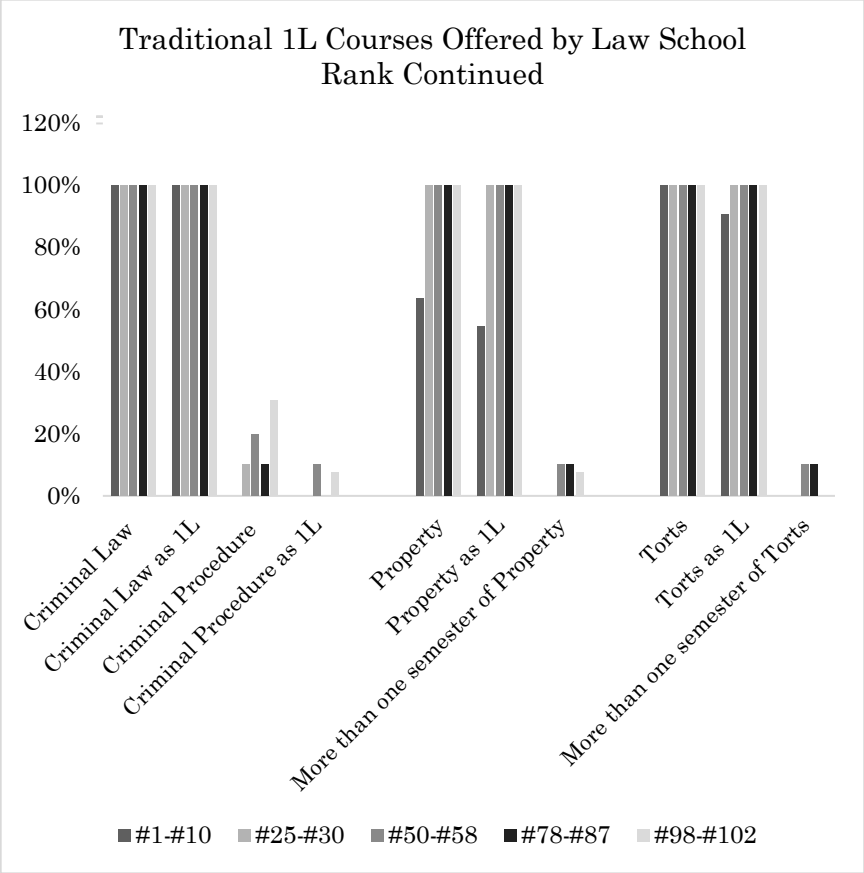

Figure 8.2 [110]

The first year is generally composed of courses on particular common law topics.[111] Focusing on inculcating legal knowledge, these courses push students to get the right answer as a matter of black letter law as opposed to conducting "actual legal work."[112] This layout, used throughout the country, does not show students the ways in which society and lawyers choose among these topics as tools to address clients' or society's problems, despite the choice among the tools having different practical consequences that lawyers must

110. Data for Figure 8.2 was compiled from each law schools' required first-year curriculum (March 1, 2022) (on file with author). For a list of the schools sampled, see Appendix A.

111. *See supra* Figure 8.1; *supra* Figure 8.2.

112. Steven D. Schwinn, *Developmental Learning Theory and the American Law School Curriculum*, 3 J. MARSHALL L.J. 33, 44 (2009).

weigh. Moreover, insulating torts from contracts from property ignores the many ways in which the lines are often blurred.

The similarity of courses and their focus on the theoretical is apparent in schools' course descriptions. Consider the required first year Contracts course. Harvard Law School, ranked 3,[113] describes its contracts course as:

> Contract law is the study of legally enforceable promises, normally exchanged as part of a bargain. Contracts are the main means by which transactions are made and legal obligations are voluntarily incurred. Among the topics that may be covered are: when a contractual promise exists and which are too indefinite; whether consideration should be required and what that means whether there is offer and acceptance forming a contract; whether and when contracts should be voided because of duress, nondisclosure, a failure to read, unconscionability, or immorality; how to interpret contracts; implied and explicit contractual conditions; the material breach and perfect tender rules; whether performance is excused by mistake of fact, impossibility, impracticability, or frustration of contractual purpose; what remedies to reward and how to measure them; and whether and when damages should be limited because of failure to mitigate, unforeseeability, or use of penalty clauses.[114]

UC Hastings Law, ranked 50,[115] provides:

> This course introduces and explores the function of contracts in a free enterprise economy. It covers the evolution and application of common law doctrines and, where applicable, those provisions of the Uniform Commercial Code governing the contracts process, including mutual assent, consideration, reliance, conditions, interpretation of contract language, performance and breach, remedies, impossibility and frustration, beneficiaries, and assignments.[116]

---

113. *See infra* Appendix A (listing the schools considered in this study based on their 2022 U.S. News and World Report ranking).

114. *Courses: Contracts 2,* HARV. L. SCH., https://hls.harvard.edu/courses/contracts-2/ (last visited Dec. 23, 2022).

115. *See infra* Appendix A (listing the schools considered in this study based on their 2022 U.S. News and World Report ranking).

116. *Courses and Course Sections: Law 110 Contracts*, UC HASTINGS L., https://colss-prod.ec.uchastings.edu/Student/Courses (check box for "Catalog Listing"; then click "Subject" and choose "Law" from dropdown; then type "110" in the box labeled "Course number"; then click "Search") (last visited Dec. 23, 2022).

The University of Cincinnati College of Law, ranked 81,[117] describes it as:

> This course on contracts is an introduction to the law that governs agreements for the future exchange of performances. Topics include the formation of contracts, their interpretation and content, grounds for nonenforcement and nonperformance, and remedies for breach. We will focus on learning the rules of contract law, identifying what rules apply to particular disputes (and what rules do not), understanding why disputes arise, and appreciating the roles of lawyers in contract matters.[118]

The University of New Mexico School of Law, ranked 102,[119] states:

> In an industrial society characterized by a "free" enterprise system and notions of individual freedom, "contract" is one of the primary means by which private individuals order their affairs. The contracts course inquires into why promises are enforced as contracts, which promises are enforced, and how they are enforced. The course places *emphasis on close and critical analysis of court decisions*.[120]

Thus, each of these schools structure their first-year course to examine what judges, and sometimes the UCC, require of contracts. Possibly Harvard and Cincinnati add a bit of contract interpretation and the role of lawyering, but it is not clear if this means contracts negotiation or only their defense. Nothing in these descriptions alludes to the introduction of transactional practice or the way in which lawyers craft or use contracts. Instead, these courses prepare students to spot legal (but not business or practical) issues with already drafted contracts for potential litigation. The transactional skills necessary to make contracts—rather than litigate them—are limited to Legal

117. *See infra* Appendix A (listing the schools considered in this study based on their 2022 U.S. News and World Report ranking).

118. *Fall 2021 Course Offerings: Contracts,* UNIV. CIN. COLL. L., https://law.uc.edu/education/curricula/fall-2021.html (last visited Dec. 23, 2022).

119. *See infra* Appendix A (listing the schools considered in this study based on their 2022 U.S. News and World Report ranking).

120. *Course Descriptions: Contracts*, UNIV. N.M. SCH. L., https://lawschool.unm.edu/academics/course-descriptions/index.html (last visited Dec. 23, 2022) (emphasis added).

Research and Writing or left as an elective in the upper-level curriculum.[121]

This is not to discount that some professors and some schools blur the lines between course topics and incorporate skills into doctrinal courses. For example, some schools pair legal research and writing with substantive law courses.[122] Sometimes the course is not tied to the first-year curriculum but, nonetheless, is focused on a practical area of law, such as the University of Missouri-Kansas City School of Law framing one section of research and writing around family law, although notably family law is not taught in its first year.[123]

In addition to the doctrinal first-year curriculum, schools also require first year writing, and many impose additional requirements.[124]

121. *See* Penland, *supra* note 23, at 121 (noting that number of schools that offer a contract drafting course has increased, but a student's exposure is still limited, particularly in the first year).

122. *See generally* David S. Romantz, *The Truth about Cats and Dogs: Legal Writing Courses and the Law School Curriculum*, 52 KAN. L. REV. 105 (2003) (discussing the importance of legal writing courses in the law school curriculum).

123. *See* Wanda M. Temm, *A Better Beginning: Family Law in the First Year of Law School*, 49 FAM. CT. REV. 711, 712 (2011).

124. *See infra* Figure 9.

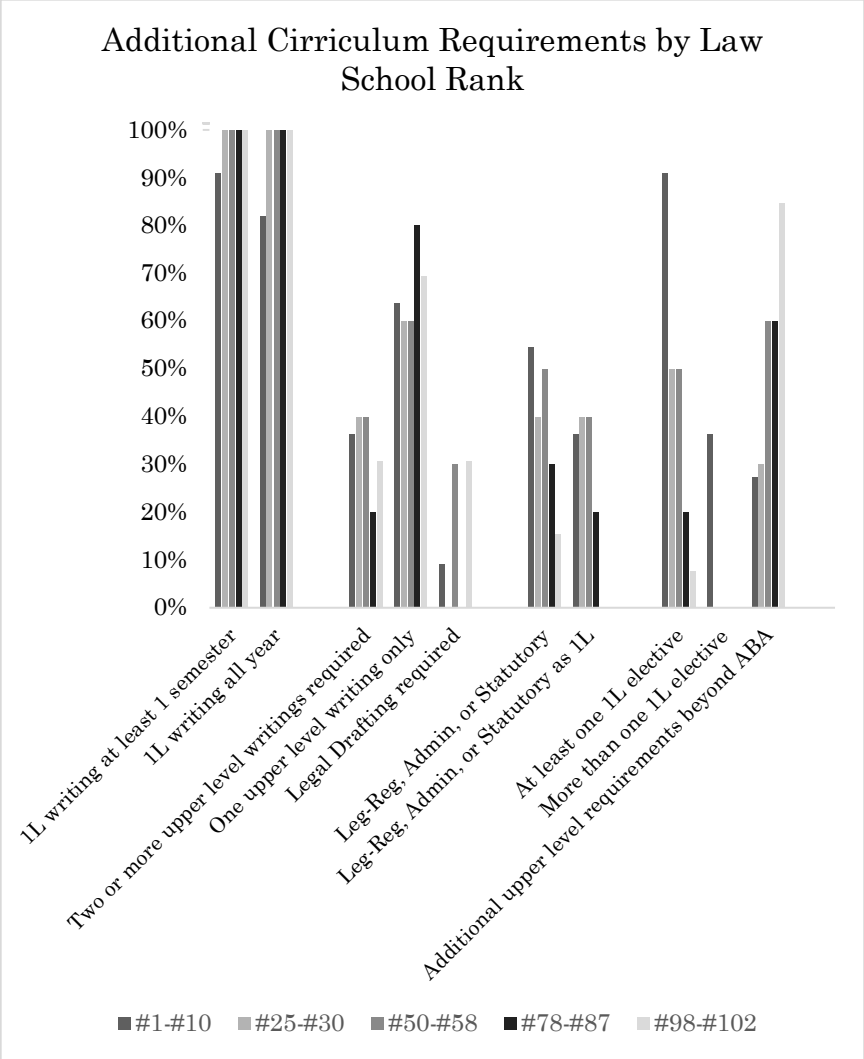

Figure 9 [125]

Almost all surveyed schools required legal research and writing for both semesters or all quarters of the first year.[126] Nonetheless, despite the general lament about young graduates' writing and research

125. Data for Figure 9 was compiled from each law schools' required curriculum in addition to the doctrinal requirements shown in Figures 8.1 & 8.2 (March 1, 2022) (on file with author). *See supra* Figure 8.1; *supra* 8.2. For a list of the schools sampled, see Appendix A.

126. *See supra* Figure 9.

abilities, well over half of the sampled law schools only required the one upper-level writing experience mandated by the ABA accreditation process.[127] Very few of the schools required any form of legal drafting or practical writing beyond that included in the first-year writing course.[128]

One moderately popular course today that was not included in the original Langdellian version of law school is often called Legislation and Regulation.[129] Anecdotally, the content of the course varies greatly from school to school and even professor to professor.[130] Its introduction into the curriculum makes a nod towards the increasing importance of these as sources of law. The course can cover how statutes are made or interpreted by lawyers or courts.[131] It can also cover any portion of administrative law, from the creation of agencies to the creation of guidance to their use by practitioners.[132] The breadth of material possibly covered means that people can see in the course whatever they want without knowing if it is actually included.

The fifty-four-school survey shows that higher ranked schools are more likely to require either a Legislation and Regulation course specifically or an administrative law or statutory course.[133] It is noteworthy that the lowest ranked schools in the survey were the least

127. *See supra* Figure 9; *see also* STANDARDS & RULES OF PROC. FOR APPROVAL OF L. SCHS. Standard 303 (AM. BAR ASS'N 2022) (providing ABA curriculum requirements).

128. *See supra* Figure 9.

129. *See supra* Figure 9.

130. *Compare Legislation and Regulation: Course Information*, COLUM. L. SCH., https://www.law.columbia.edu/academics/courses/26901 (last visited Dec. 23, 2022) ("The contemporary American legal system is largely statutory and regulatory: legislatures and administrative agencies adopt most of the law that governs behavior, both public and private, both individual and corporate. This course provides an introduction to the federal regulatory state, considering the ways in which laws are made by Congress and administrative agencies and the interpretation of these laws. In particular, the course will explore the legislative process and statutory interpretation; the structure and constitutional position of administrative agencies; the basic forms of agency action, with a focus on rulemaking; and judicial review of agency action."), *with Legislation and Regulation: Course Description*, UNIV. PITT. SCH. L., https://www.law.pitt.edu/academics/courses/catalog/5032 (last visited Dec. 23, 2022) ("This course has three main goals: first, to offer students an overall sense of how the legislative, administrative, and judicial arms of government interrelate in governing our society under a constitutional system of checks and balances; second, to familiarize them with the process of law-making and law-application as it is conducted in legislative bodies and in administrative agencies; and, third, to introduce them to the process of statutory interpretation both in theory and practice.").

131. *See* COLUM. L. SCH., *supra* note 130; UNIV. PITT. SCH. L., *supra* note 130.

132. *See* COLUM. L. SCH., *supra* note 130; UNIV. PITT. SCH. L., *supra* note 130.

133. *See supra* Figure 9.

likely to require such a course before graduation and none of these schools required such a course in the first year of law school despite the fact that graduates in schools ranked 102 and below have a 24% chance of going into government or business work as compared to a 17% chance of those at higher ranked schools.[134]

Almost as popular as a Legislation and Regulation requirement is the desire to give students choice in the first year with an elective. Particularly among the top half of law schools, 50% or more allowed at least one elective course in the first year, but only in the top ten schools do any allow for more than one elective course in the first year.[135] That first-year freedom is often balanced by more requirements in the latter two years of law school. Over 80% of the lowest ranked law schools in the sample had upper-level requirements beyond that required by the ABA accreditation standards.[136] However, schools in each of the brackets imposed additional course requirements that were not mandated by accreditation, at top ten schools two require international law[137] and, of the lower ranked schools, eleven require Evidence[138] and seven require a larger group of additional courses.[139]

Throughout these curricula, it should be noted a lack of required practical skills training except as required by Legal Research and Writing or equivalent siloed courses. Only eight of the fifty four

134. *See supra* Figure 9; *supra* Figure 3.

135. *See supra* Figure 9.

136. *See supra* Figure 9.

137. The two top ten schools in the fifty-four school sample that require International Law are Harvard Law School and the University of Michigan Law School. *See supra* note 124 and accompanying figure; *see also infra* Appendix A (listing the schools considered in this study based on their 2022 U.S. News and World Report ranking).

138. The eleven lower ranked schools in the fifty-four school sample that require Evidence are UC Hastings College of Law, Georgia State College of Law, University of Denver, Mississippi College School of Law, CUNY School of Law, Drake University Law School, Marquette University Law School, Texas Tech University School of Law, Catholic University of America Columbus School of Law, LSU Law, and Washburn University School of Law. *See supra* note 124 and accompanying figure; *see also infra* Appendix A (listing the schools considered in this study based on their 2022 U.S. News and World Report ranking).

139. The seven schools in the fifty-four school sample with a larger group of additional courses are Cardozo School of Law at Yeshiva University, Baylor University Law School, University of Kentucky J David Rosenburg College of Law, CUNY School of Law, Marquette University Law School, Texas Tech University School of Law, and Catholic University of America Columbus School of Law. *See supra* note 124 and accompanying figure; *see also infra* Appendix A (listing the schools considered in this study based on their 2022 U.S. News and World Report ranking).

schools, or less than 15%, require a skills-training course,[140] and only two required more than the ABA's six-credit hour experiential learning requirement.[141] Many schools, on the other hand, expressly pointed out that their students partially or fully completed the experiential learning requirement in their first year, despite having first years that generally fit the mold of the other schools.[142] Thus, the current mandatory curricula remains one in which law is predominately a judge-made subject and signals that legal skills are less important than doctrinal law.

There are many concerns with this approach. The traditional teaching methods used are thought by some to be intentionally oppressive and, thus, alienate students.[143] Moreover, the lack of public law in the first-year curriculum (Constitutional Law and Legislation and Regulation being the exceptions) increases ideological stress for those who do not accept a confrontational view of the law and increases the chance that students internalize that law is a zero-sum game.[144] Finally, the system is harder on students who work less well in the abstract but prefer to be practical problem-solvers.[145] These

140. The eight schools in the fifty-four school sample that require a skill-training course are Stamford Law School, University of Richmond School of Law, Villanova University Charles Widger School of Law, Baylor University, , Mississippi College School of Law, Syracuse University College of Law, Catholic University of America Columbus School of Law, and University of New Mexico School of Law. *See supra* note 124 and accompanying figure.

141. The two schools in the fifty-four school sample that required more than the ABA's six-credit hour experiential learning requirement are Baylor University Law School and Stamford Law School. *See supra* note 124 and accompanying figure; *see also infra* Appendix A (listing the schools considered in this study based on their 2022 U.S. News and World Report ranking).

142. *See*, *e.g.*, *Principles of Course Selection*, BOS. COLL. L. 1 (2022), https://www.bc.edu/content/dam/bc1/schools/law/top-bar/current-students/Academics/course-selection/principles_course_selection.pdf ("Most BC Law students will fulfill the ABA six-credit Experiential Learning requirement by taking Law Practice I and the spring 1L Experiential elective"); *Academic Regulations for J.D. Students*, UNIV. MICH L. SCH. 2 (2022), https://michigan.law.umich.edu/resource-center/degree-requirements (click "JD Requirements (pdf)" to open document) (noting that students take experiential courses in the first year).

143. *See* SpearIt, *Priorities of Pedagogy: Classroom Justice in the Law School Setting*, 48 CAL. W. L. REV. 467, 470 (2012); *see also* Rubin, *supra* note 100, at 114.

144. *See* Rubin, *supra* note 100, at 111.

145. There was worry in 1944 that this method was failing the bottom half of students who find it difficult to discern from the theoretical discussion exactly what they are supposed to take away from class. These views shaped the 1944 report of the Committee on Curriculum of the Association of American Law Schools, published as Charles Bunn et al., *The Place of Skills in Legal Education*, 45 COLUM. L. REV. 345, 353 (1945) [hereinafter Committee on Curriculum].

students may become great lawyers but be poor law students in today's system.

This lack in the first year is not easily made up in later years. Not only are fewer courses required in upper years, but students have to choose their second-year electives based on their first-year experience.[146] Students choosing courses in their upper level have scant information on which to make the best determination of what they will need for their careers. How can a student know if they want to be a transactional attorney if they have not discussed transactions? How can they know if they want to work in an administrative law field if they do not know what it entails? Moreover, students who take predominately doctrinal electives throughout law school have insufficient exposure to what it means to be a lawyer regardless of their practice area.[147]

B. Appellate Case Law is Insufficient

A 1994 prediction that there had been a "fundamental shift in the focus of legal education within the academy—from law in the abstract toward the reality of law in the daily work of lawyers" has yet to materialize.[148] If you want to be a litigator to argue before a jury, you study cases; if you want to be a transactional lawyer and help businesses plan and operate, you . . . study cases.[149] As shown by the University of New Mexico's description of its Contracts course and as the University of Chicago Law School proudly proclaims, "[i]nstruction in the first year primarily centers on class discussion of judicial decisions, known as the 'case method.'"[150] Despite the fact that "[j]udicial decisions are no longer the primary source of law in our legal system, nor are they regarded as the essence of what law should be," legal education cannot seem to broaden its educational materials.[151] This means that students are underexposed their first year to sources of

146. *See* STANDARDS & RULES OF PROC. FOR APPROVAL OF L. SCHS. Standard 303 (AM. BAR ASS'N 2022) (noting the ABA curriculum requirements).

147. *See* Penland, *supra* note 23, at 122 n.26.

148. Robert MacCrate, *Keynote Address—The 21st Century Lawyer: Is There a Gap to Be Narrowed?*, 69 WASH. L. REV. 517, 517 (1994).

149. *See* Penland, *supra* note 23, at 121 (noting that courses, whether litigation or transaction based, are primarily taught from a casebook).

150. *J.D. Program Degree Requirements,* UNIV. OF CHI. L. SCH., https://www.law.uchicago.edu/students/handbook/academicmatters/degree-requirements (last visited Dec. 23, 2022).

151. Rubin, *supra* note 2, at 617.

law that are equally important for modern practitioners and critical to transactional attorneys.

The case method with its focus on appellate opinions, dominates the first-year curriculum and, it seems, is generally introduced through the Socratic method.[152] The only available survey, from 1996, found that law professors teaching doctrinal courses in the first year overwhelmingly (97%) used the Socratic method, and a significant majority (59%) of class time in the first year was devoted to Socratic teaching.[153] "There were essentially no responses indicating that the first year of law school should focus on practical lawyering skills or other goals that reconceived the traditional legal education curriculum."[154] Moreover, the longer a person had been teaching, the less likely they were open to new teaching methods.[155]

Many, if not most, professors of first-year courses draw heavily from dominant course materials, which remain traditional casebooks.[156] Casebooks are often "exclusively of appellate opinions, even though in certain areas of the law, e.g., torts, contracts and property, most decisions are rendered by state trial courts and are never appealed. Indeed, the vast majority of cases are never even tried."[157] These materials obscure the lawyer's role, particularly as a tactician who chooses what facts to present and what claims to make. The Carnegie Report in 2007 noted that the first year's near-exclusive reliance on appellate cases means that students do not learn "the rich complexity of actual situations that involve full-dimensional people, let alone the job of thinking through the social consequences or ethical aspects of the conclusions . . . ."[158] This approach presents lawyers as "competitive scholars [not] engaged with the problems of clients."[159]

As any transactional attorney will tell you, law is more than what a judge says it is. It is often determined by what the legislature writes, what an agency publishes, or what parties agree to. Therefore, learning how to interpret and create statutes, agency guidance, and agreements are critical elements of legal education that are often given

---

152. *See* Steven I. Friedland, *How We Teach: A Survey of Teaching Techniques in American Law Schools*, 20 SEATTLE U. L. REV. 1, 12 (1996).

153. *See id.* at 27.

154. *Id*. at 21.

155. *See id*. at 37.

156. *See* Penland, *supra* note 23, at 120.

157. Weaver, *supra* note 1, at 570 (footnote omitted).

158. THE CARNEGIE REPORT, *supra* note 87, at 187.

159. *Id*. at 188.

short shrift. Transactional lawyers, in particular, also need to understand the practical world of business, with its own sense of economic priorities and the ability to negotiate those priorities.[160] These sources and topics are as critical today as the common law and should be given equal weight in the first year.

Recognition of diverse legal practice skills is important because not all forms of problem-solving are the same or else engineers could be lawyers and doctors could be architects. There is a baseline of knowledge for all lawyers but, as important, is a sense of what is important in a given field. The ability to weigh variables to solve problems requires a sensitivity as to what variables are important. Therefore, it is inaccurate to say that learning the law through the appellate common law approach is sufficient because all lawyers need to understand appellate common law.[161] Over half of the lawyers will be going into fields that need them to think about the law in a fundamentally different way.[162]

Although law students need to interpret legal opinions, it is time for legal education to recognize that the common law is only one source of law and its interpretation only one skill that lawyers need.[163] Drawing from cases legal vocabulary and pearls of wisdom about the common law in true Langdellian fashion no longer suffices. It has an undue focus on the judiciary and judicial interpretation of the law, to a large extent ignoring statutory or administrative law and, even when those topics are discussed, framing them in the perspective of a judicial interpretation. This dominance in the first year can cause students to interpret the common law as "the" foundation and not "a part" of the foundation of modern law.[164] Law's reliance on statutes

160. *See* Penland, *supra* note 23, at 123 ("[M]ost of the baseline transactional competencies for deal lawyers are related to acquiring adequate background context for business agreements and acquiring the skills necessary to negotiate and draft a business agreement.").

161. *See* THE CARNEGIE REPORT, *supra* note 87, at 89 (noting that students need to learn another skill set beyond the case method when they begin their legal careers).

162. *See* Penland, *supra* note 23, at 118 ("At least half, if not more, of all attorneys engage in transactional practice.").

163. *See* Jonathan Todres, *Beyond the Case Method: Teaching Transactional Law Skills in the Classroom*, 37 J.L. MED. & ETHICS 375, 375 (2009) ("The analytical skills developed through traditional case law analysis are important to all areas of law, yet there are fundamental aspects of transactional practice that receive too little attention in law schools.").

164. For more on Langdellian methods, see generally Rubin, *supra* note 23; Bruce A. Kimball, "*Warn Students That I Entertain Heretical Opinions, Which They are*

and agency interpretation should not be minimized in the hopes that the Federal Rules of Civil Procedure and Criminal Sentencing statutes woven into heavily common law courses can substitute for complex statutes and regulatory law.

Even when the case method teaches students to "think like lawyers" in a narrower, litigation-heavy sense, it does so inefficiently if it takes six courses to do so and limits the ability to expand coverage. The complaint that to do appellate common law case instruction well takes a lot of class time has long been lamented.[165] Erwin N. Griswold once concluded that "[w]e might be able to give them what they really need with broader strokes, and with less detail."[166] Distilling law from appellate cases limits what can be covered. Even back in 1931, an author noted the many different types of lawyers who were poorly served by their common law legal education.[167] The diversity of legal practice demands law schools instill in students a diverse set of skills, although the best mix of skills has been the subject of debate for decades. Nevertheless, both the topics covered and how they are covered is generally problematic.

The in-depth coverage of law through caselaw, in particular appellate law, frames the assessment of legal problems more for their identification than the problem-solving necessary of an attorney.[168] Lawyers solve problems not just through litigation but also through dispute resolution, planning, and seeking regulatory or executive action. In particular, the receipt of law through case analysis in which legal issues are isolated and facts are streamlined because of their importance to a particular judge may prepare students admirably for an exam at the end of the semester but not for the real world. Lawyers need to be problem-solvers and focus on fixing rather than merely

---

Not to Take as Law": The Inception of Case Method Teaching in the Classrooms of the Early C. C. Langdell, 1870-1883, 17 L. & HIST. REV. 57 (1999); Weaver, *supra* note 1; *see also* Christopher Langdell, *Harvard Celebration Speeches*, 3 LAW Q. REV. 118, 123–25 (1887).

165. *See* Committee on Curriculum, *supra* note 145, at 347 (examining the current methods of instruction but setting aside consideration of the first year).

166. Erwin N. Griswold, *Law Schools and Human Relations*, 1955 WASH. U. L.Q. 217, 230 (1955).

167. *See* John Dickinson, *Legal Education and the Law-School Curriculum*, 79 U. PA. L. REV. 424, 425, 428–29 (1931).

168. *See* Todres, *supra* note 163, at 375–76 ("[L]aw students quickly grow accustomed to issue-spotting and identifying who committed a wrong and what the elements of that wrong are, but they are far less familiar with how to approach a client's issue when nothing has happened yet.").

identifying problems. It is insufficient to say the first step is identification because it all too often ends there.

Instead of focusing almost exclusively on litigation, and therefore the failure of negotiation, planning, and compromise, most lawyers would develop more holistic lawyering skills if they were taught early that most lawyers work in groups to create law-based solutions that must be seen by all of the parties as preferable to inaction. Therefore, to introduce transactional and regulatory law in the first year would aid client counseling and function as a means to mitigate legal adversarialism and litigiousness.[169] The "gladiator model" of law teaches students that litigation is the preferred legal result, a disservice to many, if not most, clients who need problem solvers.[170]

Moreover, not all basic skills and means of problem-solving are introduced in the first year or most required curricula, including those most used by transactional attorneys. If at least half of attorneys engage in transactional practice,[171] it is particularly troubling that the first-year and required curricula do little to introduce students to transactional thinking, practice, or skills, including negotiation, drafting, and understanding clients' business needs.[172] Instead of including these foundational materials in the first year, it is generally left to electives in the later years for students to delve into the other forms of law, including administrative or statutory law, and to develop the other skills, such as negotiation and drafting, necessary to operate as transactional attorneys.[173] Broadening students' exposure is harder because of the devalued status of business practice in the legal academy. Business law was the largest loser of courses from 1973 to the

169. *See* Rubin, *supra* note 2, at 653–54.

170. *See* Susan P. Sturm, *From Gladiators to Problem-Solvers: Connecting Conversations About Women, the Academy, and the Legal Profession,* 49 DUKE J. GENDER L. & POL'Y 119, 121–22 (1997) ("This 'gladiator' model of legal education and lawyering celebrates analytical rigor, toughness, and quick thinking. It defines performance as fighting to win: an argument, a conflict, or a case. Even in more informal settings such as negotiations or in-house advising, lawyering often proceeds within the gladiator model."); Todd D. Rakoff & Martha Minow, *A Case for Another Case Method*, 60 VAND. L. REV. 597, 602 (2007) ("Lawyers need to be able to consider solving problems not just through litigation, but also through alternative forms of dispute resolution, through legislation, and through regulatory or executive action.").

171. *See* Penland, *supra* note 23, at 118; Todres, *supra* note 163, at 375.

172. *See* Todres, *supra* note 163, at 375.

173. *See* Nancy B. Rapoport, *Is "Thinking Like a Lawyer" Really What We Want to Teach?*, 1 J. ALWD 91, 103 (2002) ("The problem starts in the typical first-year curriculum, which is heavy on case analysis but light on the other skills that law students need, such as statutory analysis and an understanding of transactional work.").

2017-2018 academic year.[174] Subsets have, like federal income taxation, accounting, corporate finance, agency and partnership have all been reduced.[175]

Under the current model, students approach issues in their first summer and, for many students, long thereafter with a view as to how issues would be decided on appeal.[176] Too infrequently are they taught how to avoid litigation or an agency's review despite that being the way most transactional and other types of non-litigating attorneys approach their tasks.[177] Thus, the historic emphasis on using the first-year curriculum to challenge students to tease out what a judge would say in litigation or on appeal of issues does a disservice to students who do not want to be litigators.

Using a football analogy, one can think of the current first year curriculum largely providing students the skills for a quarterback to identify the defense. However, that is not what most lawyers do. Instead, lawyers need the skills to react to that defense once it is identified. The development of those skills is delayed until the second and third years of law school. Moreover, it is often confined to clinics and specialized skills courses.

This focus on pattern recognition is reinforced by the methods of assessment often adopted in first year and later doctrinal courses. The IRAC or CREAC style of essay writing, in addition to the legal briefs and memoranda taught in many research and writing courses to explain what students have identified are inefficient and expensive means of conveying information to transactional clients.[178] Thus, the approach and even types of writing in doctrinal courses, especially in the first year, is counterproductive to teaching the skill set junior transactional attorneys need.[179]

---

174. *See* William J. Carney, *Curricular Change in Legal Education*, 53 IND. L. REV. 245, 254 (2020).

175. *See id*.

176. *See* Rubin, *supra* note 2, at 655 (noting that the case method approach relies on appellate cases as teaching material).

177. *See* Todres, *supra* note 163, at 376 ("As much of transactional work involves thinking ex ante about legal issues, the challenge for students is to develop the ability to analyze and anticipate what could happen, come up with ideas for how to account for all possible contingencies, and put all of this in writing (ideally in such a way as to enable clients to avoid litigation in the future).").

178. *See id.* at 376–77 (noting that traditional writing courses taught in law schools do not provide students with the skills necessary to convey information to transactional clients).

179. For example, lawyers do not work alone but with clients and other legal specialists; therefore, law students need to develop the ability to work well with

For all students but especially future transactional attorneys, it is problematic that the first year and the case method starts with the end—with failed lawyering that resulted in litigation—because it omits significant parts of lawyering.[180] Only in later years of legal education do law schools introduce students to the beginning and the preventative lawyering of transactional practice.[181] These lawyers work through a bevy of facts and concerns, not a neat common law summary. The messy world of facts could result in many different legal issues and offers the opportunity for students to develop the skills of the legal counselor.[182] Thus, for transactional lawyers, contingencies are not a change of facts posed by a professor but a world of different realities that might or might not occur.

Moving away from common law would reduce the depth of coverage, but this trade-off of breadth of materials rather than a deep-dive into many common law topics is consistent with how lawyers work.[183] With the internet and widely available electronic sources, the law itself is more accessible than ever. However, sifting through that law and determining the best way to use that law to accomplish clients' objectives is more difficult. The skills for locating relevant material and using that material needs greater attention. However, substantive law faculty generally do not incorporate research assignments in their courses, leaving that to seminars and specialty research courses.[184] Thus, in the majority of credit hours that law school students take, students are handed the cases they need, often redacted so that students do not even need to learn the breadth of material they must, in practice, wade through.[185]

---

others and to lead as necessary. *See* GERKMAN & CORNETT, *supra* note 60, at 20. This requires that students internalize a responsibility to others, including trustworthiness and integrity. *See id.* at 16. They must develop their relationship skills, teamwork, and collaboration, skills, which are all too often ignored or even impaired through the first-year curriculum. *See id.* at 20.

180. *See* Todres, *supra* note 163, at 375 ("With their reliance on the case method, law schools historically have done little to introduce students to transactional thinking, practice, or skills.").

181. *See* Rapoport, *supra* note 173, at 103.

182. *See* Paul Brest & Linda Krieger, *On Teaching Professional Judgment*, 69 WASH L. REV. 527, 532 (1994) (criticizing appellate case method for failing to teach the skills of legal counseling).

183. *See* Committee on Curriculum, *supra* note 145, at 362–63.

184. *See generally* Caroline L. Osborne, *The State of Legal Research Education: A Survey of First-Year Legal Research Programs, or "Why Johnny and Jane Cannot Research"*, 108 L. LIBR. J. 403 (2016) (reviewing the state of legal research at law schools across the United States).

185. *See* Brest & Krieger, *supra* note 182, at 532.

If attorneys are to be problem solvers, and transactional attorneys are to solve problems through preventative planning, they need to develop the knowledge and skills to that end. The first year of law school should begin that training. Some of the knowledge is uncontroversial even if currently covered insufficiently, namely common law, statutes, and agency-promulgated rules.[186] Lawyers need to learn how statutes are made and how they can be used to solve problems as well as the way to use and understand the modern, specialized administrative state.[187] However, students also need to learn simple drafting to convey and explain substantive law to transactional clients.[188] But the substantive law and skills would be nothing without an understanding that all of the training is in the service of the client. Therefore, an introduction to client counseling and the ways in which a lawyer's job is client-focused applies no matter if the client is a person, business, government, or society as a whole.[189]

Putting this together demands that students develop judgment, common sense, and an ability to see the effects of their decisions.[190] Much of the ability to decide what to do with the law once it is located depends upon lawyers' ability to weigh what their clients need in a complex world. It also requires an awareness of client-specific needs and the importance of determining those needs. One answer does not fit all clients. Transactional lawyers may not be the ultimate decision-makers, but they must understand the decisions they are asking their clients to make and be capable of weighing the pros and cons of the choices. To do this, law schools need a client service orientation

186. *See* Committee on Curriculum, *supra* note 145, at 369–70.

187. *See id.* ("[Statutory construction] definitely does *not* develop adequately as a simple by-product of our current case-instruction, and few courses in Legislation give it full or systematic attention.").

188. *See id*. at 374.

189. *See* Neil Hamilton, *The Gap Between the Foundational Competencies Clients and Legal Employers Need and the Learning Outcomes Law Schools are Adopting*, 89 UMKC L. REV. 559, 572 (2020) ("Currently, the most serious gap between the competencies clients and legal employers require and the learning outcomes being adopted is the absence of strong client service orientation learning outcomes that specifically foster superior client focus, responsiveness to the client, and an exceptional understanding of the client's context/business . . . .").

190. S*ee* Carole Silver et al., *Unpacking the Apprenticeship of Professional Identity and Purpose: Insights from the Law School Survey of Student Engagement*, 17 LEGAL WRITING: J. LEGAL WRITING INST. 373, 375 (2011) (noting "the need to focus more intentionally and explicitly on helping students develop a sense of professional identity and purpose.").

learning outcome.[191] Students need to be taught a commitment to professional development with a habit of seeking feedback and reflecting on their work plus initiative, strong work ethic, and project management.[192]

A reader might note that this focus is less on doctrinal law than on the skills and awareness of how to use that doctrinal law. This should not be surprising from a practitioner's perspective because surveys of practitioners consistently focus on graduates' ability to use law to handle legal problems rather than their grasp of substantive law.[193] Thus, graduates need skills to take precedence over what has historically been law schools' focus: substantive law and legal identification.[194] Of course, to apply the law and practice solving problems requires a baseline of legal concepts and legal definitions, but that baseline can be smaller and achieved more quickly than historically taught. Advocating a choice as between outcomes, for example, depends on understanding what outcomes are possible but knowing all potential outcomes does no one any good if the lawyer does not know how to weigh them against the facts.

To be clear, this author is not suggesting that students do not need to understand the common law system or that the vocabulary of the legal professional is unimportant or easy for the uninitiated to learn. However, different teaching methods and the use of technology can increase access to this information. For example, Harvard Law School created Zero-L: Introduction to American Law, which defines many of the terms that are critical in the first-year curriculum rather than waiting for them to be drawn painfully from students in the first

---

191. *See* Hamilton, *supra* note 189, at 572 ("To the degree possible, a school should use the language of the clients and legal employers in formulating the school's learning outcomes.").

192. *See id.* at 561.

193. *See* NATALIE RUNYON & ALYSON CARREL, THOMAS REUTERS LEGAL EXEC. INST., ADAPTING FOR 21ST CENTURY SUCCESS: THE DELTA LAWYER COMPETENCY MODEL, 7–9 (2019), https://legal.thomsonreuters.com/content/dam/ewp-m/documents/legal/en/pdf/white-papers/delta-lawyer-competency.pdf; Marjorie M. Schultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admissions Decisions*, 36 L. & SOC. INQUIRY 620, 650 (2011); John Coates et al., *What Courses Should Law Students Take? Harvard's Largest Employers Weigh in* 16–25 (Harvard L. Sch. Pub. L. Working Paper, Paper No. 14-20, 2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2397317; Barbara Wagner, Bus. L. Educ. Comm., *Defining Key Competencies for Business Lawyers*, 72 BUS. LAW. 101, 106 (2017) [hereinafter Business Law Education Committee].

194. *See* Business Law Education Committee, *supra* note 193, at 107 ("[L]aw schools need to move beyond just teaching substantive law and provide instructions in the professional norms, ethics, values, and practices of lawyers.").

semester.[195] Having the definitions is no substitute for understanding how those terms are to be used. Nevertheless, changing teaching methods from a slower Socratic method to one that partially conveys information more straightforwardly would permit additional materials to be covered in the first year.

Case analysis's domination in a first year otherwise light on the other skills that law students need is not easily corrected in the last two years of law school and may reduce the value of that education.[196] First, students complete their first year having been shaped and molded in an appellate common-law educational system and should not be expected to know its limitations. They are trained to see the law as a zero-sum game in which someone wins, and someone loses the case. This is often not true and not all legal practice is adversarial.[197]

Additionally, if a course is not required in the first year, professors of upper-level courses cannot be assured all of their students have acquired necessary foundational material. For example, an elective income tax course cannot assume students possess basic statutory interpretation skills or administrative law practice if it is not taught in the first year. Every upper-level course must either re-teach the material, add course pre-requisites which makes scheduling difficult, or ignore some fundamental precepts and hope students learn them elsewhere.

This Article is not alone in critiquing the pervasiveness of the case method in law school and renews calls for changing the first-year curriculum to reduce its prevalence. The case method has been under attack for almost as long as it has existed.[198] Everyone knows of professors who have changed their mode of teaching—those who introduce skills training into doctrinal courses, those who introduce ethical questions in any non-ethics course, those who expose students to what lawyers really do. However, that coverage is not required or

---

195. *See Zero-L*, HARV. L. SCH., https://online.law.harvard.edu/ (last visited Dec. 23, 2022).

196. *See* Rapoport, *supra* note 173, at 103 (noting the costs of upper-level opportunities).

197. *See* Todres, *supra* note 163, at 376 (noting that the parties to a transactional deal generally have the same end goal).

198. *See* Holmquist, *supra* note 17, at 354; Judith Welch Wegner, *Reframing Legal Education's "Wicked Problems*," 61 RUTGERS L. REV. 867, 927–28 (2009); Barton, *supra* note 12, at 233; Blasi, *supra* note 14, at 387; Weaver, *supra* note 1, at 518–19; Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907, 910 (1933); KARL LLEWELLYN, THE BRAMBLE BUSH, 16 (1930).

likely consistent across schools. The consequence is that different professors of even the same subject may teach different skills and students do not receive adequate training because the frame remains a common law approach barely appropriate for the nineteenth century and certainly not the twenty-first.

IV. RETHINKING THE FIRST YEAR AROUND PRACTICE AREAS

It may be surprising that the need to "creat[e] more room in the professional curriculum of the law-school for topics like administrative law, problems of procedural reform, corporate finance, and international law" was made back in the 1930s.[199] Nevertheless, not much has changed, especially in the first year. Many advocates of reform of law school curricula have urged a rethinking of the way information is presented to students and the narrow definition of foundational law.[200] Law school students need an education that prepares them for likely jobs and changes in the job market, both of which have evolved dramatically since the 1870s.

Thus, currently, the first-year curriculum is not the most important training for lawyering, but it should be. It does introduce the universal language of lawyers, and it is when many students get their first small glimpse of legal practice. However, in doing this, the first-year focuses on topics to be tested two-and-a half years later.[201] Its narrow focus on traditional common law topics and the bar exam hinders its ability to provide a strong foundation in training to be a lawyer.[202] Framing the first year around legal practice would more accurately illustrate the way the law operates in the 21st-century and provide students exposure to the law in a broader sense.

In all of schools' structural choices regarding the first year, the focus should be on legal training by having students think about when a particular type of law is most effective to solve a client's or a societal problem. For example, when is it best to resolve a problem using tort as opposed to criminal law or when to plan a prior to allocate risk as opposed to ex post litigation? Situating the law in lawyers' problem-

199. Dickinson, *supra* note 167, at 435.

200. *See* THE CARNEGIE REPORT, *supra* note 87, at 47.

201. *See Preparing for the MBE,* NAT'L CONF. BAR EXAM'RS, https://www.ncbex.org/exams/mbe/preparing/ (last visited Dec. 23, 2022) (noting that the MBE portion of the bar exam tests on "seven subject areas: Civil Procedure, Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Real Property, and Torts," which are primarily taught in the first-year curriculum).

202. *See* Business Law Education Committee, *supra* note 193, at 107.

solving practices would help students conceptualize and utilize the law rather than focusing on identification of legal issues. Of course, students must be familiar with (but not experts in) the substance of the law in order to think about ways to use that substance; however, the goal should not be substance for its own sake as training in legal practice.

Therefore, this Article proposes a balanced first-year curriculum framed around practice areas rather than common law subjects. This would entail five core topics, although their substance would certainly be subject to debate at each law school.

- *Criminal Justice* should replace Criminal Law and explain what the prosecutorial system is trying to accomplish, how it does so, and what pitfalls are on the long road of criminal punishment.
- *Civil Litigation* should replace Civil Procedure and focus not only on the Federal Rules of Civil Procedure and what the litigation is like but also why people choose litigation as a means to resolve disputes and how they avoid it.
- *Transactional Practice* should replace Contracts and introduce contract law but also how to read, negotiate, write, and explain contracts to clients and to engage in business and preventative law.
- *Administrative Practice* should introduce administrative law and when agencies are used to solve problems, how they are formed, and how lawyers use the guidance they produce.
- *Public Interest Lawyering* should introduce basic justice concepts as well as the ways in which lawyers contribute to social justice projects.
- *Legal Research and Writing* would ideally be integrated into the various practice areas, but integration would require a degree of cooperative teaching that could prove difficult.

This choice of topics is not all inclusive. Instead, the division of the first year among these practice areas is intended to introduce students to the major choices of legal practice. Armed with this information, students would be better informed when making course selections for electives in their chosen field.

Added to this first-year curriculum from the dominant law school model are three critical practice areas: Transactional Practice, Administrative Practice, and Public Interest Lawyering. Including in the first year the beginning of a deal or government regulation rather than the litigated result allows a better glimpse of a lawyer's life. "When analyzing law in intricate detail, it may be hard to keep in mind the vital fact that the problems really relate to people, either the people who are parties to the case, or the people who will be affected by the law

established once the case is decided."[203] This facet of lawyering belongs in the first year.

A Transactional Practice course is needed to offer students a glimpse of the practice of preventative lawyering. This course purposefully incorporates how contracts are made and why, something not always included in a current Contracts course, and forces students to look at clients before problems begin (or at least before problems are reduced to litigation), which adds important human elements to lawyering. The course is fundamentally one of maximizing multiple people's or groups' interests in a way that belies the gladiator model of lawyering. This approach is lacking today. A Georgetown explanation of J.D. careers focused on transactional law admitted that the "first year of law school traditionally focusses on the case method. . . . [which] can make learning about transactional practice difficult."[204]

Including an Administrative Practice course exposes students more directly to the way government lawyers work, although it should include how other attorneys use government materials to service clients. This course would demonstrate how policy works its way into the law as regulatory law.[205] Therefore, it is inherently a public policy course. Guidance (in the form of a guidance document) and their policies become a battleground for litigation but, more than that, are the bedrock upon which many day-to-day business and legal decisions are made.[206] All students need exposure to this source of law.

It is the need to understand how agencies work as purveyors of the law that is unlikely met by combining statutory construction and regulatory law into a makeshift Legislation and Regulation course,

---

203. Griswold, *supra* note 166, at 220.

204. *Careers in Transactional Law*, GEO. L. (2021), https://www.law.georgetown.edu/wp-content/uploads/2021/08/Careers-in-Transactional-Law-2021.pdf; *see also* Carol R. Goforth, *Use of Simulations and Client-Based Exercises in the Basic Course*, 34 GA. L. REV. 851, 852–53 (2000) (arguing that the traditional curriculum and the case method undersells transactional work).

205. *See generally A Guide to the Rulemaking Process*, OFF. OF FED. REG. (2011), https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf (discussing the law-making process and the connection to policy).

206. By itself, an agency guidance document "never forms 'the basis for an enforcement action'" because such documents cannot "impose any 'legally binding requirements' on private parties." Kisor v. Wilkie, 139 S. Ct. 2400, 2420 (2019). However, attorneys litigating a regulation may rely on relevant guidance documents. Additionally, guidance documents may be entitled to deference or otherwise carry persuasive weight with respect to the meaning of the applicable legal requirements. *See id.* at 2424–25 (Roberts, C.J. concurring in part).

which fourteen of fifty three surveyed schools have done.[207] Part of the difficulty with a course like Legislation and Regulation is defining what is covered, which is necessary so that upper-level courses and employers can build on that knowledge.[208] The course title is overly broad and, therefore, inadequate.

For example, statutory interpretation is the ability to read and understand complex statutes (like the Internal Revenue Code with cross-references and rules of construction), and it is also the application of the different cannons of interpretation that a court uses to interpret the words, such as purposivism or original intent.[209] Although the skills are often overlapping, they are not the same. Moreover, it takes significant time to master each.

Similarly, for regulation, the question can be how agencies form and propagate regulations and the various forms of guidance and interpretive materials and the limited power of each.[210] Additionally, it may consist of understanding when and how to use that guidance and when that use is likely to be seen as consistent with or antithetical to the agency's direction. Practicing attorneys need all of these skills. They are unlikely to be conveyed in a two- or three-hour course that is not properly defined. Without that definition, it will be difficult for upper-level classes to bridge gaps in knowledge.

Public Interest Law would help balance parts of the curriculum that tilt to protecting or aiding the established and wealthy parts of society. It would be a course intended to teach students about society's needs and the unique skills lawyers have to address them. The course could carve out discussion of prosecutors and public defenders because of their coverage in Criminal Justice and, instead, focus on the ways in which people can harness the law in the public's interest and the difficulties of doing so. Doing so would expose all law students to their obligations to society and the tools they can use as agents of larger societal improvement.

---

207. *See supra* Figure 9; *see also supra* notes 126–29 and accompanying text.

208. *See supra* notes 126–29 and accompanying text.

209. *See generally* Katherine Klark & Matthew Connolly, *A Guide to Reading, Interpreting and Applying Statutes*, THE WRITING CTR., GEO. UNIV. L. CTR. (2017), https://www.law.georgetown.edu/wp-content/uploads/2018/12/A-Guide-to-Reading-Interpreting-and-Applying-Statutes-1.pdf (providing an overview of statutory interpretation).

210. *See generally* KATE R. BOWERS, CONG. RESEARCH. SERV., LSB10591, AGENCY USE OF GUIDANCE DOCUMENTS (2021) (discussing how agencies issue guidance documents and the framework applied in the judicial review of guidance).

The introduction to these different practice areas is beneficial to all students, regardless of what area of law they eventually practice. Framing the law in response to practice areas with a focus on how those areas solve clients' and society's problems permits students to be better problem-solvers and to question how best to resolve disputes.[211] Individual students may not develop expertise in a particular area but would learn where to turn for advice. They would also be able to think more broadly about issues in their own fields by being taught to look at problems from different perspectives with different tools for possible solutions.

Within each of these five courses, certain types of material should be required, partly to permit comparisons as between courses and partly to ensure coverage of critical elements of law. This required material needs to be introduced early as a lens through which to see legal issues. For example, each course should include an element of statutory law, international law, ethics, and constitutional limitations. This coverage would not replace upper-level specialty courses but would provide students a baseline for making decisions as to which specialty courses they are interested in taking and ensures no student graduates law school without a rudimentary understanding of how the full legal system operates.

Moreover, to provide a fuller understanding of each practice area, these courses should not be limited to legal topics but introduce some of the broader issues lawyers in these areas face. For example, Transactional Practice should include some discussion of the market and how business is conducted.[212] Criminal Justice should include questions about the objectives of incarceration and racial disparities in policing;[213] Public Interest Lawyering should include issues of creating and funding programs to bring legal access to more

211. *See* Singer & Rakoff, *supra* note 26, at 427.

212. *See, e.g.,* Andrew Cohen, *Berkeley Law Survey Gauges Key Skills for Transactional Lawyers,* BERKELEY L., https://www.law.berkeley.edu/article/berkeley-law-survey-gauges-key-skills-for-transactional-lawyers/ (May 1, 2014) ("Practicing corporate lawyers want law students to get a foundation in accounting, finance, business strategy, and how to use tools of valuation.").

213. *See* Shasta N. Inman, *Racial Disparities in Criminal Justice,* A.B.A., https://www.americanbar.org/groups/young_lawyers/publications/after-the-bar/public-service/racial-disparities-criminal-justice-how-lawyers-can-help/ (last visited Dec. 23, 2022) (noting racial disparities in the criminal justice system and how lawyers can help).

Americans.[214] These are just a few of the issues that can be addressed early in a law student's education once the basic courses have been reframed.

For these changes to the first year to be meaningful, they must be more than cosmetic and may be seen as conflicting with professors' academic freedom.[215] Academics' need to control the substance of their courses is real and can function as a counterweight to political forces operating on law schools. That being said, law schools remain schools that need to provide students training for their careers. Moreover, if faculty of upper-level courses are to build on what students learned in their first-year courses, faculty need to know what is covered.[216] The balance between providing faculty the freedom to develop courses and ensuring students are taught necessary and relevant material is a difficult one to achieve.

By refocusing the first-year curriculum around practice areas, it signals to faculty and students alike the purpose of legal education. While law school is not a "trade" school, used by many legal academics as a pejorative, it is also not a liberal arts institution.[217] It is a training program to create the next generation of societal problem-solvers. Graduates need to think broadly about problems and have the skills to find solutions.

Thus, each course should be framed around asking, repeatedly, what is the problem and what can the attorneys do to try and address it? How does someone judge when an attorney is successful? What would the student do or ask differently in light of the problem? And would a proposed solution help the client, be true to the student's own conscience, and help (or at least not hurt) society?

This approach means that some substance currently covered in the first year would not be taught that year. Some of the current common law topics would be included in the newly defined courses but to a much lesser extent than today. This has long been recognized as a

---

214. Many law schools have a pro bono requirement. *See, e.g.*, *Pro Bono Requirement and Program*, COLUM. L. SCH., https://www.law.columbia.edu/careers/public-interest/pro-bono-requirement-and-program (last visited Dec. 23, 2022). However, students going into public interest should have more exposure to the development of these programs.

215. *See infra* Part V.

216. *See* Gerald F. Hess et al., *Fifty Ways to Promote Teaching and Learning*, 67 J. LEGAL EDUC. 696, 712–13 (2018) (acknowledging that professors "are woefully ignorant about what [their] colleagues or the adjuncts at [their] law school teach.").

217. *See* Penland, *supra* note 23, at 119 (noting that the legal field has "fought hard against the perception of legal education as a 'trade school . . . .'").

requisite for including skills in courses.[218] Karl Llewellyn noted that "a first year course which takes on as a deliberate part of its job and adequate training in one or more practical skills must, to get that job done, reduce its 'content' of 'subject matter' for standard classroom coverage by at least a third."[219] He did not worry about that, and neither should we.[220]

To the extent coverage of particular substantive law is critical for the bar exam, the timing of that coverage under the current model is suboptimal.[221] Substantive material is often forgotten, if ever learned, as students struggle to figure out what it means to be a lawyer. Instead, that material could be included, either required or not, at the end of law school and closer to the time it is tested on the bar exam. Instead of heaping on positive law so early in their education, focusing on how to discern and locate the different sources of law as used in different forms of practice would build a stronger foundation that first year.

This shift of the first year to contextualizing the law in terms of problem-solving will also help students who have difficulty working in the abstract—a skill that is not necessary for the practice of law even if many law professors prefer to work that way. Additionally, one study found that the strongest predictor of success in law school was the lawyering skills grade, more so than the LSAT score, showing a potential link that focusing on "doing" the law also helps students understand the law.[222] Using knowledge in practical ways is not only the end goal of legal education, but it likely helps many students develop the analytical skills to understand the theory behind the law.[223]

---

218. *See* Committee on Curriculum, *supra* note 145, at 362.

219. *Id.*

220. *See id.*

221. *Compare NCBE Exams*, NAT'L CONF. OF BAR EXAM'RS, https://www.ncbex.org/exams/ (last visited Dec. 23, 2022) (noting that the Multistate Bar Examination tests "Constitutional Law, Contracts, Criminal Law and Procedure, Civil Procedure, Evidence, Real Property, and Torts" and the Multistate Essay Examination tests "Business Associations, Civil Procedure, Conflict of Laws, Constitutional Law, Contracts (including Article 2 [Sales] of the Uniform Commercial Code), Criminal Law and Procedure, Evidence, Family Law, Real Property, Torts, Trusts and Estates, and Article 9 (Secured Transactions) of the Uniform Commercial Code."), *with supra* Figure 9 (noting the common courses that make up the first year curriculum).

222. *See* Leah M. Christensen, *Enhancing Law School Success: A Study of Goal Orientations, Academic Achievement and the Declining Self-Efficacy of our Law Students*, 33 L. & PSYCHOL. REV. 57, 74, 82–83 (2009).

223. This kind of training prepares students to further their knowledge in clinics and upper-level courses. To gain the most from clinics, the modern panacea for teaching lawyers' practical skills, they need basic training first. *See* Stefano Moscato,

This approach would be particularly useful for lower-ranked schools whose students are less likely to start in law firms.[224] Instead of doubling down on bar-tested subjects, it permits students to see how to use that material and, hopefully, find their own path. Their students need practical information to perform their future jobs, but the need to secure a sufficient bar-passage rate to retain ABA accreditation forces these schools to devote students' most limited resource – time – to material that they may never use.[225] Putting that material closer to the exam and starting from a perspective of employment should better accomplish both goals.

To the extent that law schools are unable or unwilling to radically change their first-year curriculum, the least that can be hoped is that faculty embrace that certain courses in the curriculum are expected to prepare students for non-litigation careers. If Contracts is a transactional course, hopefully the professors teach it as such. This also means that for law schools which offer a Legislation and Regulation course, the focus should be on the skills and law that students going into the government, lobbying, or using administrative law need, as opposed to approaching these courses as a supplement to the common law practice covered in other courses.[226] Thus, instead of the continued focus on common-law development to the exclusion of other necessary legal skills, the first-year curriculum should begin to prepare students for the careers they will enjoy as attorneys.

Although this proposal stresses practical lawyering throughout the first year, doing so would not mean that law schools would disavow progressive agendas or condemn students to a money-grubbing existence as corporate shills. Instead, a proper focus on transactional practice, administrative practice, and public interest lawyering coupled with civil litigation and criminal justice allows law schools to fill longstanding voids in the preparation of attorneys.[227] For example,

---

Teaching Foundational Clinical Lawyering Skills to First-Year Students, 13 LEGAL WRITING: J. LEGAL WRITING INST. 207, 208–09 (2007).

224. *See supra* Figure 1.

225. *See* STANDARDS & RULES OF PROC. FOR APPROVAL OF L. SCHS. Standard 316 (AM. BAR ASS'N 2022) ("At least 75 percent of a law school's graduates in a calendar year who sat for a bar examination must have passed a bar examination administered within two years of their date of graduation.").

226. *See supra* notes 127–29 and accompanying text (discussing how Legislation and Regulation is taught differently in schools).

227. Today, corporate lawyers are said to emphasize craft over counseling, allowing business clients to set the agenda, and "often seem to reject even the *aspiration* to serve as molders of corporate and public policy." Robert A. Kagan & Robert E.

looking at the practice of law requires law schools to introduce in the first year the complex ethical issues graduates will face, and the way that lawyers relate to clients and society as a whole.[228] Having all students participate in discussions over the purposes, benefits, and limits of the different practice areas opens a dialogue that prevents students from hiding in their specialties and ensures proper debate before students unexpectedly end up in those professions.

V. WHY IT IS SO HARD TO CHANGE

That the 2022 first-year curriculum remains eerily like that of Harvard's 1880 curriculum, despite significant changes in how the government makes and enforces law and the shifts in the legal profession, is troubling if not unexpected.[229] "The world of academia is structured in a way that is not conducive to significant change."[230] Simply reporting the need for change, however, is not enough.[231] Resistance can, however, be overcome through external pressure. Much of past criticism has resulted in, if anything, an overlay of new requirements.[232] What is needed for transformational change are requirements imposed from the ABA as law schools' accrediting body coupled with changes to what bar examinations test.

A. Common Obstacles to Change

Revamping the required curriculum is hard, as I learned when chairing my law school's curriculum committee. We failed for many of the following reasons, and other schools likely have experienced their own frustrations. This is an exhaustive list and does not indicate ill will on the part of faculty but illustrates the strong structural problems lurking for anyone who wants to modernize an 1870 curriculum. The hurdles to change are arranged as the three "Fs" – faculty, fear,

---

Rosen, *On the Social Significance of Large Law Firm Practice*, 37 STAN. L. REV. 399, 435 (1985) (emphasis in original).

228. *See* Silver, *supra* note 190, at 375–76.

229. *See* Rubin, *supra* note 2, at 619.

230. Sonsteng et al, *supra* note 96, at 351.

231. *See id.*

232. *See, e.g.*, Neil W. Hamilton & Louis D. Bilionis, *Revised ABA Standards 303(b) and (c) and the Formation of a Lawyer's Professional Identity, Part 1: Understanding the New Requirements*, NALP (May 2022), https://www.nalp.org/revised-aba-standards-part-1 (noting a recent revision to ABA accreditation requiring that law schools provide bias training and substantial opportunities for students to develop their professional identity).

and funding. Of course, change does occur and not every law school has an equal measure of these obstacles. The point remains, however, as shown by the widespread inertia in law school curricula, that these obstacles are sufficiently large that curricula have not adapted to changes in forms of law or in the way lawyers work.[233]

1. Faculty

Faculty are a tremendous resource for law schools, and most that I have had the pleasure to work with or meet at conferences care deeply about their students and their institutions. Nevertheless, as the primary gatekeeper for curriculum in a world where most institutions value faculty-governance, the lack of adaptation of the curriculum must be laid squarely at faculty feet.[234] However, blame does not solve the problem because faculty have reasons, some more justifiable than others, for their inaction. These obstacles need to be overcome to encourage change.

Likely the largest reason for faculty reluctance to modernize their curricula, at least as claimed by those who do not like the academy, is that so many faculty have tenure and tenure means that faculty do not need to adapt to changing times.[235] With job security, faculty can choose to update or not, and there is little that most institutions can do about it.[236] Coupled with this security, the professors who teach traditional courses likely enjoy knowing that their credit hours are fully prepared and can be scheduled at the same time year after year. These are real benefits to faculty even as they stand as obstacles to change and adaptation.

A partner to tenure is academic freedom. This author does not purport to know the extent to which various schools give faculty academic freedom over their course design. However, the American Association of University Professors (AAUP) defines the freedom to teach to include "the right of the faculty to select the materials, determine the approach to the subject, make the assignments, and assess

233. *See* Rubin, *supra* note 2, at 610.

234. *See* Sonsteng, *supra* note 96, at 351–54 (discussing how and why law faculty resist change).

235. *See id.* at 355 ("[T]he tenure system does not encourage change because it offers professional security, regardless of whether change is overdue or implemented.").

236. *See id.*

student academic performance . . . ."[237] On the other hand, this freedom is not unlimited. The AAUP goes on to say that "[t]he department should have a process for periodically reviewing curricular decisions and altering them based on a consensus of the appropriate teaching faculty, subject to review at other levels of governance."[238] Regardless, in some, if not most, schools, faculty have an expectation of the freedom to design their own courses with minimal oversight or direction.

Normally, academic freedom is good for students because faculty choose material the faculty feels comfortable (i.e., knowledgeable and secure) to teach, and faculty are more likely to become invested in the material they choose.[239] Academic freedom can also be used by faculty to set limits if a course needs them—and sometimes faculty reasonably fear what they can cover in the credit hours allotted. This may be particularly true when courses have their hours reduced in order to teach the "new" areas of law that started growing 100 years ago.[240]

The reality is that as the law has expanded, the amount of time that should be devoted to common law topics has been reduced because this practice excludes areas of the law and sources of law that are equally foundational to what has long been taught.[241] Recognizing that more sources and types of law need to be covered means that

237. Press Release, Am. Ass'n Univ. Professors, Brief Statement on the Freedom to Teach (Nov. 7, 2013), https://www.aaup.org/file/2013-Freedom_to_Teach.pdf. Personally, I have had two different Associate Deans of Academic Affairs tell me that they were reluctant to require any particular subject matter in a particular course even with respect to bar-tested material in a designated bar-prep course.

238. *Id.*

239. *See id.* (noting that giving professors freedom "could turn out to be as effective in engaging the students as requiring them to use an alternate textbook."). No matter how old a faculty is, they came into the educational market long after the New Deal and the advent of the administrative state. *See* Rubin, *supra* note 2, at 618–19. Nevertheless, they went to law school with outdated curricula and flourished enough to get coveted jobs. *See* Sonsteng, *supra* note 96, at 352–53. Moreover, many have limited practical experience, so that shifting the law to a legal-practice approach would put faculty out of their depths. *See id.* Karl Llewellyn once complained about the lack of curricular change was partly because no law faculty "knows what it or they are really trying to educate for." Karl Llewellyn, *On What Is Wrong with So-Called Legal Education*, 35 COLUM. L. REV. 651, 653 (1935). However, a separate class of educators may not be a bad thing because teaching initiates into the field is different than practicing law.

240. *See* Committee on Curriculum, *supra* note 145, at 354; John Dickinson, *Making Lawyers*, 8 N.C. L. REV. 367, 383 (1930) (considering whether certain indispensable courses might need to be compressed in order to allow students to make room for other courses).

241. *See* Dickinson, *supra* note 240, at 384.

faculty will have to cover material more efficiently, but law professors have long believed that to teach students to "think like lawyers" requires the case method and to do it properly is time-consuming.[242] Some professors will resist losing the luxury of pouring over several cases to make a point, and many staunchly defend their right to do so. In a modern curriculum, faculty could take the approach of close-reading cases but not for every point.

Overcoming faculty resistance and academic freedom is a high hurdle, particularly with the institutional model many law schools have. As the sampled law schools have 26 to 184 full-time faculty members, and an average of 62, unanimity would be unheard of and consensus would be difficult.[243] It is doubtful that unanimity would ever be required, but the process required to change a curriculum could nonetheless be unreasonably cumbersome. At my institution, for example, curricular change had to go through a special committee, then a standing Academic Policy Committee, and, finally, the full faculty.[244] Under this model, a vocal minority may be sufficient to ensure curricular reform fails.

That this obstacle can be overcome is evidenced by the fact that some individual faculty members have changed how they teach, the types of material that they cover, and some law schools have changed their curricula. Some Contracts courses, for example, are significantly more transactional than they were in 1870, and some schools have oriented their curriculum toward legal practice.[245] Nevertheless, a difficulty remains that widespread change across law schools is unlikely unless the features that make faculty resistant are recognized and addressed.

---

242. *See id.*

243. For access to that data that was compiled for this statistic, see *509 Required Disclosures*, A.B.A. https://www.abarequireddisclosures.org/Disclosure509.aspx (under "Compilation-All Schools Data" select class year "2020"; then click "Download Complete Employment Data"; then open downloaded Excel spreadsheet). Please note that the only schools included were the fifty-four listed in Appendix A. *See infra* Appendix A.

244. Please note that the author works at the University of Cincinnati Law School.

245. For example, a conference was held to discuss the transactional approaches to Contracts. *See generally* Peter Linzer, *Teaching Contracts Transactionally: Introduction*, 34 U. TOL. L. REV. 685 (2003).

2. Fear

Not all reluctance to change is for selfish reasons: Law schools and their faculty may legitimately fear that change would be worse than the established curriculum that has operated for over 100 years. Thus, law schools and law faculty may be hesitant to embrace new curricula because of fear—fear of the unknown, fear of getting it wrong, and fear of bad press. Fear helps prevent rash changes but remains an obstacle to be overcome to adapt a curriculum to twenty-first century law.

A legitimate source of fear is the unknown. One cannot expect people to know what they do not know. Changing the curriculum requires new skills faculty may worry that they do not have. Moreover, it requires trusting colleagues to adapt and educate within the new paradigms. Looking around a faculty meeting, it is not unreasonable to fear that some members will not respond well to required changes and, if these faculty teach in the first-year curriculum, it may undermine improvement. "The familiar [case method] is at least that which existing personnel have already proved their competence to handle, and which experience has also proved to have some real value. That counsels caution and care."[246] Change is often scary and fear of how faculty will respond should not discounted.

Faculty may also legitimately fear getting changes wrong and, in the process, losing the good that is currently accomplished with their teaching. That the law has evolved, and that this evolution should be recognized in the required curriculum does not mean that all existing legal education is bad. Most law students do learn a lot. Moreover, although there is likely substantive law and legal skills that all lawyers need, no magical list exists of that knowledge or skills. It could be worse to change the system and fail to provide adequate training in the old sources or the new.

The fear of making bad changes is likely coupled with the fear that any change would adversely affect bar passage.[247] This may be particularly troubling for lower-ranked schools that already have

246. Committee on Curriculum, *supra* note 145, at 349.

247. *See* Robert J. Derocher, *What's Going on in Legal Education?*, 36 A.B.A. (2012), https://www.americanbar.org/groups/bar_services/publications/bar_leader/2011_12/spring/legaled/ ("For their part, many deans say their jobs are more challenging than ever. . . . You need to have good *US News & World Report* numbers, keep standards high, make sure you don't misstate your number, keep tuition low, and keep applications up." (internal quotation marks omitted)).

lower bar passage rates.[248] The National Conference of Bar Examiners (NCBE) administers the Uniform Bar Exam (UBE) used by thirty-eight states, and the UBE corresponds heavily to the current first-year curriculum.[249] Today there are two sections of the exam: multiple choice and essay.[250] The multiple-choice section, or MBE, is six hours long and has 200 questions.[251] The essay section, or MEE, has six thirty-minute-long essays.[252] The MBE tests civil procedure, constitutional law, contracts, criminal law and procedure, evidence, real property, and torts.[253] The MEE tests the material covered on the MBE plus business associations, conflict of laws, family law, secured transactions, and trusts and estates.[254]

Despite the importance of the bar exam, law schools have long taken the position that they do more than just train for a test and that the bar exam is insufficient to ensure that students are prepared to be attorneys.[255] Otherwise, a bar course would be sufficient legal training. Law school should prepare students to pass the test, to grow their careers, and to use their new knowledge and skills to the betterment of society. This means that the bar exam is an insufficient guide to creating a law school curriculum. It should be one data point for consideration in evaluating a curriculum, but the tested topics alone do not prepare students to function as members of the bar or of their world.

---

248. *See generally Statistics: Bar Passage Data*, A.B.A., https://www.americanbar.org/groups/legal_education/resources/statistics/ (last visited Dec. 23, 2022) (data pulled from excel spreadsheet linked on webpage) (providing the bar passage rates by school). It is also possible to invert the timing of bar courses to be later in law school and, therefore, closer to the exam.

249. *See List of UBE Jurisdictions*, NAT'L CONF. BAR EXAM'RS, https://www.ncbex.org/exams/ube/list-ube-jurisdictions (last visited Dec. 23, 2022) (listing the jurisdictions that use the UBE).

250. *See Understanding the Uniform Bar Examination*, NAT'L CONF. BAR EXAM'RS, https://www.ncbex.org/pdfviewer/?file=%2Fdmsdocument%2F209 (last visited Dec. 23, 2022). For more on changes accepted in January 2021, see *infra* note 276–81 and accompanying text.

251. *See Understanding the Uniform Bar Examination*, *supra* note 250.

252. *See id.*

253. *See id.*

254. *See id.*

255. *See* THE CARNEGIE REPORT, *supra* note 87, at 13 ("Legal Education is complex, with its different emphases of legal analysis, training for practice, and development of professional identity.").

Fear of reducing bar passage is also tied up with the fear of lowering law school rankings.[256] Changes to the curriculum might well make better lawyers but what would they do to a school's ranking? Honestly, rankings are unlikely to change, at least not quickly. Although employment constitutes 25.25% of rankings, legal employers use simplifying heuristics—reputation and perhaps geographic proximity plus GPA, moot court, law review, and poise—in their hiring decisions.[257] This means that any change that improves the quality of graduates takes significant time to percolate through to the hiring market. It is likely that those voting for U.S. News & World Report rankings, (25% for faculty and administrators and 15% for lawyers and judges) use similar heuristics in their ranking choices.[258] While this gives greater latitude for experimentation than schools currently take, it reduces the payoff for taking risks and changing the curriculum.

One last fear is related to the industry: fear of moving from a liberal arts-based curriculum to lesser-valued vocational training and from the nation's esteemed problem-solvers to narrow scribes.[259] Reducing prestige, resources devoted to the law, and the ability to help fix society's problems, this shift threatens what makes law and law schools great. The ability to frame solutions to problems exists because of the law's complexity and that some know how to use that complexity.

However, for this threat to be credible, a change to address the changing law and legal profession must create more narrow thinkers, despite the fact that these changes would broaden students' exposure to more tools, ideally with a problem-solving focus. Recognizing that there are different types of law on which to take deeply philosophical views does not narrow thinking. It would require professors to broaden their own thinking in order to engage students in open and fruitful conversations about things faculty have not previously taught.

Combined, these fears are not insignificant, and that some students are very successful under the current system makes addressing these fears seem less pressing. The success of some does not,

256. *See* Morse, *supra* note 32 (demonstrating that bar passage rates impact a law school's rankings).

257. *See id.*; Keith A. Findley, *Assessing Experiential Legal Education: A Response to Professor Yackee*, 2015 WIS. L. REV. 627, 636.

258. *See* Morse, *supra* note 32.

259. *See* Penland, *supra* note 23, at 119 (noting that the legal academy has "fought hard against the perception of legal education as a 'trade school'").

however, mean that the current method works for everyone or that it is the best system. While it cautions against change for change's sake, balanced consideration of the need to recognize the evolution of the law with a desire to mitigate the risks of change is sufficient to justify the undertaking.

3. Funding

Change is not only scary to a faculty that may not feel that it is necessary to confront those fears, but it can also be difficult because of the resources currently devoted to the established curriculum. Law schools have invested heavily in their curricula.[260] Without a pressing need to change those allocated resources, it is unlikely that schools will take undertake the costs of doing so.

Law schools have invested in the first year primarily through tenure and, for some schools, named professorships for the faculty who teach these courses.[261] If these professors' skill sets are not transferrable to other areas of law, or if they resist change, new faculty would need to be hired to teach a broader, more modern curriculum.[262] Many schools do not have the luxury of letting tenured faculty languish but need them to teach core courses to large numbers of students. Even if they are willing to change their teaching packages, for these professors to take on the preparation of a new course, they would likely require financial incentives, if only summer funding.

Consequently, changing the required curriculum would likely entail new costs, and the payoff may not be financial. Most law schools are tuition driven in that they depend on their tuition as opposed to state funding or endowments.[263] Applications and matriculants are, therefore, critical to their financial health, and it is uncertain how responsive applicants would be to changes in a curriculum.

260. *See* Rapport, *supra* note 173, at 106.

261. *See Tenure*, AM. ASS'N UNIV. PROFESSORS, https://www.aaup.org/issues/tenure (last visited Dec. 23, 2022) ("Tenure promotes stability. Faculty members who are committed to the institution can develop ties with the local community, pursue ongoing research projects, and mentor students and beginning scholars over the long term.").

262. *See id.* (noting the academic freedom that comes with tenure positions).

263. *See* Wu, *supra* note 73. For example, subsidies to UC Hastings have decreased from over 80% to approximately 13%. *See id..*

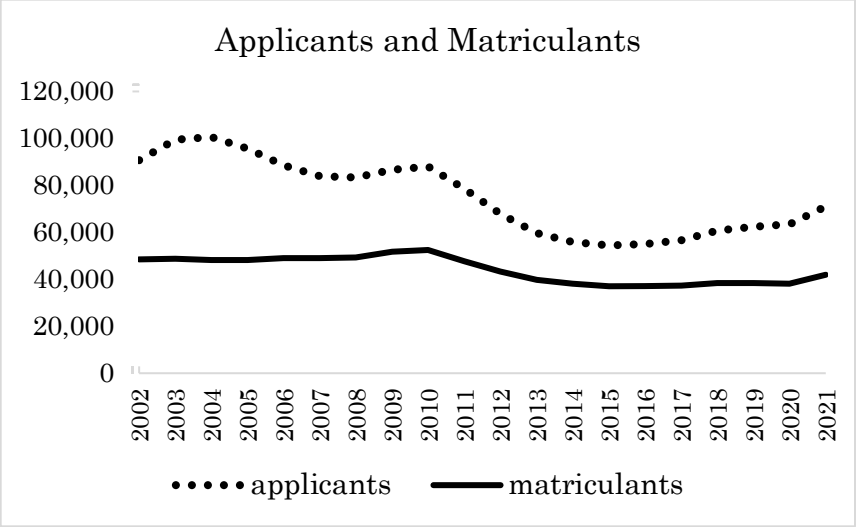

Figure 10 [264]

These numbers are perhaps better illustrated by the percentage changes of applicants.[265] When these numbers go down, law school administrators and faculty worry about their budgets.

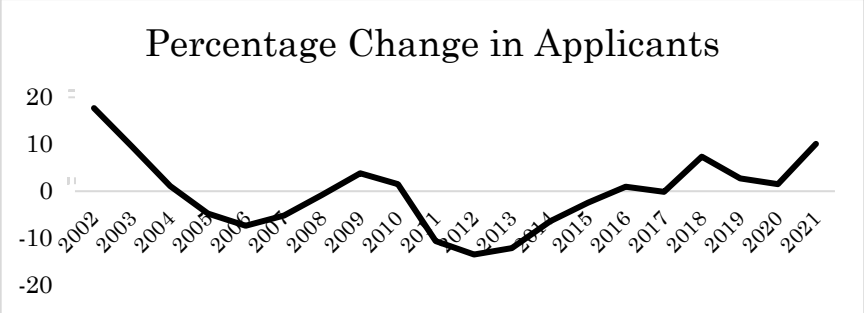

Figure 11 [266]

When the number of applicants goes down, law schools may be more inclined to think critically about changing their institutional

264. For access to applicant data that was used to create Figure 10, see L. SCH. ADMISSION COUNS., ADMISSION TRENDS: ABA APPLICANTS, ADMITTED APPLICANTS & APPLICATIONS (2021), https://report.lsac.org/View.aspx?Report=AdmissionTrendsApplicantsAdmitApps&Format=PDF. For access to matriculant data that was used to create Figure 10, see *Statistics 1963-2013, supra* note 74.

265. *See infra* Figure 11.

266. *See* L. SCH. ADMISSION COUNS., *supra* note 264.

models to draw in students, but they are in a worse position to undertake the costs of doing so.[267] The more applicants, the less need to consider tailoring law school to potential students because the old model is working well enough. Unfortunately, that cyclical model encourages law schools to make short-sighted and superficial changes in times of need rather than facing the reality that the legal market has changed over the last 150 years and that what students need in order to function in the market has also changed.

Even the financial pressure of lower enrollment may be less incentive to rethink the curriculum than it once might have been because of new degree programs.[268] Schools may decide to add new programs rather than adapting their current model to attract J.D. students. The use of this model can be seen in the increase in the number of non-J.D. students in law schools. Unregulated by the ABA, schools have great freedom over their curriculum.[269]

B. Proposal to Push Change

That law schools have preserved achingly similar required curricula for over 100 years illustrates not only the tenacity of the obstacles to change but also the lack of external pressure to overcome these obstacles.[270] In the face of faculty, fear, and funding, law schools are unwilling or unable to push through changes on their own and will need someone outside the law school to force modernization. Employers have proven ineffective to this end, so it is left to the ins and outs of law school—accreditation to get students in and the bar exam as students go out.[271] The former can demand change and the later holds the power of bar passage, something law schools value.

The U.S. Department of Education recognizes the Council of the ABA Section of Legal Education and Admissions to the Bar (ABA Council) as accreditor of J.D. programs, and most but not all jurisdictions require a degree from an ABA-approved law school in order to practice law.[272] The ABA Council imposes requirements for law school

267. *See* Wu, *supra* note 73 (noting that less applicants means less money into the school).

268. *See* Mystal, *supra* note 86 ("LL.M..s are extremely valuable to law school budgets.").

269. *See Post J.D. Degrees*, *supra* note 75.

270. *See* Rubin, *supra* note 2, at 664.

271. *See* Findley, *supra* note 257, at 629.

272. *See* STANDARDS AND RULES OF PROC. FOR APPROVAL OF L. SCHS. Preface (AM. BAR ASS'N 2022).

accreditation, currently only loosely focused on the required curriculum. For example, the ABA Council requires students gain competency in:

> knowledge and understanding of substantive and procedural law; legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context; exercise of proper professional and ethical responsibilities to clients and the legal system; and other professional skills needed for competent and ethical participation as a member of the legal profession.[273]

The ABA does not mandate how this is to be accomplished with a few exceptions. A curriculum must contain one course of at least two credits in professional responsibility, one writing experience in the first year and at least one more after the first year, and at least six credit hours of experiential learning, the latter requirement added in 2015.[274] Within these requirements, the ABA grants law schools significant latitude in how they want to accomplish these objectives with the caveat that 75% of a law school's graduates who sit for the bar must pass it within two years.[275]

The ABA Council does not determine bar admission; this is controlled by the jurisdiction's highest court and its bar admission authority.[276] Currently, most jurisdictions use the UBE administered by the NCBE but have different minimum passing scores.[277] As discussed above, the current test largely follows the dominant first-year curriculum, with some additional material tested in the essay portion.[278] This creates a chicken and egg problem of law schools curricula preparing for the exam and the exam testing the curricula.

---

273. *Id.* Standard 302.

274. *See id.* Standard 303.

275. *See id.* Standard 316.

276. *See* NAT'L CONF. OF BAR EXAM'RS & AM. BAR ASS'N, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 1 (Judith A. Gundersen & Claire J. Guback eds., 2020), https://www.ncbex.org/assets/BarAdmissionGuide/CompGuide2020_021820_Online_Final.pdf

277. *See Minimum Passing UBE Score by Jurisdiction*, NAT'L CONF. BAR EXAM'RS, https://www.ncbex.org/exams/ube/score-portability/minimum-scores/ (last visited Dec. 23, 2022) (listing minimum passing UBE scores in each jurisdiction).

278. *See supra* notes 245–50 and accompanying text.

The NCBE recently agreed that it would change its tested material before 2026.[279] The new test will include as foundational concepts business associations, civil procedure, contract law, constitutional law, criminal law, evidence, real property, and torts.[280] Thus, little has changed except to eliminate criminal procedure and all but business associations as the specially-added topics of the essay portion of the exam.[281] If anything, this increases the importance of current first-year courses as the only substance but for evidence and business associations that is tested.

In addition to these substantive law changes, testing of skills is to be increased. The foundational skills to be tested are legal research, legal writing, issue spotting and analysis, investigation and evaluation, client counseling and advising, negotiation and dispute resolution, and client relationship and management.[282] In fact, an early report concluded that "lawyering skills should be emphasized over subject matter knowledge."[283]

Even though the new test is also supposed to "test less broadly and deeply," more akin to how practitioners work and less the way the current first year is set up, disappointingly it does not recognize many areas of law currently omitted from the test.[284] Administrative law and statutory interpretation are not included, which are big omissions from how legal practice works. Drafting is also notably excluded.

With these continued omissions, the contemplated changes to the UBE do not replace the need for law schools to educate beyond the exam even for basic competency. Nevertheless, the exam should encourage law schools to take skills training more seriously by establishing a relatively low bar (pun intended) for students. That the organization has proven willing to adapt its testing, especially in light of the logistical difficulties of testing for skills-based knowledge, is commendable.

---

279. *See* NAT'L CONF. OF BAR EXAM'RS, OVERVIEW OF RECOMMENDATIONS FOR THE NEXT GENERATION OF THE BAR EXAMINATION 2 (2021), https://nextgenbarexam.ncbex.org/wp content/uploads/TTF-Next-Gen-Bar-Exam-Recommendations.pdf.

280. *See id.* at 4.

281. *See id.*

282. *See id.*

283. NAT'L CONF. OF BAR EXAM'RS, PHASE 1 REPORT OF THE TESTING TASK FORCE 3 (2019), https://nextgenbarexam.ncbex.org/wp-content/uploads/FINAL-Listening-Session-Executive-Summary-with-Appendices-2.pdf.

284. *See* NAT'L CONF. OF BAR EXAM'RS, FINAL REPORT OF THE TESTING TASK FORCE 2 (2021), https://nextgenbarexam.ncbex.org/wp-content/uploads/TTF-Final-Report-April-2021.pdf.

Both organizations have been willing in the past to change their standards, although not as extensively as this author would like. The author's hope is that the ABA Council and the NCBE will go further and lead law schools to curricular change more consistent with legal practice in the twenty-first century. Although this course of action would be consistent with each institution's purpose by defining the "knowledge and skills that every lawyer should be able to demonstrate,"[285] the "[k]nowledge and understanding of substantive law," and "[o]ther professional skills"[286] to include working with modern materials of law, leading change in this way would chart a new course for these organizations.

First, the ABA should require law schools either to adopt first-year curriculum that better reflects legal practice, such as including transactional practice and administrative practice as well as civil and criminal litigation, or to structure their first-year curricula around the dominant legal practice areas of the school's employers in the prior five years. The former would ensure a better mix of education for students and the later would provide for school-specific education. In either case, the change would enhance the school's alignment with employment outcomes.[287]

Second, the NCBE should add to the tested material substantive law and legal skills needed to operate in legal practices today. In addition to litigation and understanding the court systems, lawyers need a basic understanding of the modern administrative state and transactional practice. If the bar exam were to test broader, more practice-oriented subjects, it would help overcome the faculty, fear, and funding obstacles to change.

In both instances, these outside bodies are likely to face significant opposition if they accept this plea to require or encourage modernization of law school curricula. As seen by recent discussions of a requirement for Diversity, Equity, and Inclusion, the ABA must respond to its opponents, and opponents to change can affect the framing of ABA proposals much as they do to curricular reform within law schools.[288] Nevertheless, these public-minded organizations have a

---

285. *About the UBE: Purpose*, NAT'L CONF. BAR EXAM'RS, https://www.ncbex.org/exams/ube/ (last visited Dec. 23, 2022).

286. STANDARDS AND RULES OF PROC. FOR APPROVAL OF L. SCHS. Standard 302 (AM. BAR. ASS'N 2022).

287. *See supra* Part IV.

288. *See* Stephanie Francis Ward, *For second time, ABA Legal Education Section Seeks Public Comment on Diversity Accreditation Standard*, A.B.A. J. (Nov. 22, 2021,

unique power to ensure this nation's lawyers are as prepared to practice in the twenty-first century as they were in the nineteenth.

V. CONCLUSION

Law schools have found it difficult to change despite the increased role of transactional practice among its graduates and the increased importance of statutory and administrative law. Faced with faculty reluctance (sometimes for legitimate reasons), fear of making things worse, and concerns with how to fund changes, law schools will need a strong push to align their curricula with twenty-first century legal practice. That push can most readily come from law schools' accreditor and from bar examiners. This is not meant as an excuse for inertia but a plea for help in overcoming it. Fundamentally changing the requirements for accreditation and the material tested on the bar exam would encourage a changed curriculum, but it must be thoughtfully done so that law schools do not add on to established curricula but rethink the current approach to broaden exposure, particularly in the critical first year.

The tools and substance that worked for Christopher Columbus Langdell is not the only foundational materials modern students need to be equipped to practice law. Change should recognize that legal practice and the ways in which the government and people regulate their affairs through the law is radically different than in 1870. This Article does not propose the elevation of transactional practice above other practice areas in the first-year curriculum or in law school generally, but to put the transactional practice on equal standing. This will help all students become the problem-solvers of the future, especially as the data shows that many students do not know how they will first use that knowledge, and many will have different jobs over the course of their lives. It will take courage to ensure that all students develop the skills and knowledge to prosper today.

12:02 PM), https://www.abajournal.com/news/article/for-the-second-time-aba-seeks-public-comment-on-law-school-diversity-accreditation-standard; *see also* Memorandum from Am. Bar Ass'n Council on Recommendations for Approval for Notice and Comment on Standard 206 Revisions to Standards Committee (Nov. 4, 2021), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/nov21/21-nov-std-206-notice-and-comment-w-appendix.pdf.

Appendix A[289]

Law School	**Ranking**	**Law School**	**Ranking**
Yale Law School	1	Georgia State College of Law	78
Stanford Law School	2	Loyola University Chicago School of Law	78
Harvard Law School	3	University of Denver Sturm College of Law	78
Columbia Law School	4	American University Washington College of Law	81
University of Chicago Law School	4	Brooklyn Law School	81
NYU School of Law	6	Drexel University Thomas R. Kline School of Law	81
University of Pennsylvania Carey Law School	6	University of Cincinnati College of Law	81
University of Virginia School of Law	8	University of Kentucky J. David Rosenberg College of Law	81
UC Berkeley School of Law	9	University of San Diego School of Law	86
Duke University School of Law	10	University of Nebraska College of Law	87
University of Michigan Law School	10		
		University of Buffalo School of Law	98
Sandra Day O'Connor College of Law—Arizona State Univ.	25	University of Hawaii at Manoa William S. Richardson School of Law	98
University of Alabama School of Law	25	University of Louisville Brandeis School of Law	98
The George Washington University Law School	27	University of Mississippi School of Law	98
University of Georgia School of Law	27	CUNY School of law	102
Boston College Law School	29	Drake University Law School	102

289. Data for Appendix A was compiled from the 2022 U.S. News Report & World Report Ranking. For a complete list of the 2022 rankings, see Staci Zaretsky, *The 2022 U.S. News Law School Rankings Are Here*, ABOVE THE LAW (Mar. 29, 2021, 8:49 PM), https://abovethelaw.com/2021/03/2022-us-news-law-school-rankings/.

Brigham Young University J. Reuben Clark Law School	29	Marquette University Law School	102
Emory University School of Law	29	Syracuse University College of Law	102
University of Illinois College of Law	29	Texas Tech University School of Law	102
University of Iowa College of Law	29	Catholic University of America Columbus School of Law	102
University of Wisconsin Law School	29	University of New Mexico School of Law	102
		LSU Paul M. Hebert Law Center	102
UC Hastings College of Law	50	Washburn University School of Law	102
University of Maryland Francis King Carey School of Law	50		
SMU Dedman School of Law	52		
Temple University Beasley School of Law	53		
Texas A&M University School of Law	53		
Univ of Richmond School of Law	53		
Villanova University Charles Widger School of Law	53		
Cardozo School of Law Yeshiva Univ.	53		
Baylor University School of Law	58		
University of Connecticut School of Law	58		