

# SOCIAL SCIENCE AND THE INTELLECTUAL APPRENTICESHIP: MOVING THE SCHOLARLY MISSION OF LAW SCHOOLS FORWARD

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As the first decade of the twenty-first century draws to a close in the United States, a number of different forces are converging to cause renewed interest in legal educational reform. One of the many influences in this direction has been a report from the Carnegie Foundation, which for decades had focused on improving professional education in the United States.<sup>1</sup> The Carnegie group outlined three kinds of learning (or “apprenticeships”) and indeed—intellectual, practical, and ethical—which the group deem

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\* © 2011, Elizabeth Mertz. All rights reserved. American Bar Foundation and University of Wisconsin Law School. I would like to thank the organizers of the John Marshall Law School’s *YES WE CARNegie* Conference for their hard work in putting together a fascinating conversation about law school reform, with special appreciation to Maureen Kordesh. I am also very grateful to the patient Editors of this Journal, whose work greatly improved and clarified my writing. It is a particular pleasure to benefit from expert guidance on my own writing while working through the publication process.

1. The Carnegie Report was published as a book entitled, *Educating Lawyers*. William M. Sullivan et al., *Educating Lawyers: Preparation for the Professor of Law* (Jossey-Bass 2007) [hereinafter *Carnegie Report*]. The authors of this report were Lloyd Bond, Anne Colby, Lee Shulman, William Sullivan (all from the Carnegie Foundation), and Judith Wegner (former President of the American Association of Law Schools); the group worked as a team to conduct site visits and assess the current state of legal education. The Carnegie Foundation has since announced a shift in its long history of research on professional education, with the advent of a change in administration. Carnegie Found. for Advancement of Teaching, *Foundation History*, <http://www.carnegiefoundation.org/about-us/foundation-history> (accessed June 29, 2011). One of the most famous Carnegie Reports was its 1910 report on medical education, often referred to as the Flexner Report; it has been credited as a major influence on today’s United States medical schools. Abraham Flexner, *Medical Education in the United States and Canada: A Report to the Carnegie Foundation for the Advancement of Teaching* (Carnegie Found. 1910); see also Andrew Beck, *The Flexner Report and the Standardization of American Medical Education*, 291 *JAMA: J. of Am. Med. Assn.* 2139 (2004). More recent Carnegie Reports include books focusing on engineering, nursing, and a re-examination of medical education, among others. See e.g. Patricia Benner et al., *Educating Nurses: A Call for Radical Transformation* (Jossey-Bass 2009); Molly Cooke et al., *Educating Physicians: A Call for Reform of Medical School and Residency* (Jossey-Bass 2010); Shari Sheppard et al., *Educating Engineers: Designing for the Future of the Field* (Jossey-Bass 2008).

necessary to preparing for law practice.<sup>2</sup> For some time now, legal educational reform efforts have focused on improving practical and ethical training (Carnegie's second and third apprenticeships), the *Carnegie Report* identified these areas as the ones most lacking in United States legal education today.<sup>3</sup> But I argue that important alterations in the first apprenticeship (intellectual) will be necessary if legal educators are to create a new integrated legal pedagogy.<sup>4</sup> Although this idea may seem to be counter-intuitive to many legal practitioners, I will make the case for social science as a key bridge between legal theory and law practice. Using this bridge, I argue, legal educators can alter the intellectual apprenticeship so as to make room for the incorporation of more ethical and practical training into the core of the law school curriculum. This insight is based in part on my own empirical research on legal education and the legal academy, which is primarily housed at and funded by the American Bar Foundation, on legal education and the legal academy.<sup>5</sup> In this Article, I will also draw on several current examples of law schools that incorporate social science into legal training, using them to illustrate how interdisciplinary research can bridge theory and practice for lawyers and the legal profession.

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2. *Carnegie Report*, *supra* n. 1, at 48, 194. The third apprenticeship is also described as one of "identity and purpose." *Id.* at 28. In defining their conception of apprenticeship, the *Carnegie Report* authors note,

Learning, then, entails embarking on an effort to gradually grow into the complex abilities of an expert. This is where the idea of apprenticeship enters. Research suggests that learning happens best when an expert is able to model performance in such a way that the learner can imitate the performance while the expert provides feedback to guide the learner in making the activity his or her own. . . . Expertise . . . is always shared among members of a community who have mastered certain practices. When such communities organize ways of transmitting this expertise to new members, they create apprenticeships.

*Id.* at 26.

3. *Id.* at 191. For examples of legal reform efforts, see the following websites: Center for Excellence in Law Teaching, [http://www.albanylaw.edu/sub.php?navigation\\_id=1721](http://www.albanylaw.edu/sub.php?navigation_id=1721); Institute for Law Teaching and Learning, <http://lawteaching.org/>; Center for Engaged Learning in the Law, <http://blogs.elon.edu/cellblog/>; and Best Practices for Legal Education blog, <http://bestpracticeslegaled.albanylawblogs.org/>.

4. On the need to incorporate interdisciplinary perspectives, see also Paul Maharg, *Reforming Legal Education: Learning and Teaching the Law in the Early Twenty-First Century* (Ashgate 2007).

5. See Elizabeth Mertz, *Law School Language: Learning to "Think Like a Lawyer"* (Oxford U. Press 2007); Katherine Barnes & Elizabeth Mertz, *Is It Fair? Law Professors' Perceptions of Tenure*, \_\_\_ J. Leg. Educ. \_\_\_\_ (forthcoming 2012).

## I. INTRODUCTION

Just at the moment when the *Carnegie Report* and other scholarly calls for legal education reform have begun to attract wide attention, a more politicized confrontation over reform within the United States legal academy is coming to a head. The American Bar Association, a key force in decisions regarding law school accreditation, finds itself at the center of a controversy over retaining tenure as a core requirement for United States law faculties. Ironically, debates over the need for traditional law teaching should integrate practice-oriented approaches have somehow become merged into an argument over job security and labor practices—a merger, I will argue, that is more detrimental than helpful.

This Article begins by discussing the contexts and contents of current debates over reform within the United States legal academy, examining proposals for change that have emerged against a background of fissure within United States legal education and practice. Recent ideas for reform have drawn on diverse sources, including the *Carnegie Report*,<sup>6</sup> as well as newly proposed recommendations for “best practices” in legal education<sup>7</sup> and highly publicized accounts of changes in law school curricula at elite schools like Harvard.<sup>8</sup> Like several earlier proposals,<sup>9</sup> these reform efforts concentrate on law schools’ failure to deal systematically with training for legal practice, as well as on these schools’ haphazard approach to teaching legal ethics. On the other hand, the *Carnegie Report* characterizes United States law schools as doing a better job at handling the intellectual training or apprenticeship required for nascent lawyers.

While I agree with the *Report’s* authors that the intellectual apprenticeship is the most highly developed part of current United States legal education, I also think that further progress in

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6. *Carnegie Report*, *supra* n. 1.

7. Roy Stuckey et al., *Best Practices for Legal Education: A Vision and a Road Map* (Clin. Leg. Educ. Assn. 2007).

8. E.g. Harv. L. Sch., *Rethinking Langdell: Historic Changes in 1L Curriculum Set Stage for New Upper-Level Programs of Study*, [http://www.law.harvard.edu/news/today/dec\\_hlt\\_langdell.php](http://www.law.harvard.edu/news/today/dec_hlt_langdell.php) (Dec. 2006).

9. See e.g. ABA Sec. Leg. Educ. & Admis. to B., *Legal Education and Professional Development—An Educational Continuum*, *Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (ABA 1992); William H. Simon, *The Practice of Justice: A Theory of Lawyers’ Ethics* (Harv. U. Press 1998).

this arena is possible—and indeed necessary—both to refine and strengthen legal theory and to provide links with clinical and ethics training. Just as in the time of the legal realists, I argue, we are at a moment when integrating interdisciplinary perspectives can help to fuel both more sophisticated legal theory and better integration of law practice into legal education. This Article concludes with a fuller explication of this overall argument, taking into consideration some current reform efforts that exemplify how the proposed integration of intellectual, social science, practical, and ethical training is already bearing fruit.

## II. CONTEXTS

In an unfortunate coincidence, legitimate questions about improving legal education are emerging just as a politicized struggle is erupting over law school tenure—at a moment when the ABA began to consider reducing standards for law school faculties. Indeed, in 2010, the ABA Standards Review Committee seriously considered a proposal to eliminate tenure as a core requirement for accreditation of United States law schools.<sup>10</sup> This odd (and, to many observers, troubling) development derives, in its own convoluted way, from a persistent split within United States legal education that dates back almost to its origins. On the one side, armed with his newly articulated “science” of law, stands Christopher Columbus Langdell, revolutionizing United States law teaching through the use of Socratic questioning designed to uncover regularities in doctrinal development. This focus on doctrinal rules created a formalist center for the dominant pedagogical approach that subsequently came to dominate in American law schools. On the other side were practitioners who had always socialized new lawyers using an apprenticeship model, in which novices worked with seasoned attorneys to learn the way “real” law works on the ground.

Although Langdell, from his elite perch in the Harvard Law School, clearly won the day in terms of formal United States legal education, the grumbling about his victory from the practicing bar has also remained a persistent feature of the scenery since that

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10. For a description of this development, see Debra Cassens Weiss, *ABA Committee Proposal to Eliminate “Tenure” Word Raises Law Profs’ Ire*, [http://www.abajournal.com/news/article/aba\\_committee\\_proposal\\_to\\_eliminate\\_tenure\\_word\\_raises\\_law\\_profs\\_ire/](http://www.abajournal.com/news/article/aba_committee_proposal_to_eliminate_tenure_word_raises_law_profs_ire/) (posted July 27, 2010, 7:29 a.m. CDT).

time. Practitioners have consistently complained that law schools neglect the practical training that is needed to actually perform the tasks of lawyering, such as drafting legal documents, managing a case in and out of court, and dealing with real live clients. For a brief time in the early twentieth century, the legal realist movement in United States law schools attempted to bridge this split between theory and practice. Their brand of theory turned attention to the practice of law—to the law-in-action. Legal realists contrasted this kind of law on the ground with “law in the books”—Langdell’s doctrinal vision of law. It is probably not surprising, then, that a call for a new kind of pedagogy also emerged from members of this original legal realist group, some of whom began to push for a “lawyer school” that would train students in law as it was actually practiced on the ground.<sup>11</sup> Interestingly, this very same movement toward practice was accompanied by increased attention to another tool for understanding law-in-action: social science. Legal realist scholars understood that if they were to move away from traditional doctrinal study of law in the books, they would need the insights and techniques of disciplines better equipped to understand how law worked out in practice.<sup>12</sup> However, the interest in social science rapidly waned within law schools themselves, leaving throughout the latter half of the twentieth century a sharp division between the theoretically and doctrinally oriented scholars, on the one hand, and clinical teachers, on the other.

The growth of clinical training in United States law schools, which took important impetus from these legal realist roots, has proceeded in fits and starts in the intervening years. By the end of the millennium, it had become de rigeur for law schools to offer some kind of clinical training—although not at the level where every student graduating from law school was required to obtain the basic skills needed to practice law. Some law schools did have tenured clinical faculty, although it was still quite common for most of the clinicians on law faculties to remain on shorter-term contracts. Similarly, many schools relied on largely untenured groups of specialized legal writing professors to teach students

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11. Jerome Frank, *A Plea for Lawyer-Schools*, 56 Yale L.J. 1303 (1947); Jerome Frank, *Why Not a Clinical Lawyer School?* 81 U. Pa. L. Rev. 907 (1933).

12. John Henry Schlegel, *American Legal Realism and Empirical Social Science* (U. N.C. Press 1995).

the kinds of writing required for practice.<sup>13</sup> These “legal skills” teachers were not generally expected to publish or conduct scholarship, but instead were expected to spend more time in apprenticeship-like relationships with students, intensively training small groups of students. At the end of the millennium, then, the division between “podium” or “stand-up” faculty and “skills” faculty had become institutionalized not only as a split in kinds of teaching but also as a division in labor conditions and scholarly orientations.<sup>14</sup> In this division, those who taught law students how to perform on-the-ground skills generally wound up with shorter-term contracts, lower salaries, and fewer demands in terms of scholarly production.<sup>15</sup>

However, in the usual kind of “ratcheting up” of credentialing and other requirements that has seemed to be occurring within the current United States employment market in general, untenured clinical and legal writing faculty began to experience additional pressure to produce scholarship on top of providing apprenticeship-style training for law students. It is not clear whether this demand arose as a result of direct requirements from law school administrators, or whether it emerged as part of an effort to raise the prestige of clinical instruction in law schools. In either case, the 1980s saw the emergence of *The Clinical Law Review*, a journal devoted to clinical legal scholarship, and *Legal Writing: The Journal of Legal Writing Institute*, specializing in scholarship pertaining to legal writing.<sup>16</sup> Articles by clinicians, legal writing professors, and others in these journals—as well as in less specialized law reviews—have pushed disciplinary bound-

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13. See the ALWD/Legal Writing Institute surveys (available at <http://www.lwionline.org/surveys.html>) for data tracking employment patterns in legal writing.

14. There appears to be variation among law schools in the terminology used to refer to law professors who perform only the more traditional kind of classroom teaching; adjectives in common use include “podium,” “stand-up,” “black-letter,” and “casebook”—but each has its limitations.

15. On differential status, job security, and expectations regarding clinical faculty, see Marina Angel, *The Modern University and Its Law School: Hierarchical, Bureaucratic Structures Replace Coarchival, Collegial Ones; Women Disappear from Tenure Track and Reemerge as Caregivers: Tenure Disappears or Becomes Unrecognizable*, 38 Akron L. Rev. 789, 792–298 (2005); Thomas F. Geraghty, *Legal Clinics and the Better Trained Lawyer (Redux): A History of Clinical Education at Northwestern*, 100 Nw. U. L. Rev. 231, 246–249 (2006).

16. For more information on these two journals, see *Clinical Law Review*, [http://www.aals.org/resources\\_clinical.php](http://www.aals.org/resources_clinical.php), and *Legal Writing: The Journal of the Legal Writing Institute*, <http://www.journallegalwritinginstitute.org>.

aries at the same time as they have worked to integrate the worlds of legal practice and legal scholarship. For example, in the final decades of the twentieth century, legal writing and “skills” professors have occupied the cutting-edge in terms of integrating literary scholarship on narrative and language into legal research and scholarship. It is true that these developments took place within a context that included serious consideration of narrative theory within critical legal studies, feminist legal theory, and critical race theory—all products of the “stand up” side of the legal academy. Nevertheless, concomitant excitement over the incorporation of law-and-economics into law faculties, along with ongoing interest in standard doctrinal and historical legal analyses, continued to dominate much of the legal scholarly world. As the new millennium dawned, the worlds of law practice and standard legal scholarship seemed as far away from one another as ever. Law schools continued to serve as uneasy cradles for both practicing attorneys and abstract theoretical research on law.

### *III. CHANGING THE INTELLECTUAL APPRENTICESHIP: SOCIAL SCIENCE AND THE INTELLECTUAL MISSION OF LAW SCHOOLS*

Generations of legal scholars have now worked to bring our conceptualization of law into contact with scholarly knowledge about how society works. The list reaches back through a very familiar history from at least the time of the Legal Realists through subsequent schools of thought centered on legal process, law-and-society, law-and-economics, and critical legal scholarship from a number of vantages including foci on feminism and race. The list now contains a number of new attempts to rekindle interest in integrating forms of realism, empiricism, and social science into legal scholarship.<sup>17</sup>

Yet a productive and systematic use of these scholarly traditions in the teaching and practice of law has until recently seemed elusive, despite their many past impacts on both teaching and practice. Indeed, integration of interdisciplinary scholarship into legal education has drawn criticism as impractical, as if expertise in assessing how law works on the ground undercuts legal

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17. Mark Suchman & Elizabeth Mertz, *Toward a New Legal Empiricism: Empirical Legal Studies and New Legal Realism*, 6 *Ann. Rev. L. & Soc. Sci.* 555 (2010).

scholars' understanding of—and ability to teach—law in practice.<sup>18</sup> This attitude is not as farfetched as it might appear to be, however, because of the gaps that exist within the ranks of legal academy itself. “Podium” faculty, particularly at the most elite law schools that draw a great deal of public attention, do not tend to work with clinical or legal writing faculty who are training students in more “practical” skills. Law professors and social scientists who are advocating more use of empirical research often fail to take seriously the forms of expertise that are particular to legal professionals—in particular, the forms of normative reasoning that translate the “is” of social science into the “ought” or “must” of law.<sup>19</sup>

If in fact law and social science are distinct enterprises with somewhat divergent goals, then it follows that integrating social science into legal scholarship, teaching, and practice requires some yielding on both sides. Social scientists understandably complain about uninformed forays into their domains by law professors and legal practitioners who use empirical research in opportunistic and even quite obviously mistaken ways.<sup>20</sup> And yet, some of the new empiricists are equally guilty of approaching the legal world in opportunistic fashion, failing to take legal knowledge and expertise seriously. For example, an “add social science methods and stir” approach to training law students—in which, for example, incipient lawyers might be required to take a statistics course—may simply produce future lawyers with only partially digested and rudimentary statistical skills. Recognizing the limits of expertise in both law and social science may well be the first necessary step to reaching a new kind of synthesis—one that truly integrates two disciplines rather than merely layering

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18. Harry T. Edwards, *The Growing Disjunction between Legal Education and the Legal Profession*, 91 Mich. L. Rev. 34 (1992).

19. An exception to this is the new legal realist movement, whose primary focus is precisely on the need to translate respectfully between the quite different goals and forms of knowledge typical of legal and social science approaches. Am. B. Found. & U. Wis. L. Sch., *New Legal Realism: Social Science/Law/Policy*, [www.newlegalrealism.org](http://www.newlegalrealism.org) (accessed May 16, 2011); see also Howard Erlanger et al., *Is It Time for a New Legal Realism?* 2005 Wis. L. Rev. 335; Victoria Nourse & Gregory Shaffer, *Varieties of New Legal Realism: Can a New World Order Prompt a New Legal Theory?* 95 Cornell L. Rev. 61 (2009).

20. See Shari Diamond, *Empirical Marine Life in Legal Waters: Clams, Dolphins, and Plankton*, 2002 U. Ill. L. Rev. 803, and Lee Epstein & Gary King, *The Rules of Inference*, 69 U. Chi. L. Rev. 1 (2002), for a consideration of both sides of the equation.

somewhat incompatible forms of expertise on top of one another without further thought.<sup>21</sup>

It is in this sense that practitioners and professors are experts in teaching practical skills have a legitimate gripe when they complain about trends toward increased hiring of Ph.D.s to law faculties. Unless those Ph.D.s come to law teaching with respect for law's special expertise—and with new ideas for how to integrate their social science backgrounds into the world of law as it is experienced on the ground—then the move toward legal empiricism will only increase the unfortunate rift between tenured law faculties and the rest of the legal profession.<sup>22</sup>

Yet simplistic opposition to integrating social science into legal training, on the other side of the coin, also contributes to such an unproductive rift, while stalemating attempts to move forward in both legal scholarship and legal education. Instead, I argue, what is needed is a reformulation of the intellectual mission of legal education to integrate the knowledge generated by social science with the existing expertise of legal professionals skilled in moving from law-on-the-books to law-in-action. To make this abstract recommendation more concrete, I turn now to some examples of novel approaches to legal education that are in fact changing the “first,” intellectual apprenticeship within law schools

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21. See James Boyd White, *Justice as Translation: An Essay in Cultural and Legal Criticism* (U. Chi. Press 1990) (providing eloquent warnings on this point).

22. Another unfortunate possible by-product of “undigested” additions of social scientists to law faculties is the concomitant dilution of proficiency in basic social science among law-professor social scientists. This can happen when scholars trained in social science wind up having to fit into traditional legal academic modes of scholarly work, without the ongoing training provided by peer review, extensive interaction with other social science colleagues, grant review, and other institutionalized forms of research support and critique within social science fields. Simply obtaining a social science degree does not guarantee that a scholar will continue to meet scholarly norms within any particular social science field, because knowledge within fields is constantly evolving and scholars at all levels continue to hone their skills through extensive peer interactions of many kinds. It may be quite difficult to obtain this kind of continuing social science education while also meeting quotas for rapid production of law review articles, and while developing networks—or participating in debates—within the legal academy. And beyond these kinds of practical constraints is the continuing pressure to adopt standards, norms, language, and ways of thinking that are quite different from those used in social science fields.

This is not to say that the task is impossible, nor that achieving a good synthesis is an unworthy goal. But it is a sobering reminder that an “add social scientists and stir” solution to the problem of integrating new fields into law is unlikely to, by itself, yield the desired results. Indeed, unreflective addition of social science may make things worse. Understanding the limits of our expertise is an important component of good interdisciplinary work. Overly simplistic attempts to merge social science into legal education may undercut rather than promote such appreciation of those limitations.

while also integrating practical and ethical training. These examples are in no way exclusive. In fact, this Article ends with a plea for more substantive and inclusive discussions of the many exciting reform efforts currently underway in law schools across the United States.

#### A. Integrating Social Science about the Legal Profession into Professional Training

One obvious but underutilized resource that social science can provide legal educators is information about legal practice and legal careers. Numerous studies of lawyers and law practice upon which law schools could draw in educating students. Southwestern Law School, for example, has incorporated empirical research on lawyers' careers into a class in its mandatory first-year curriculum: "Professionalism explicitly grounds the course through the introduction of case studies of lawyers' careers that have been drawn from empirical research. . . ."<sup>23</sup> Indiana University's Maurer School of Law has introduced a four-credit first-year course on the Legal Profession that similarly involves students in learning about lawyers' careers using empirical research and discussions with practicing lawyers.<sup>24</sup> Interestingly, in both cases, the deans of the law schools themselves are part of the professor team teaching these new first-year courses.

Individual scholars have also provided very useful guidelines for integrating social science into law teaching. In a thought-provoking essay, for example, New York Law School professor Elizabeth Chambliss outlines how professors could integrate social science on lawyers' careers into the teaching of professional ethics.<sup>25</sup> Chambliss's essay shows how a sociological understanding of, for example, different law practice settings can help the students understand where, when, and how model rules governing professional conduct might be more or less applicable to actual practice. University of North Carolina law professor John Conley has also described how he integrates social science into a legal profession class. In this case, his students themselves are helping

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23. *Carnegie Report*, *supra* n. 1, at 198.

24. Ind. U. Maurer Sch. of L., *Doctor of Jurisprudence (JD): A New Educational Model*, <http://www.law.indiana.edu/degrees/jd/curriculum.shtml> (accessed May 16, 2011).

25. Elizabeth Chambliss, *Professional Responsibility: Lawyers, a Case Study*, 69 *Fordham L. Rev.* 817, 822–850 (2000).

to create a database on the legal profession based on their interviews of practicing attorneys in different practice settings in North Carolina.<sup>26</sup> Students actually engage in social science while educating themselves about the practice of law on the ground. In this brief discussion, I can just begin to hint at some of the many resources now available for those seeking to use social science in reforming legal education. In a sense, more social science is itself needed before we can assess and understand the many different initiatives now taking place across the country.

#### B. Using Social Science in Assessment and Pedagogical Change

Another extremely productive use of social science in legal educational reform is emerging from programs designed to help law schools assess their own progress.<sup>27</sup> Indiana, for example, tracks both its innovative first-year curricular innovations and its novel forms of law student assessment. It is currently in the process of reviewing how assessments other than grades might do a better job of predicting lawyer performance, following its own graduates out into practice to see how well they succeed once they leave law school. One exciting consequence of this use of social science is the possibility that social scientific measures might help guide law schools in developing curriculum and assessment reforms that fit better with law practice on the ground.

#### C. From Real-World Law Practice to Interdisciplinary Legal Education

Law professors across the country are also deeply engaged in creating new forms of interdisciplinary legal education—often, but of course not exclusively, originating in the clinical or legal writing programs. I again offer just a few descriptions of this kind of innovation, in the hope of contributing to a broader discussion. At the University of Wisconsin, for example, the Center for Patient Partnerships at the law school brings together students and faculty from law, social work, pharmacy, engineering,

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26. John M. Conley, *How Bad Is It Out There?: Teaching and Learning about the Legal Profession in North Carolina*, 82 N.C. L. Rev. 1943 (2004).

27. See the Law School Survey of Student Engagement (LSSSE) that provides law schools with a way to track their progress along a number of dimensions each year. LSSSE, <http://lssse.iub.edu/> (accessed May 16, 2011).

psychology, medicine, nursing, and other fields.<sup>28</sup> The faculty and students work in teams to help patients with life-threatening illnesses address their most pressing needs, while at the same time learning from one another about the ways their quite different disciplines deal with problems. It is hard to think of a more practical training, and yet this interdisciplinary program also features constant importation of non-legal materials and approaches into the education of law students.

Clinical law professors have, not surprisingly, provided a number of exciting ideas for interdisciplinary bridges across the theory-practice divide in law and legal education.<sup>29</sup> Legal writing, as I need hardly tell this audience, has also been a source of new interdisciplinary thinking about legal education. Scholars in these fields have brought theories of language, narrative, and storytelling to bear on very practical issues involved in representing clients—and in this endeavor they have found common ground with many other law professors with a broad variety of legal specialties.<sup>30</sup> Again, even a cursory review of this vast literature is beyond my scope here, but it is important to note the very promising way that interdisciplinary work has already been providing a quite practical link between theory and practice. This link can be helpful not only to law students and law professors—but also, if properly translated, to practitioners.

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28. The Center for Patient Partnerships, <http://www.patientpartnerships.org/index.php> (accessed May 16, 2011).

29. See e.g. Anthony G. Amsterdam & Jerome S. Bruner, *Minding the Law* (Harv. U. Press 2000); Jane Aiken & Stephen Wizner, *Law as Social Work*, 11 Wash. U. J.L. & Policy 63 (2003); Clark D. Cunningham, *The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse*, 77 Cornell L. Rev. 1298 (1992); Ann Shalleck, *Pedagogical Subversion in Clinical Teaching: The Women & the Law Clinic and the Intellectual Property Clinic as Legal Archeology*, 13 Tex. J. Women & L. 113 (2004); Lucie E. White, *Subordination, Rhetorical Survival Skills and Sunday Shoes: Notes on the Hearing of Mrs. G*, 38 Buffalo L. Rev. 1 (1990).

30. Teresa Godwin Phelps, *Narrative Capability: Telling Stories in a Search for Justice*, in Severine Deneuline et al., *Transforming Unjust Structures: The Capability Approach* 105 (Springer 2006); Jill J. Ramsfield, *The Law as Architecture: Building Legal Documents* (West Group 2000); Kate Nace Day & Russell G. Murphy, "Just Trying to Be Human in This Place": *Storytelling and Film in the First-Year Law School Classroom*, 39 Stetson L. Rev. 247 (2009); Jill J. Ramsfield, *Is Logic Culturally Based? A Contrastive, International Approach to the U.S. Law Classroom*, 47 J. Leg. Educ. 157 (1997). The turn to examine narrative and language is a meeting-point for legal scholars across the boundaries of "podium" faculty, clinical faculty, and legal writing faculty. E.g. *Contracts Stories* (Douglas G. Baird ed., Found. Press 2007); Martha Albertson Fineman, *The Neutered Mother, the Sexual Family, and Other Twentieth Century Tragedies* (Routledge 1995); White, *supra* n. 21.

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In these examples we see ways that legal educators can draw on social science while also moving closer to the ground of real-world law practice, integrating doctrinal, theoretical, practical, and ethical knowledge while improving incipient lawyers' training into a new professional identity and practice. Professional education, as the Carnegie authors point out, can and should be a special time, where the professions not only prepare new members for practice, but also push them—and the profession as a whole—to think about the field's aspirations and to face hard questions. Professional schools can and ideally should serve as institutions that bring the best of new learning from many disciplines together with their own professions' special areas of expertise.

This cannot take place if law professors do not take seriously the charge to stay in contact with the state of law practice. But assessing the state of practice requires more than collecting anecdotes. Here is a place where social science has a contribution to make, providing more accurate pictures of law practice than might be available from a sprinkling of conversations with individual practitioners. On the other hand, social science studies by themselves will not bridge the gap between theory and practice. As any good ethnographer knows, we need to hear from the people who are actually practicing law—and who are being represented by lawyers—to create a truly integrated approach to training lawyers.<sup>31</sup>

Just as inclusion of social science research on law practice can broaden and improve the intellectual apprenticeship in United States law schools, so, too, can social science research on legal education itself can help law schools with the process of reform.<sup>32</sup>

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31. "Ethnographers" write about the details of daily life after spending a long time conducting intensive observational research in particular local settings. Ethnography is a core part of the methodology that defines sociocultural anthropology in the United States. See generally Shirley Brice Heath et al., *On Ethnography* (Teachers College Press 2008).

32. In my own research on legal education, I demonstrated that a key shortcoming of the traditional intellectual apprenticeship lies precisely when students start to think about the contexts of law cases in complicated ways. Mertz, *supra* n. 3, at 75–79. While law students are trained to be extremely careful in parsing legal language, they are not encouraged to be similarly cautious or critical in analyzing social contexts. Here, then, is an opportunity for legal education to provide intellectual leadership to the legal profession as a whole. If lawyers have been trained to reach premature conclusions when they deal with complicated social evidence, then integrating a more sophisticated sense of standards for evidence and good arguments in social science can provide an important antidote.

Research that looks across a variety of kinds of law schools is needed to inform changes in pedagogy that are sensitive to differences in missions, constituencies, and resources. Social sciences like sociology and anthropology push us to think past the limitations created by an over-reliance on rankings and an over-emphasis on the schools at the tops of hierarchies. Innovations that receive a lot of attention, such as Harvard's introduction of intensive skills training for first-year law students, or Northwestern's introduction of a two-year J.D. program, had in fact already been introduced in a number of other law schools.<sup>33</sup> Social science studies of innovation in legal education would permit legal educators to focus more substantively on innovative changes regardless of the ranking of the school that is introducing them—and would thus permit educators across the country to learn from one another.<sup>34</sup>

In sum, one promising route to integrating intellectual, practical, and ethical training while furthering innovation in legal education lies in the avenue created by social science research—particularly when it is carefully and sensitively translated into terms that make sense to practicing lawyers. Building and using this bridge will require respect for the expertise and potential contributions of scholars on both sides. But there is an opportunity for alchemy here, in which something better may emerge not only for law students and lawyers—but for the people and society they are supposed to serve.

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33. See, for example, the description of the J.D. programs of varying lengths offered at Southwestern Law School, <http://www.swlaw.edu/about/introduction>.

34. This is in no way meant to take away the importance of the curricular innovations at Harvard, which reflected careful and interesting planning to bring the “real world” of today's law into the first-year classroom in new ways. It is also worth noting that Harvard Law School has been very generous in extending an open hand to other law schools who seek to learn from their materials and approach. Hopefully the years to come will see an expansion of this open exchange to an increasing number of law schools.