IMPLEMENTING A MEANINGFUL & EFFECTIVE LEGAL EDUCATION REFORM

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ABSTRACT

This article offers a critical perspective on legal education based on a holistic approach to law study. Since formalization of the modern university in the 1800s, and ascendency of doctrinal method as the dominant form of instruction in many commonwealth law nations, educators have taken an interest in reconnecting law with society and culture to enhance knowledge and improve lawyer competence. This article identifies challenges facing law study and describes how to overcome them using a three pillars model derived from the literature to contribute to the conversation about how best to go about implementing a meaningful, effective legal education reform.

I. INTRODUCTION

This article offers a critical perspective on legal education reform using a holistic approach. Since formalization of the modern university in the 1800s, and ascendency of the doctrinal method of instruction, educators have taken an interest in reconnecting law with culture and society to enhance knowledge and improve lawyer competence. This article identifies challenges facing law study and describes how to overcome them using a three pillars model to implement meaningful, effective legal education reform.

Lawyers play leading roles in business, civic affairs, government and politics (Sullivan, *et al.* 2007). Challenges in law study include rising costs, diminishing or flat enrollments, incomplete training, isolation from other disciplines (siloed thinking), conflicting demands of students and the profession, inadequate resourcing and the reluctance of academic staff and students who become too invested in the system to want change (Keyes & Johnstone, 2004: 538). The development of legal education is important not just to produce competent practitioners but also to ensure proper access to justice (Barker, 2015: 93). Educators need to move beyond traditional models and embrace innovative curriculum design. They must collect and analyze assessment data to reform pedagogy. Student learning outcomes evidence informs educators how to better integrate curriculum components—holistically combining doctrinal, interdisciplinary and experiential learning. The traditional model of doctrinal-based instruction

is flawed because it is too passive. The three pillars approach developed here extracts all possible value to be derived and limits its use, minimizing negative impacts. Improvement in law study is possible by restructuring the curricular-sequence. Content knowledge, practice-skills and professional responsibility (Sullivan, *et al.* 2007: 47) are more equitably aligned. Reform ensures status-building is available to reverse alienation and detachment (Rochford, 2008: 41). In this way the privatization trend in academia is reversable and law study doesn't have to be a choice between 'practice-ready' graduates and broad-based 'liberal arts' exposure (Brand, 1999: 109).

First-year law study covers a core set of traditionally mapped subjects. These are (and should continue to be) delivered in traditional doctrinal style. Beginners move from puzzlement about law to familiarity as content knowledge is increasingly understood. The mystification of being transformed into a lawyer should be preserved. But the approach is imperfect because it lacks integrating knowledge with purpose. That needs altering. The Webster program at a law school in New Hampshire, United States (US) shows how that can happen. But even the Webster program isn't perfect. It can be improved with a three pillars model for law study (Gerkman & Harman, 2015) that would include the suggestion of retaining doctrinal learning but injecting it with interdisciplinary exposure and patterning it after medical training simulated learning for a more effective pedagogical application (Sullivan, *et al.* 2007).

Unfortunately, education is not immune to market impacts. These need to be tempered by idealistic values (Brand, 1999) that enrich perspectives (Rochford, 2008: 42). Experiential learning, professional responsibility and the privatization of law all play a role in how law study reform will end up being expressed. Learning is improved by better linking doctrinal and experiential methods of teaching (Tokarz, *et al.* 2014: 13) so that students might become better trained professionals capable of effectively serving the public (Borrego & Newswander, 2010: 62). The three pillars approach recognizes there is a need to master an effective combination of content knowledge, practice-skills and professional identity training to develop effective decision-making skills to competently perform services in circumstances of uncertainty, which is to say—to teach students how to recognize complexity and continually learn from experience (Welch Wegner, 2009: 20-21). Doctrinal pedagogy is effective for teaching critical legal thinking but inadequately addresses purpose in social-context and practice-skills training requisites. Students must master discipline-specific competence and world-view knowledge to serve as effective practitioners in complex, diverse professional settings.

II. COLLABORATION & INDIVIDUALISM

In Australia legal education evolved in a non-structured way, in fits and starts, without any serious inquiry into quality and purpose, in contrast to its development in the United Kingdom

(UK), (Barker, 2015:93). In the US, the Langdellian case-dialogue system as the dominant form of law study was firmly entrenched by the 1920s. The post-Second World War period saw the first formalized inquiry into Australian universities leading to the Murray Report published in 1957 identifying finance and development as a priority for legal education (Barker, 2015: 93). In the US not much has changed in legal education over the last century; but, in New Hampshire, the Daniel Webster Scholar Honors Program administered at the New Hampshire School of Law is an example of how law study can be improved by integrating thinking with practice skills and professional identity training (Gerkman & Harmon, 2015). The Webster program retains introducing doctrinal learning in the first-year of study but in second and third-years shifts pedagogical focus to interdisciplinary team-based collaborative instruction and practice-skills training. Other law programs prepare students to manage the impacts of economic, political and sociological influences on legal decision-making by offering courses in legal theory, history and the social sciences to expand the richness of study recognizing law's relationship to other disciplines is critical to its function (New York University Law School). The three pillars model proposed here embraces this three-step approach.

The Martin Report, published in 1964, identified the problem of the growing complexity of society, demands for more extensive training for lawyers to address those demands and the tendency of tension between professional training requirements and university educational aims as well as the problem of underfunding of legal education (Barker, 2015: 95). Interdisciplinary learning provides solutions to all of these identified problems. It offers a more humanistic legal education and a broader, more diverse context to better understand the richness of interests underlying legal problems which makes students better problem-solvers, and it addresses the issue of cost as described below and developed throughout this article.

The literature on legal education reform has taken up the question whether such education should be more sensitive to market demands or service-provider needs, but it is clear both interests are important. There is confusion among theorists on deciding what the proper distinction between private and public ought to be, how needs can best be met and how use-value and resource allocations may be optimized. Achieving these objectives is a priority for any business model, although public education is somewhat nuanced and unique. The professional culture appears to encourage training students to be practice-ready to better serve the public; while the effect of economic rationalism on education policy cannot be ignored (Brand, 1999: 109-110). Meanwhile, the Webster program integrates private and public needs linking training with service and improving student preparedness by administering formative and reflective assessment in a practice-based context (Gerkman & Harmon, 2015: 1). Interdisciplinary instruction broadens knowledge delivered while retaining the vocational nature of law (Brand,

1999:110) satisfying the Martin recommendation that wherever possible, legal education should be founded upon full-time studies at university level (Barker, 2015: 95, n. 12). Privatization serves individuals, reduces costs and strengthens the collective, public good (Rochford, 2008: 43). The history of legal education reform is marked by fits, starts, set-backs and the influence of privatization. There is an unresolved tension between providing a humanistic, beneficial liberal arts education and preparing students for practice in a socially-productive vocational profession (Brand, 1999: 111). Critics argue programs focused on doctrinal learning insufficiently instruct on critique that is inadequately defined (Rochford, 2008: 45, citing James, 2004: 380) and need to focus instead on interdisciplinary principles (Brand, 1999: 113, n. 10). Others suggest doctrinal instruction should remain a core legal education focus because students need to know law—meaning possess theoretical knowledge; but as recognized in the Bowen Report of 1979, lawyers must satisfy minimum academic education *and* practical training skills to qualify for admission (Barker, 2015: 96). In the US, doctrinal or theoretical instruction has been the priority over the past century (Rochford, 2008: 45). Review of the Webster program reveals educators now recognize knowing law is about more than what constitutes legal doctrine—graduates need to be better prepared for actual practice by having exposure to a mix of skills-training and interdisciplinary-based collaborative learning activities. The Webster approach produces more competent graduates who are better prepared to engage in practice than their traditionally trained counterparts (Gerkman & Harmon, 2015: 1-2).

The Webster program applies free market principles to enhance student economic value recognizing graduates are more productive practitioners if trained using collaborative learning (Rochford, 2008: 46, citing Hager, P 2005: 661). Individualistic approaches to learning do nothing to foster community spirit. Instead they reinforce competitive struggle, alienate, are passive and dehumanize commodifying learning equating students with units of production (Rochford, 2008: 46). The trend in aligning higher education with broader economic aims indicates movement toward privatization (Brand, 1999: 117). This is particularly so as state funding to public universities is reduced, institutions increasingly behave entrepreneurially (Brand, 1999: 118), students and the profession increasingly demand courses focused on business and theorists conflate commodification with vocational discourse seemingly to align education with professional demands (Rochford, 2008: 47). The problem with this individualistic pedagogical approach is it overlooks that law is a social practice (Rochford, 2008: 48, citing G. Langford: 1989: 21) and more satisfying solutions are possible using collaboratively-negotiated settlements as opposed to contested litigation. Viewing legal education as individualistic investment in self flies in the face of the bar's aspiration to equate practice with service. Interdisciplinary thinking erases negative connotations arising from

competitive, adversarial practice and instead encourages innovative solutions to complex social problems.

Problem-solving is improved when causation is better understood, and cooperation is encouraged to produce more effective solutions (Borrego & Newswander, 2010: 74). Ignoring the social nature of learning detaches students from their community (Rochford, 2008: 50). The literature identifies five key knowledge forms needed in effective law study. These include content knowledge, practice skills, ethical standards and appreciation of policy choices in the social context of law (Brand, 1999: 124, 137) expressed as doctrinal learning, interdisciplinary problem-solving and practice-skills training. Theory depends on practice for application; practice depends on theory for substance; and learning improves with holistic sequencing of all necessary elements.

III. ADVANCING LAW STUDY

The Bowen Report stressed the need for achievement of three essential components of training prior to admission to practice that incorporate theoretical knowledge, practical skills-knowledge and a component relating to professionalization (Barker, 2015: 97, n. 21). Law study is improved by deemphasizing the traditional teacher-focused, doctrinal learning model that views legal education as properly autonomous, subservient to the profession, isolating and individualized (Keyes & Johnstone, 2004: 539-543). The fact is, doctrinal pedagogy transmits knowledge about legal rules, but little more. It does not prepare students to appreciate the meaning and purpose of law in society. Some argue structuring the curriculum to develop problem-solving skills is improved by adding experiential instruction and small-group teaching activities to the curriculum (Keyes & Johnstone, 2004: 544). Others suggest training in disciplinary grounding, integrative quality, critical awareness, communication, collaboration and capacity to resolve conflict between disciplines (Borrego & Newswander, 2010: 66) is more useful. One report suggests the organized bar ought to identify its view of the best mix of content, methods and instruction skills for aspiring practitioners (Gerkman & Harmon, 2015: 3, citing the MacCrate Report, 1992: 334).

Most theorists will agree genuine learning requires active engagement with teaching focused less on routine delivery of transmitted knowledge from teacher to student and more on guiding students to develop their own understanding of how to learn (Keyes & Johnstone, 2004: 546). Successful teaching depends on purposeful course design that entail appreciating how practice is about more than imitation—it concerns applying knowledge to problem-solve by effectuating prior-acquired knowledge and skills for contemporary application and enhancing capacity by improving critical thinking, analysis and judgment.

The Bowen Committee recognized legal education must teach analytical skills, substantive legal knowledge, but also basic practice and research skills, including the skill of communication, familiarity with the institutional environment and an awareness of the non-legal environment and its connection to the legal (Barker, 2015: 98, n. 31). The Webster program acknowledges this instructional agenda and was designed to teach students how to determine effective responses in law practice under certain factual variables (Gerkman & Harmon, 2015: 3) in random combinations based on contingent human nature. The curriculum was developed to improve learning by promoting a methodology that articulates the advantage of combining perspectives to capitalize on synergy to teach students to translate knowledge across disciplinary boundaries, establish common ground in problem-solving and develop critical awareness necessary to make sense of knowledge by framing problems with interdisciplinary combinations in mind (Borrego & Newswander, 2010: 66-69). This is an example of critical autopoiesis in teaching and learning. Law involves translating messy human social issues into clarity using legal reasoning to take strategic action to advance a client's cause. It represents order derived of progress. To succeed with such a course, it is necessary to parse distinction between what is private and what is public (Sullivan, *et al.* 2007: 54) in search of optimally effective pedagogies along the way.

Educators recognize that intercultural knowledge of other disciplines effectively socializes learners and improves outcomes by displacing inefficient, individualistic, private disconnects (Woods, 2007: 853-854). To that end, students pursuing law study may be encouraged to do an extended course combining distinct but related subjects (Sullivan, *et al.* 2007: 54). Learning how law operates as it relates to other disciplines would produce more effective practitioners (Woods, 2007: 853-854). Discipline-specific study is invaluable for creating specialists, but interdisciplinary learning promotes development of otherwise untapped boundary-crossing higher-order thinking and communication skills necessary for success in the workplace (Ivanitskaya, *et al.* 2002: 97).

Law study aims to teach content knowledge, the ability to apply legal principles to resolve problems, familiarity with court procedures, the ability to draft documents, an appreciation of the role of law in society and knowledge of ethics and practice-skills, generally ('Studying Law in Australia', n.d.). Law is a professional discipline — to better prepare students for practice, founders of the Webster program sought to implement MacCrate-described lawyering skills (Gerkman & Harmon, 2015: 4) to better integrate instructional methodologies, interdisciplinary learning and practice-skills training and thereby encourage more collaboration between students from different subject areas teaching them critically useful knowledge-pooling skills for advanced problem-solving capability (Woods, 2007: 854). Student learning improves when the curriculum is altered to retain the benefits of traditional doctrinal learning, while expanding

to include equal focus on interdisciplinary connections and practice-skills development. Student competence is enhanced by understanding the legal environment of capitalism, the embeddedness of law in social relations and the complex role of law in resolving inequalities of race, class, gender and sexual identity experienced in society.

IV. RESOLVING THE TENSION BETWEEN LAW SCHOOLS & THE PROFESSION

The reform suggestions proposed here reflect criticism of legal education in the literature and profession including the ongoing debate over the continued utility of articling as a tool of pedagogy in commonwealth law nations. There is a recognized gap between what the profession indicates it wants (practice-ready lawyers) and what law schools seem capable of providing (almost practice-ready lawyers) (Gerkman & Harmon, 2015: 4). How is this divide to be bridged? Some theorists complain pedagogical training for academic staff is inadequately supported and insufficient rewards are available to promote innovative scholarly approaches to teaching (Keyes & Johnstone, 2004: 556). Others complain private practice exerts excessive control over the curriculum and academics need to have more input (Keyes & Johnstone, 2004: 557). This latter claim is based on the idea that instruction ought to focus less on practice-skills training and more on theory or alternatively, on interdisciplinary context and purpose learning outcomes. Meanwhile the reality is reform requires adequate funding to ensure quality control and good instruction will effectively cover all necessary elements in an all-inclusive law study. The Pearce Report, viewed by some as the most comprehensive, significant investigation undertaken of Australian legal education favored the Socratic casebook method of instruction over expository lecture methods (Barker, 2015: 101). That would represent improvement but unfortunately does not go far enough to better train students for practice proficiency. Pearce also identified positive trends in legal education reform including growth in the use of combined degrees, small group teaching, skills training, provision of graduate study and specialized focus on teaching and research (Barker, 2015: 101, n. 65, citing McInnis *et al.* 1994: 170). These suggestions effectively promote holistic learning and ought to be encouraged.

Some educational programs focus on interdisciplinary purpose and practice-skills training with positive effect (Keyes & Johnstone, 2004: 558, note 156, citing Brownsword in Cownie (ed.) 1999: 27-30, 36-38). For example, at Central Michigan University, instructors of literature, history, music and art share methodologies, discuss how their expertise and disciplines overlap (Ivanitskaya, *et al.* 2002: 97-98). and engage in a curriculum designed to improve student learning outcomes by integrating knowledge-analyses from diverse subjects to address a specific problem. At Queensland University of Technology, instructors teach discipline-specific capabilities embedding specific skills-learning in maximally relevant courses (Keyes & Johnstone, 2004: 559). Other studies indicate interdisciplinary activities and collaborative learning methodologies are helpful learning tools (Cooper *et al.* 2001: 233). A mix of

interdisciplinary learning and structured activity-based teaching using a student-focused approach beneficially guides students in constructing their own knowledge (Keyes & Johnstone, 2004: 559-560). This latter skill is an absolute necessity for practice proficiency.

An effective pedagogical inquiry is to have instructors think about articulating context and purpose, assessing student progress and providing constructive feedback to correct misconceptions ~~of~~ in understanding law (Keyes & Johnstone, 2004: 560-561, nn. 168-175). Problem-based learning presents interdisciplinary material and identifies connections between disciplines to enhance student learning. Interdisciplinary instruction teaches students to create meaningful knowledge-structures that guide decision-making, assisting students in recognizing patterns and connecting them to newly encountered events and ideas (Ivanitskaya, *et al.* 2002: 99). Exposure to the liberal arts provides useful context for understanding the role of law in society and is readily available at most every university. Students can combine undergraduate and advanced degrees to take full benefit of the knowledge available by integrating the connections that exist between the disciplines enhancing competency (Gorman 1971: 848).

Law study requires a commitment to intellectual rigor, embracing dogma, developing practice-skills (Menkel-Meadow 2007: 555) and taking the time necessary to assimilate knowledge, skills and abilities to appreciate how to apply them effectively to resolve legal problems. Law is scientific, artistic, humanistic and social. Its study requires an open mind about how law impacts social life (Luhmann, 2004). Law study must recognize the human connection between action, its consequences and discontents—which is what law schools need to teach their students (James, 2000). Law schools need to provide students with the skill-sets necessary to reflect on broader determinants of law (Webber, 2004: 567-568). This requires effective practice-skills and understanding how law impacts individuals as well as society overall.

Theorists recognize the practical limitations of exclusive reliance on doctrinal pedagogy. It is too adversarial and patriarchal (O'Brien, 2011). They observe more theoretical and sociological approaches would better prepare students for professional challenges (Webber, 2004: 571). Legal education was once constituted primarily of practicing lawyers mentoring apprentices. Later, schools formed to legitimize law study in response to criticism indicating the apprenticeship method offered inadequate academic preparation. Instruction delivered by practitioner-lecturers was thought more effective. It increasingly bureaucratized and after the 1970s a permanent academic staff was formed on the view teaching and scholarship required organization into formal structures of appointment (Webber, 2004: 575). The literature recognizes enhanced quality of instruction derived from movement toward more permanent full-time academic staff (Webber, 2004: 576).

The doctrinal Socratic method of case-dialogue delivery was intended to make law study more scientific, theory-based and dogmatic. The law study reform proposed here is intended to improve the preparation of students for practice—teaching them what they need to know in terms of advocacy, analysis, counseling, interviewing, lobbying, negotiating, presenting, speaking and writing about law (Menkel-Meadow 2007: 577). For example, a lawyering seminar linked to a substantive course using simulated learning that provides students an experience of thinking and doing (Sullivan, *et al.* 2007: 35) is a far more effective collaborative learning-in-context approach because it ~~that~~ engages students in learning and enhances instructional outcomes. This reform aims to reinforce content knowledge development in practice settings, minimize harm by guiding, provide better instructional feedback for learning, evaluate and correct errors in a risk-free environment and respond with efficiency to the challenges posed by the reality of rising costs in education (O'Brien, 2011: 129, citing Kift, 2008: 2).

The doctrinal case-dialogue critical thinking approach of teaching students to think like lawyers is necessary for effective law study; but the apprenticeship model of training through practical experience is also necessary. Alone, both methods are deficient. Together, learning is improved. What is necessary to effectively reform law study is to construct a proper mix of doctrinal, interdisciplinary and practice-skills training that will enhance student learning outcomes. Consistent with flexibility in law programs, academic teaching staff must revise curricula to better respond to student, bar and public needs. A plan to achieve this follows.

VI. REFORMING THE STRUCTURE OF LAW STUDY

The value of interdisciplinary law study is outlined in a proposal favoring merger of the graduate Bachelor of Laws curriculum with undergraduate study (Kilgour, 1955: 83). This approach encourages a more effective law study at less cost integrating doctrinal with experiential learning (Tokarz, *et al.* 2014: 14) and restoring context to law study by incorporating the practical effect of legal phenomena in social relations (Webber, 2004: 579). This approach also affords students more elective space in their academic programs opening access to the entire university for interdisciplinary exposure (Chanen, 2007: 42), and permits attaching simulated learning laboratories to lectures to reinforce theoretical underpinnings ~~standings~~ by using practical applications of them. Improvement in student learning is shown in evidence drawn from assessment of student learning outcomes results, interviews with students, analysis of data on job placement rates of graduates or rates of placement in advanced programs of law study including indirect evidence of career reporting.

The Australian Law Reform Commission Report entitled 'Managing Justice' published in 2000 made a salient comparison with the MacCrate Report's 1992 review of legal education in the US. MacCrate called for a reorienting of legal education around what lawyers need to be able to

do while the Australian position remained anchored around outmoded notions of what lawyers need to know (Barker, 2015: 103, n. 85). MacCrate provides an abundance of evidence to support its conclusions. Competent provision of legal services means helping clients discover effective ways to resolve a problem—this is doing that goes beyond knowing and is what law study must be reformed to teach.

Interdisciplinary-based instruction produces lawyers better able to do. They do better by imagining creative solutions for better legal results (Tokarz, *et al.* 2014: 18). Law study is judged by the quality of instruction and the competency of graduates to perform well. Law is but one discipline in the business of education organized to deliver quality instruction. Each competes at the university for students and resources, must offer highest quality at lowest cost and if it is to thrive, ~~it~~ must be viewed by its consumers as value-producing and offering of a distinct competitive advantage. For example, the partnership between Manor College and Delaware Law School at Widener University is an early-stage effort to create such a product (Manor College and Delaware Law School Form Partnership, n.d.). There, students may enroll in law-based degree programs to complete multiple degrees. Such an arrangement ~~agreement~~ can stream-line study and save students time, money and enhance the quality of their education. The objective of law study is to deliver a balanced, complex educational experience that guides students in learning how to identify legal problems, prioritize solutions and appropriately respond to challenges. Programs such as this offer a means to leverage university resources, expose students to enriching interdisciplinary connections through collaborative processes and deliver instruction better suited to practice needs (Moliterno, 2013: 81; Cooper, *et al.* 2001: 229, citing Hammick, 1998: 323-332; Welch Wegner, 2009: 20). Doctrinal teaching suggests law practice is adversarial intellectual combat but there is more to it than just that—cultural purpose underlies the meaning, application and enforcement of legal duties and rights and instruction must address those relations. Law study reform would re-integrate previously divided disciplines to achieve that result ~~end~~.

Law study reform acknowledges the validity of complementarity. Effective teaching addresses student and practice needs, opens minds to alternative ways of thinking, allows for doctrine and practice-skills development and stimulates learning by identifying prior-acquired knowledge to build on and connect to other-discipline applications. This is how reform can advance a holistic appreciation of law's relationship to society. Instructors must encourage excellence in critical thinking, content knowledge acquisition and contextual understanding integrated by teaching students how to notice patterns, reflect on meanings, identify, describe and define problem-solving strategies, communicate insight and apply knowledge innovatively to confront uncertainty in situational complexity—and achieve all this effectively. This is

accomplished ~~achieved~~ by active collaboration among peers to distill better solutions to problems (Tokarz, *et al.* 2014: 13).

Reform has a chance for success if the silos of intellectual isolation that falsely promote law as a relic of scientific doctrine devoid of interdisciplinary sensibility are deconstructed. Law is less effective when it is divided from its close connection to other social science disciplines (James, 2000). To reintegrate law with its natural partners ~~to~~ and make it more humanistic, students must learn to think about content in terms of its impact. Instruction must blend theory with practice to enhance understanding. The first step toward effectuating a more meaningful law study is to embrace the opportunity to develop and exchange ideas systematically. The second step is to identify a workable model to connect what one knows with what is unknown to resolve the central problems of social life, in getting along with others. The third step is to actualize those connections and apply them to good effect. The three pillars approach would subject students to an intensive, two-year program after a traditional doctrinal first-year introduction to law. Building on the traditional first-year curriculum, students would follow a regimented set of requirements in a specified sequence. This curriculum mapping approach would ensure students are immersed in professional relationships and develop collaborative learning skills to encourage reasonable risk-taking, learning from error with constructive feedback and promoting new ideas and seeing events through others' perspective with an open mind (Gerkman & Harman, 2015: 6).

The Webster program offers a combination of formative, reflective and summative assessment as both a critical aspect of the learning environment and a means to measure outcomes with the purpose of better transforming students into competent practitioners (Gerkman & Harman, 2015: 6, citing Garvey and Zinkin, 2009: 117-119). The courses required in the Webster program include pretrial advocacy, alternative dispute resolution, a survey course in client counseling, family law, domestic violence, conflict of laws, commercial transactions, trial advocacy, business transactions and advanced problem-solving and client counseling all of which are organized around simulations, class discussions and mock trial activities (Gerkman & Harman, 2015: 7-8). The assessment provided is formative including frequent and constructive feedback on performance as students advance in the program allowing for productive reflection on the feedback and opportunity for self-correction as a component of student learning (Gerkman & Harman, 2015: 10). Assessment is reflective in that students consider formative feedback, evaluate peer performance, contemplate what they are learning and are guided in developing a strategy to cure identified weaknesses. Reflection permits a more sophisticated understanding of how lessons learned are intended to develop proficiency as the lessons relate to the practice of law and the role of lawyers in practice. Students are evaluated on their interpersonal and

professional interaction with clients and ability to organize relevant information for competent representation—meaning their capacity to utilize information (Gerkman & Harman, 2015: 11).

Such a learning approach improves law study integrating practice-skills training and awareness of purpose reconnecting theory with practice. The result is a better-quality graduate (Cooper *et al.* 2001: 230) who is more prepared to grapple with legal problems. As a student I wondered why my contracts professor dedicated as many class sessions to Hawkins [1929] referred to as the Hairy Hand case, as he did. There, a doctor had promised his patient a perfect hand but couldn't deliver same. The patient sued for breach of promise, but his damages were reversed on appeal because it was more proper to award the difference between what was promised and what was received than omitting the value conferred. I mention this here to make the point that the doctrinal lesson learned was not justifiably important in the greater scheme of contract law to have spent the time spent on the lesson. Such is the deficiency in traditional Socratic method doctrinal law study pedagogy (James, 2004b: 588). Valuable instructional time was ill-used.

VII. ON PRIVATIZED LEGAL EDUCATION

While time can never be restored, space in the curriculum can be more efficiently allocated. The form, nature and purpose of legal education today is a product of government intervention, market demand and resistance by academic teaching staff (James, 2004b: 590). Legal education is influenced by alternative discourses representing inconsistent world views that include doctrinalism, vocationalism, credentialism, liberalism and multiple variants in critical legal scholarship discourse (James, 2004b: 590). The adversarial nature of law is competitive and stressful (O'Brien, 2011: 131, citing Kelk, *et al.* 2009: 12). While the teaching of law must reflect its adverse nature, teaching law in a competitive and stressful learning environment *for the duration* of a program isn't justifiable. The approach ~~although it~~ is arguably beneficial in some respect—the traditional-adversarial approach is initially useful to desensitize students to the human aspect of legal matters to focus on analysis in a deconstructionist mode ~~approach~~; but reconstruction thereafter is necessary. An example of positive reform is New York University's program (Sullivan, *et al.* 2007: 38-43) in which students are offered vocabularies for thinking about practice, are presented with a legal problem, guided in learning how to resolve it using collaborative instructional activities, are required to plan and execute a response, engage in collaborative critique, develop an understanding of content knowledge, critical thinking and communication skills—all from an experiential perspective that enhances student learning outcomes and reduces peer-generated competitive pressure and stress.

Assessment of student learning data is collected to support progress in learning and to reinforce teaching that meets student needs. This refers to consonance, measuring the success

of intended outcomes; individualization, reinforcing growth in knowledge skills; relevance, comparing group learning with individual activities; feedback, supporting student progress; and facilitation, promoting practice-skills (Cooper, *et al.* 2001: 231, citing Mullen, *et al.* 1985).

Student learning may be assessed with reaction by evaluating the learning experience; learning by observing possible effects on student knowledge; skills development by identifying how best to couple learning substance with process; and results by recognizing possible impacts on student learning (Cooper, *et al.* 2001: 233, citing Kirkpatrick, 1967). Interdisciplinary and experiential teaching methods can be utilized to supplement doctrinal learning, encouraging the development of positive professional attitudes and a collaborative work ethic. Innovative teaching, including group-work, experiential projects and collaborative learning methodologies (What's the Difference, n.d.) fill gaps in learning left by doctrinal teaching and produce a supportive learning environment where students are guided in developing a context for their knowledge and team-building skills that reduces the negative psychological impacts of traditional law study pedagogy.

The literature acknowledges there is a need to increase course offerings dedicated to practice-skills training (James, 2000; Moliterno, 2013) and to provide a social perspective on law's purpose in dispute resolution. The second-year of law study could shift instruction from doctrinal critical analysis to interdisciplinary re-contextualization, using small-size laboratories attached to lectures, collaborative learning exercises and other innovative instructional practices to restore context and prepare students for later-stage experiential learning. Academic staff could be encouraged to attend workshops focused on identifying connections between law and other disciplines and new academic staff who value interdisciplinary learning could be sought-after.

Law school policies impact teaching by regulating most every aspect of the education process in the name of efficiency, accountability and marketability with utility taking precedence over other objectives such as the transmission of doctrinal knowledge, teaching of practice skills, pedagogical innovation or social reform (James, 2004b: 593). In fact, under the corporatist model specifically critiqued by James, 2004b, it would appear law study as a product might be viewed as a quantifiable process capable of being managed in such a way as to minimize costs and maximize quality, profit, and customer satisfaction (2004b: 595). Law schools compete to attract the highest-quality students and faculty possible in what is essentially a capitalist commercial enterprise that seeks to minimize its costs and maximize its profit (reputation in the case of public institutions) by improving its relative ranking compared with comparable institutions.

Interdisciplinary teaching helps students better understand law because law is explained as a social construct and system of beliefs and meanings that attach to human behavior. Making sense of human social conduct facilitates conflict resolution of problems that arise in a complex social system made up of competing interests. The three pillars of law study discussed here can help students integrate a tightly organized content knowledge, liberal arts and practice-skills regime. At each pillar, critical thinking and analysis skills are formed from distinct points of departure and perspectives. Ideas are concretized and yet are made to retain a degree of flexibility necessary for effective problem-solving. Knowledge of the arts, humanities and social sciences guide students in appreciating how law functions in the context of human social relations. Lawyers-in-training need to be reminded that their clients are individuals with real-world problems and vulnerabilities—not mere cases to be practiced on. Lawyers need to be trained critical thinkers, competent to effectively file and argue claims and defenses supporting client interests; but also, to be sensitive to clients as individuals who feel and experience pain. Law study develops intellectual capacity in students to objectively apply rules of law to the facts at hand, to communicate and act in uncertainty and to respond to diverse situations with reasoned, finely-tuned judgment. Theorists complain of shortcomings in pedagogical approaches, arguing deficiencies are caused by a mismatch between opportunities and threats (McAuslan, 1989) and the ability of the university to respond appropriately; but it is Ivory Tower thinking ~~mentality~~ that limits institutions of higher learning in efforts to achieve their objectives. Such entities must learn to function as businesses—because that is what they are. Pursuing knowledge for knowledge's sake is laudable, but without a patron to support the endeavor, funding must be justified by a business model that is productive. Privatization has naturally impacted education—invisible-hand-like, the university functions as a vehicle to develop market and property interests (Thornton, 2004: 482).

The commodification of legal education has had the effect of compromising certain liberal-traditional values associated with the disinterested pursuit of knowledge now favoring alternative values aligned with entrepreneurialism (Thornton, 2004: 482-483). The resulting impact on law study is resource cut-backs, downsizing, increases in stand-alone law degrees, reversion to larger class-size lectures on doctrine that reinforce the autonomous nature of law and its disconnection from the social forces that drive it (Thornton, 2004: 483). These impacts are not beneficial. They fly in the face of a well-rounded liberal arts perspective on knowledge-generation that would teach~~es~~ students how to respond effectively to unplanned-for contingencies by broadening their sensitivities (Thornton, 2004: 485) and thus, their sensibilities. Characterizing education as a commodity, reorders priorities in ways that reward efficiency but sacrifice quality as by increasing class size to reduce delivery cost.

As described by James (2000), the Pearce Report identified a number of problems with Australian legal education that are generalizable to law study in all common law nations. Pearce identified deficiencies in law study that were in need of remedy including the negative weight of inertia, concern with the commitment institutions have toward teaching and the causes of and responses to student dissatisfaction with their learning (James, 2000). The study recommended attention be paid to theoretical and critical perspectives but noted law must be taught in its social context and a purely technocratic approach to law study would be inappropriate (Thornton, 2004:485). The report emphasized law study should stimulate student intellect and encourage independent thought and inquiry about the complex relationship between law and society (James, 2000). Relatedly, the MacCrate report (MacCrate, *et al.,* 1992), also generalizable to law study in commonwealth law nations, recommended schools emphasize practice-skills instruction and formation of values, provide students with opportunities to perform lawyering tasks with guidance, offer constructive feedback and encourage reflective evaluation of performance. This describes the ideal model of a liberal law school education—one that provides a balanced mix of delivery of necessary elements for a meaningful education. This objective seems to have been lost as a result of the privatization of law. In many respects, neoliberalism has replaced social liberalism and positivist legal pedagogy now caters almost exclusively to corporate interests (Thornton, 2004: 486). The debate about the necessary deliverables in legal education rages on as the pendulum swings between dominance of private or public interests. Some argue enhanced practice-skills training and interdisciplinary context in law study are necessary elements of reform. Others claim the doctrinal learning method is preferable because practice-skills training is vocational, non-academic, too time-consuming and too costly to deliver—in short, it is an academically inferior approach easily accomplished in the workplace over time (Sullivan, *et al.* 2007: 94). Defenders of doctrinal pedagogy conclude there is no worthy alternative model for skills-training (Sullivan, *et al.* 2007: 94, citing Tomain *et al.,* 1990) concluding the predominant focus is legitimately placed on market-based, applied knowledge (Thornton, 2004: 486).

VIII. A TRINAL CURRICULAR & PEDAGOGIC REFORM

This article has articulated the necessity for law study reform. Is effective reform possible, and if so, how would it best be implemented? Reform requires making better use of the knowledge, skills and resources available at the university. This is accomplished by promoting meaningful interdisciplinary teaching that facilitates student learning using critical engagement with complex social issues in simulated formats. Reform is possible but requires altering how institutional resources are allocated to enhance student learning outcomes. The American Medical Association integrates the teaching of science theory with clinical practice-skills training. Simulation exercises are used to train students in developing effective problem-solving skills (Sullivan, *et al.* 2007: 94). The study of law could be improved by similarly implementing a

pedagogy of 'seeing'/ 'doing'/ 'demonstrating'/ 'knowing' to develop more effective practitioners of law. Learning requires guidance, feedback, correction, mirroring, redoing, prompting on 'how' 'why' and 'ought' skills-development with respect to the functioning of law and creating confidence in learners that they indeed do possess sufficiency of ~~t~~ knowledge, skills and understanding to engage in practice effectively.

While it is true that learning to do by doing can create a risk of harm; it is also true that there are ways to minimize said risk. For example, one ought to learn substance *before* process or 'what' before 'why' and 'how'. The trend toward privatization in academic study has forced law schools to deliver their product in more traditional, doctrinal, positivistic packaging—to curtail costs which idolizes the cenobitic-monastic image of the ideal learning environment. The notion of a community of hermitic scholars that pursue the ideal of pure intellectual discovery free of the distraction of daily life, however, is no more (Thornton, 2004: 488). All that remains of that is the ceremonial garb. Even the candles are long-gone. The three pillars approach to law study described in this article would retain a measure of traditional doctrinal instruction but would improve law study by expanding the curriculum to include interdisciplinary learning intended to make law study more relevant to real-world practice (Jennison, 2014). Jurisprudence is the sociology of law (Luhmann, 1985). Reintegrating law that was previously separated from its social science counterparts is intellectually and practically necessary. The reintegrative use of simulated learning reverses the division by blending law study with other social science disciplines using the adapter of context. Doctrinal critical thinking is strengthened when it is bonded to other law study foundational elements such as communication, content knowledge, context and practice-skills training (Bathurst, 2012).

The MacCrate report notes the importance of developing lawyering skills in law study. In Appendix E of the report, it is observed that in some locations, practice programs are used to supplement theory-based training such as, for example, the use of articling (Articling, n.d.), which is still required for licensure in some commonwealth law jurisdictions (MacCrate, 1992). The literature suggests higher-order thinking and learning occurs in collaborative settings that promote familiarity and provide learners with the opportunity to work through simulated problems, encouraging intellectual deconstruction and reassembly, with attention paid to how parts combine to form an integrated whole. Contextualized experiential learning of discipline-specific core content in a broader context improves knowledge. This type of positive, beneficial supplement-to-learning reform may meet with resistance, however, if instructors of practice remain ~~are~~ devalued. The method is at risk in an environment of declining resources and market-induced pressures that threaten the traditional idea of the university as provider of a broad-based liberal arts training (Thornton, 2004: 494). Doctrinal theorists conceive of practice-skills pedagogy as the ability to find, draft and argue doctrinal law, with practice-skills always

subordinate to theory-based approaches to law study (Sullivan, *et al.,* 2007: 114, citing Garth & Martin, 1993: 504). There is no place in traditional law curricula for contextual learning, and scant space for recognition of the value of practice-skills training. Doctrinal theorists, however, have got it (in part) wrong—practice-skills and a sense of professional purpose are in fact co-equal determinants of a meaningful and effective law study and expanding on student exposure to them is absolutely essential. While practice is distinct from theory, it requires a substantive understanding of law's broader role and purpose in social relations.

To the extent law study is philosophical and historical, it is accepted as a legitimate intellectual discipline; but to the extent it represents vocational training, it is denigrated law-for-practice not knowledge (Thornton, 2004: 494). This points to the deeper, more important divide in the debate over reform between business and property interests, and those focused on broader social issues (Thornton, 2004: 495). In conjunction with the market-oriented focus on less reflective or philosophical business law subjects, there is a tendency to wish to teach law 'as it is' that dilutes the importance of critical rational discourse. Some theorists argue legal education as a source of knowledge-production is circumscribed (Thornton, 2004: 495-496) but others acknowledge that because law is not autonomous (Menkel-Meadow, 2007: 557), students must be taught to appreciate its function in society and inter-connection with other disciplines. This appreciation includes understanding economic, moral, political and social elements embedded in law drawn from social science (James, 2000), not just the interactive relationship between law and business.

There is no one single 'type' of a university. Legal regulation occurs in places other than universities and law schools. Higher education today is short on money, is micro-managed and any proposed reform of legal education is likely to be met with resistance following a 'we can't do that' conclusion to innovative suggestions (Collier, 2004: 506-507). For example, law-related professional-development trainings/ workshops/ seminars expenditures aren't reimbursable by the academy because 'you would do them anyway.' *What?* Listen to the sound of capitalism and privatization speaking. The fact is law is typically derived from policy decisions based on empirical claims about living conditions, normative assertions, desired change and economic, political and social considerations (Collier, 2004: 506-507). To provide context about what it means to be a lawyer, students must adopt a reflective capacity and appreciate that their study entitles them to entrance into membership in a distinguished, professional community in which lawyers serve as officers of the court. Law influences how people behave toward one another. Law is made through interpersonal relations that go beyond the boundaries of jurisprudence (Menkel-Meadow, 2007: 560). Law is deliberately constructed, and so law study must be open to interdisciplinary and experiential elements that reflect the evolution of thinking about appropriate mediation in human social relations.

Right or wrong, for what it's worth, it is necessary to recognize that credentialism drives legal education. This thinking, that the best measure of ability comes with academic qualification, is what has caused doctrinal academic staff to denigrate the value of practice-oriented 'vocational' staff, is what has pushed interdisciplinary context beyond consideration and is what has led to the characterization of any form of pedagogy in law study, other than doctrinal, as less valuable (Sullivan, *et al.,* 2007: 101). This issue is connected to the fact that the corporatized university and trend toward privatization in social relations is a by-product of the privatization of law. The entrepreneurial university is a redirection of all aspects of university life toward the exploitation of learning and knowledge, commodifying what was once pure (Collier, 2004: 509-510).

The privatization trend has generally transformed the conventional wisdom on how a public university education should best operate. Utility demonstrates corporate links should drive education, entrepreneurial modes should fuel qualitative change and how individuals function should be redirected to exploit learning to benefit business interests (Collier, 2004: 510-511, n.33, citing Polster, 2000: 183). Some theorists bemoan the negative consequence of the privatization focus to which we have all grown accustomed, arguing subservience to commercially-oriented objectives undermine the traditions of established academic teaching and research and puts disinterested inquiry and academic standards (Collier, 2004: 511) at risk, forcing universities through the professoriate to sacrifice pure knowledge-reproduction. In the context of law study, this distracts from what should be its primary purpose—guiding students on the proper role of what it means to be a lawyer (Tokarz, *et al.,* 2014: 30).

For many academic institutions, it is sufficient reform to use casebooks with materials that go beyond traditional methods, coupled with designer-specialty courses that connect law with business and use a sprinkling of small-group seminars to promote critical thinking and communication skills. However, optional, pass-fail electives in devalued practice areas taught by subordinated academic staff (Sullivan, *et al.,* 2007: 88) sends a poor message about what is valued in academic study. Restructuring the curriculum to create combined degree offerings with scale-efficiency and more efficient resource-use in mind would truly benefit law study. An example of effective reorganization of law study is in how the course 'Alternative Dispute Resolution' is offered at Hamline Law (Sullivan, *et al.,* 2007: 105). There, the course is cross-listed with the university's management and public administration program evidencing entrepreneurial integration, creating interdisciplinary impact and reducing costs by filling seats that would otherwise go empty (Sullivan, *et al.,* 2007: 101). Another example of cost-effectively enriching the educational experience of students by expanding their exposure to interdisciplinary approaches to problem-solving is the course offering 'Perspectives on Law'

available at the University of British Columbia that is intended to counterbalance the traditional first-year focus on doctrine by introducing complex relationships among law, society and values (Sullivan, *et al.,* 2007: 153) to students. Yet another example is the interdisciplinary study curriculum developed at the University of Toledo where law and social thought inquiry is combined to envelop the study of law within a rich humanistic and social science tradition that aims to explore connections among diverse disciplines as they relate to legal issues to promote critical and creative thinking (Welcome to The Program, n.d.).

Under the commodification of education regime under which universities appear increasingly to labor, knowledge is characterized as a raw material resource applied to generate social wealth and competitive advantage (Collier, 2004: 512). There has now developed a new debate about academic reform centering on identifying the future-bound purpose of universities. One school of thought favors support for economic development and would reallocate resources toward programs focused on training in science, technology, engineering and maths. The obverse approach would be to starve through neglect those programs that lack 'use-value' because they do not contribute obvious economic gain and cannot be justified in terms of priority-funding. These other programs fail to meet the criteria of value in the cost-effective delivery of education and research (Collier, 2004: 512). The dilemma in this is accepting the corporatization of the university. What would enable a better-quality legal education, and how may it best be promoted?

The structure of higher education is constantly transformed in terms of academic functionality and management practices (Collier, 2004: 513). Changes to the delivery of education have included political interventions aimed at producing a leaner, more flexible, cost-efficient and accountable public sector, and a repositioning or restructuring of traditionally civic, public-minded institutions toward entrepreneurial-driven objectives (Collier, 2004: 513). The privatization of education has its greatest impact in knowledge-reproduction operationalized at the level of individual performance where the rubber hits the paved road in terms of how institutional management impacts student learning, and how the institution is viewed in its larger community based on performance (Collier, 2004: 515). Legal education has responded to the pressure to privatize by shifting the orientation and purpose of instructional design away from intellectual inquiry toward instrumentalism and vocationalism to actualize a more practice-centered, market-oriented model (Collier, 2004: 527). This could be taken to mean that hitherto lauded effort to enhance practice-skills training is more in the way of responding to privatization trends than to improve law study. If the purpose of law study is to produce graduates competent to practice law, then the perceived graduate employment needs of the profession must have a greater impact on curriculum reform to provide students with a balanced, comprehensive program of knowledge and practice-skills training that would more

effectively integrate theory with practice (Jennison, 2014: 644, n. 4) and offer consumers more contextualized knowledge about the true function of law in society (Chanen, 2007: 42). The Webster program discussed in this article is an effective model for better integrating theory with practice to enhance student learning. When students in the program were compared with students not in the program, in terms of degree of achievement, it was found that participants were just as competent or more so than lawyers who graduated from law school within the prior two years of the study signifying clearly that the coursework provided the equivalent of practice-experience of two years in the field post-graduation (Gerkman & Harmon, 2015: 12).

IX. CONCLUSION

Corporatization, privatization and commodification are observed trends in the evolution of academic institutions. The privatization trend is a response to rising costs coupled with reductions in public education funding that has made the traditional pursuit of knowledge driven by curiosity a near-impossible objective to achieve (Collier, 2004: 534, citing Thornton, 2001: 43). University legal education has had to adjust to this reality and to do so has had to undergo a painful restructuring. The purpose of law school is to develop competent professionals. A meaningful, effective reform of law study will require less large-scale doctrinal learning sections offered and more small-sized interdisciplinary seminars appended to skills-based training sessions. To achieve the greatest possible cost savings in what will amount to higher-cost delivery, law study reform must better integrate undergraduate, graduate and post-graduate offerings to leverage resources available at the university to strengthen the quality of instruction using a blend of doctrinal-interdisciplinary-experiential methodologies that better manage costs. The fact remains: students require effective correcting, guiding and mentoring with feedback to encourage critical reflection on their performance (Sullivan, *et al.,* 2007: 109). Theorists have observed incorporating interdisciplinary and experiential learning into the curriculum improves competency and enhances student learning outcomes by recognizing optimal resolutions to legal problems (Chanen, 2007: 42); focusing on developing good collaboration and leadership skills in students (Moliterno, 2013: 73); and using clinic to facilitate the ability in students to effectively respond to complex, real-world problems and indeterminate, contingent sets of facts in practice settings (Tokarz, *et al.,* 2014: 30). The shift toward increasing the offering of practice-skills courses and clinical opportunities along with integrating doctrinal with context and practice-skills training efficiently replaces the sage on the stage with a guide on the side (King, 1993: 30) to enhance student learning outcomes.

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