

Writing the Law<sup>1</sup>:  
Developing the ‘Citizen Lawyer’ Identity through  
Legislative, Statutory, and Rule Drafting Courses

*Ann L. Schiavone\**

ABSTRACT

*At the time of the American Founding, Thomas Jefferson, among others, viewed lawyers as the class of citizens most suited to lead the American institutions of government, as well as preserve and protect them. Jefferson valued the ideal of the “Citizen Lawyer” who would have a broad liberal education, experiential learning, and be capable of using knowledge of the law to promote the public good.*

*In more recent years, American law schools have been criticized for failing to achieve many of these goals first envisioned by Jefferson. Particularly, law schools have often failed to promote strong public service identities in students, failed to provide students with extensive experiential learning, and neglected to provide courses in public policy, legislation, and lawmaking.*

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1. This title evokes the historical concept of “reading the law,” a system of apprenticeship where students studied the law by reading treatises and working with an established attorney. See generally Blake D. Morant, *The Continued Evolution of American Legal Education*, 51 WAKE FOREST L. REV. 245, 248 (2016) (“This system of apprenticeship not only imparted substantive knowledge of the law, but also inculcated an appreciation for the professionalism required of a successful lawyer. Professionalism in this context embodied the recognition of the significance of the human dynamic and the historic responsibility of lawyers to foster society.”). This essay promotes the idea that it is not just reading the law, but also writing it, that helps produce attorneys with strong professionalism and a dedication to advancing the law for the public good.

\* Assistant Clinical Professor of Law, Duquesne University School of Law. Having spent my early career as staff in the Pennsylvania legislature, I have always found the lack of attention to legislative matters in law schools surprising. This symposium, I hope, was a strong step in the direction of rectifying missed opportunities. My deepest thanks to Prof. Jan Levine, who, sharing my interest in legislative process, came up with the idea for the symposium and spent countless hours making it happen. Many thanks also to Profs. Richard Neumann and Lyn Entrikin whose expertise enriched the program. Thanks to Duquesne University School of Law for supporting the event, and to the *Duquesne Law Review* staff for its work publishing the articles arising from it. Special thanks to Allen Page (J.D., 2018) for his invaluable research assistance.

*Today, our nation is once again in need of strong lawyers who can work for the public good, to protect our system of government, preserve the rule of law, and promote the positive reformation of law when needed. Through the teaching of more robust legislative and policy courses that include experiential learning components and consider issues of social justice and public policy, law schools can support the needs of law students and society. Such courses can help law students develop their “Citizen Lawyer” identity, and our society will be better off for having more lawyers who take their role of public service as a professional duty.*

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## I. INTRODUCTION

From Thomas Jefferson and Alexander Hamilton to James Madison and John Adams, lawyers have played a pivotal role in the founding of the United States, and the establishment of its government.<sup>2</sup> Twenty-five lawyers signed the Declaration of Independence, accounting for approximately forty-five percent of the signers, and over half of the members of the First Congress were legally trained.<sup>3</sup> Thomas Jefferson, particularly, believed that lawyers should and would be instrumental to the success of the American

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2. See Anna Masoglia, *The Founding Fathers as Lawyers*, LAWYERIST (July 4, 2016), <https://lawyerist.com/120002/founding-fathers-as-lawyers/> (describing the history of prominent founders of the United States who were also lawyers).

3. Nick Robinson, *The Declining Dominance of Lawyers in U.S. Federal Politics* 10 (HLS Ctr. on the Legal Profession, Research Paper, No. 2015–10, 2015).

government and that lawyers had a special role to fulfill in public life, as “citizen lawyers” tasked with maintaining and improving laws and making a difference in our society.<sup>4</sup> His vision of the “citizen lawyer” influenced his efforts to formalize legal education in America through establishment of a law professorship at the College of William and Mary.<sup>5</sup> In Jefferson’s vision, aspiring lawyers were trained not only in legal doctrine through study of common law, statutes, and constitutions, but also in broader knowledge through the study of humanities, such as philosophy and history, as well as social sciences, including the science of government and politics.<sup>6</sup> They were educated holistically, including elements of both academic and professional education traditions.<sup>7</sup> Law students were expected to think critically about the law, and lead the way in reforming and developing it for the public good.<sup>8</sup> The Jeffersonian ideal of legal education promoted both excellence in the lawyer as a lawyer, and excellence in the lawyer as a leading citizen with responsibility for shaping society and government.

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4. Robert E. Scott, *The Lawyer as Public Citizen*, 31 U. TOL. L. REV. 733, 733 (2000). “A lawyer, Jefferson said, must aspire to be a public citizen. In this single phrase he captured the singular notion that educated citizens, and especially legally educated citizens, can, and therefore must, strive to make a difference in the world.” *Id.*

5. Davison M. Douglas, *The Jeffersonian Vision of Legal Education*, 51 J. LEGAL EDUC. 185, 197 (2001).

6. *Id.* at 199.

7. See Paul D. Carrington, *The Revolutionary Idea of University Legal Education*, 31 WM. & MARY L. REV. 527, 532 (1990) (“Thus, what Jefferson envisioned as a ‘nursery’ of patriots was to be neither purely academic nor purely professional, although it partook of both.”). Carrington also notes that George Wythe who held the first professorship of law at William & Mary, and was Jefferson’s own mentor in the law, used teaching methods that would be considered “clinical” or experiential today. *Id.* at 535.

8. *Id.* at 528–29 (“Thus, for Jefferson, university legal education was to be part of ‘the nursery’ in which the political leadership of the republic could be nurtured, forming ‘the statesmen, legislators, and judges, on whom public prosperity and individual happiness’ so much depended.”).

Today, in a time of upheaval for the legal profession,<sup>9</sup> legal education,<sup>10</sup> and, arguably, for our constitutional democracy itself,<sup>11</sup> law schools should renew commitments to produce “citizen lawyers” in the Jeffersonian model, who can and will be prepared and motivated to shape and lead our law and our society moving forward, and defend our democratic institutions.<sup>12</sup>

While this may seem a tall order for law schools, I argue in this essay that adding just one type of course to the curriculum, an experiential legislative course, can make a significant and positive im-

9. The legal profession has experienced a retraction of certain types of traditional (and lucrative) legal jobs over the past decade as companies seek to reduce legal bills and large law firms trim their workforce. See Adam Cohen, *Is There a ‘Lawyer Bubble’?*, TIME (May 7, 2013), <http://ideas.time.com/2013/05/07/is-there-a-lawyer-bubble/?iid=tsmodule>. However, it does not necessarily follow that the need for legal services has declined. A major gap in affordable legal services persists for middle- and low-income Americans, causing significant hardship. See Martha Bergmark, *We don’t need fewer lawyers. We need cheaper ones*, WASH. POST (June 2, 2015), [https://www.washingtonpost.com/posteverything/wp/2015/06/02/we-dont-need-fewer-lawyers-we-need-cheaper-ones/?utm\\_term=.d4dc6c499c5b](https://www.washingtonpost.com/posteverything/wp/2015/06/02/we-dont-need-fewer-lawyers-we-need-cheaper-ones/?utm_term=.d4dc6c499c5b). The profession must now adapt to the shifting market. See *Lawyers advised to embrace the changing legal market*, AM. BAR ASS’N (Aug. 11, 2014), [http://www.americanbar.org/news/abanews/abanews-archives/2014/08/lawyers\\_advised\\_toe.html](http://www.americanbar.org/news/abanews/abanews-archives/2014/08/lawyers_advised_toe.html).

10. Hand-in-hand with crisis in the profession comes a crisis in legal education. Students are stressed by higher tuition, but few available jobs in traditional markets. See Steven J. Harper, *Too Many Law Students, Too Few Legal Jobs*, Op-Ed, N.Y. TIMES (Aug. 25, 2015), <https://www.nytimes.com/2015/08/25/opinion/too-many-law-students-too-few-legal-jobs.html>. Schools must continue to adapt and innovate to increase the value of the legal education and its affordability. See Leo P. Martinez, *Legal Education and Change*, THE ASS’N OF AM. LAW SCHS., <https://www.aals.org/services/presidents-messages/legal-education-change/> (last visited May 17, 2017).

11. Ironically, just as legal education and the profession face crises of relevance and survival in the economy, the need for lawyers as “public citizens” has grown in importance to counteract increasing attacks on our democratic systems. For example, the current president, Donald J. Trump, a businessman, not a lawyer, has not hidden his disdain for many constitutional principles essential to our system of government including: freedom of the press (Joel Simon, Op-Ed, *Trump Is Damaging Press Freedom in the U.S. and Abroad*, N.Y. TIMES (Feb. 25, 2107), <https://www.nytimes.com/2017/02/25/opinion/trump-is-damaging-press-freedom-in-the-us-and-abroad.html>); freedom of assembly (Amanda Erickson, *Americans’ right to protest is in grave danger under Trump, United Nations warns*, WASH. POST (Apr. 2, 2017), [https://www.washingtonpost.com/news/worldviews/wp/2017/04/02/americans-right-to-protest-is-in-grave-danger-under-trump-united-nations-warns/?utm\\_term=.add196ae5f4](https://www.washingtonpost.com/news/worldviews/wp/2017/04/02/americans-right-to-protest-is-in-grave-danger-under-trump-united-nations-warns/?utm_term=.add196ae5f4)); the independent judiciary (Kristine Phillips, *All the times Trump personally attacked judges—and why his tirades are ‘worse than wrong,’* WASH. POST (Apr. 26, 2017), [https://www.washingtonpost.com/news/the-fix/wp/2017/04/26/all-the-times-trump-personally-attacked-judges-and-why-his-tirades-are-worse-than-wrong/?utm\\_term=.5cd84e79d51f](https://www.washingtonpost.com/news/the-fix/wp/2017/04/26/all-the-times-trump-personally-attacked-judges-and-why-his-tirades-are-worse-than-wrong/?utm_term=.5cd84e79d51f)); and the system of government itself. Julian Borger, *Donald Trump blames constitution for chaos of his first 100 days*, THE GUARDIAN (Apr. 30, 2017), <https://www.theguardian.com/us-news/2017/apr/29/trump-blames-constitution-for-first-100-days-chaos-presidency> (quoting President Donald Trump: “It’s a very rough system,” he said. “It’s an archaic system . . . it’s really a bad thing for the country.”).

12. See Kenneth M. Rosen, *Lessons on Lawyers, Democracy, and Professional Responsibility*, 19 GEO. J. LEGAL ETHICS 155, 155 (2006) (“[R]anking among an American lawyer’s greatest professional responsibilities is the duty to understand and to support democracy.”).

impact on students and help develop in them the “citizen lawyer” identity.<sup>13</sup> Engaging in research, discussion, writing, and creation of law helps develop the whole lawyer and promotes a type of problem solving and analytical process that is very different from the type developed in reading court cases, writing legal memos or briefs, or even participating in moot court experiences. Experiential legislative courses are excellent means of teaching core legal skills and professionalism, but perhaps more importantly, they develop students’ sense of responsibility for the law and its development. The Jeffersonian ideal of the “citizen lawyer” included both developing excellent lawyers and leading citizens; experiential legislative courses help accomplish that goal. Part II of this essay will briefly consider what it means to be a “citizen lawyer” and why it is a worthy goal for most lawyers. Part III will describe some of the varied versions of experiential legislative courses, and how they develop both the “lawyer” and the “citizen” in law students. Part IV of this paper will discuss the pedagogical benefits of experiential legislative courses and how such courses develop the “lawyer” skills of the “citizen lawyer.” Finally, Part V will explore the impact such courses can have on the development of the “citizen” in the “lawyer citizen” identity, through the promotion of social justice, law reform, and leadership in public life.

## II. RELEVANCE OF THE “CITIZEN LAWYER” TODAY

The phrase “citizen lawyer” does not have a specific definition.<sup>14</sup> Some might describe the phrase as pertaining to government lawyers or public interest lawyers, alone.<sup>15</sup> Others suggest that, perhaps, “all lawyers are citizen lawyers,” because all lawyers play “a critical role in the justice system or economic life of the country.”<sup>16</sup> In this essay, I will focus on a broad view of the “citizen lawyer” that may include government and public interest lawyers, but which also includes lawyers, involved in any field, who, in some way, take

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13. Many law schools have included a legislation and regulation course in their first-year curriculum already. See James J. Brudney, *Legislation and Regulation in the Core Curriculum: A Virtue or Necessity?*, 65 J. LEGAL EDUC. 3, 4–5 (2015) (discussing the proliferation of “leg-reg” courses and their benefits). These courses, in so far as they focus mostly on statutory and regulatory interpretation, will not be the focus of this article.

14. Lawrence M. Friedman, *Some Thoughts About Citizen Lawyers*, 50 WM. & MARY L. REV. 1153, 1153 (2009).

15. See *id.* at 1153–54 (suggesting neither description gives an accurate portrayal of the “citizen lawyer”).

16. See *id.* at 1154 (finding this “broadest view” complex and worthy of discussion).

responsibility for their role in promoting public good through development and reform of law.<sup>17</sup> I focus on the term “citizen lawyer” precisely because it is a broad term that can encompass many roles of lawyers in society, so long as the lawyer focuses some attention on the public good over individual enrichment.

At the founding, lawyers were among the primary leading citizens of the new nation,<sup>18</sup> and even to this day, a significant number of lawyers continue to play key roles in government, politics, social justice movements, education, and other fields that shape and develop our laws and our civil society. A survey conducted last year by The National Conference of State Legislators and the Pew Charitable Trusts revealed an estimated 14.4% of state legislators across the country are lawyers, down from a high of 22% in 1976.<sup>19</sup> A little less than 40% of the 114th Congress was made up of lawyers.<sup>20</sup> Historically, 59% of U.S. Presidents and 68% of all Vice-Presidents were trained lawyers, while the profession accounts for 78% of all Secretaries of State and 70% of all Secretaries of the Treasury.<sup>21</sup> Countless others work on legislative staffs, executive agencies, and non-profit organizations, and even more sit on boards of community groups, serve on local government councils, and school boards. Lawyers continue to be prominent and important members of the community, primarily because of the knowledge, skill, and professionalism developed over the course of their education and career.<sup>22</sup>

Our most prominent legal organization, the American Bar Association (ABA), promotes the concept of the lawyer as a leading pub-

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17. See Rosen *supra* note 12, at 165 (“[B]y recognizing a responsibility to uphold America’s democratic values and principles, lawyers will . . . work to further improve our democracy.”). See also Harry T. Edwards, *A Lawyer’s Duty to Serve the Public Good*, 65 N.Y.U. L. REV. 1148, 1150 (1990) (“[A]s a part of their professional role, lawyers have a positive duty to serve the public good.”).

18. See Alexis De Tocqueville, *DEMOCRACY IN AMERICA* 304 (Henry Reeve trans., 1965) (1835) (“The government of democracy is favorable to the political power of lawyers; for when the wealthy, the noble, and the prince are excluded from the government, the lawyers take possession of it, in their own right, as it were, since they are the only men of information and sagacity, beyond the sphere of the people, who can be the object of the popular choice.”).

19. Jen Fifield, *State Legislatures Have Fewer Farmers, Lawyers; But Higher Education Level*, STATELINE (Dec. 10, 2015), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/12/10/state-legislatures-have-fewer-farmers-lawyers-but-higher-education-level>.

20. Robinson, *supra* note 3, at 12–13.

21. *Id.* at 9 (Note: These numbers do not reflect changes resulting from the 2016 general election.).

22. See W. Taylor Reveley III, *The Citizen Lawyer*, 50 WM. & MARY L. REV. 1309, 1320 (“Being a citizen lawyer is rarely about being a transcendent political leader who saves the galaxy. It is about the countless ways, most of them small and mundane, in which any lawyer can make a difference for the better, drawing on the comparative advantages for leadership inherent in legal training and experience.”).

lic citizen. For example, in its preamble to the Model Rules of Professional Conduct, the ABA notes that “[a] lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.”<sup>23</sup> While representing clients is important, it is placed on equal footing with our role as a public citizen protecting and improving quality and access to justice.<sup>24</sup> The preamble goes on to further note that:

[a]s a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice, and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education.<sup>25</sup>

Lastly, the preamble calls for lawyers to “strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession’s ideals of public service.”<sup>26</sup>

Our law schools, too, promote a mission of educating the lawyer as a public citizen and as a figure that contributes to the larger society. Based upon its history, it should be no surprise that William & Mary Law School espouses a “dedication to educating citizen lawyers who will serve with distinction in their communities, the nation, and the world.”<sup>27</sup> But other schools have similar missions. Tulane University Law School in Louisiana expresses in its mission the importance of educating students “to serve clients and the broader society” and to “serve the community by advancing the fundamental values of diversity, justice, and the rule of law.”<sup>28</sup> Duquesne University School of Law promotes a mission of educating students to not only assist individual clients but to act for the “betterment of society and in furtherance of justice.”<sup>29</sup> Like the ABA, many law schools view the responsibility of lawyers to extend not only to clients, but also to the greater good of society.

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23. MODEL RULES OF PROF’L CONDUCT Preamble & Scope ¶ 1 (AM. BAR ASS’N 1983).

24. *See id.*

25. *Id.* at ¶ 6.

26. *Id.* at ¶ 7.

27. *Our Mission*, WILLIAM & MARY LAW SCH., <http://law.wm.edu/about/ourmission/index.php> (last visited Nov. 28, 2016).

28. *Mission Statement*, TULANE UNIV. LAW SCH., <http://www.law.tulane.edu/tlsabout/index.aspx?id=1870> (last visited Nov. 28, 2016).

29. *Mission Statement*, DUQUESNE UNIV. SCH. OF LAW, <http://law.duq.edu/about/mission-statement> (last visited Nov. 28, 2016).

Despite the continued importance of lawyers in public life, the profession's hegemony of public service is seemingly in decline. In recent years, there has been a significant reduction in the percentage of lawyers involved in public service and government.<sup>30</sup> At the same time, there is also an overall decline in knowledge and understanding of our governmental system in the general populace.<sup>31</sup> Lack of civics education is not reserved for the uneducated or poor;<sup>32</sup> it even rears its head in law school classrooms.<sup>33</sup> Ignorance among the electorate regarding the value of individual liberties, checks and balances, and the basic framework of our institutions, could have grave consequences regarding their ultimate survival.<sup>34</sup> Lawyers are the natural solution to help educate and inform the public regarding civics.<sup>35</sup> In fledgling or developing democracies the lawyers are expected to act as civics educators, much as they were in early American history.<sup>36</sup> While the United States is a well-established

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30. See Robinson, *supra* note 3, at 27 (“In recent years, the proportion of lawyers in the U.S. Congress has hit an all time low. There is also evidence of a similar general decline in lawyer representatives in state legislatures.”).

31. See Sam Dillon, *Failing Grades on Civics Exam Called a ‘Crisis,’* N.Y. TIMES (May 4, 2011), <http://www.nytimes.com/2011/05/05/education/05civics.html?module=ArrowsNav&contentCollection=Education&action=keypress&region=FixedLeft&pgtype=article> (discussing the poor performance of students on a national civics exam and efforts to re-emphasize civics education in schools.) See also Margaret Warner, *David Souter Gets Rock Star Welcome, Offers Constitution Day Warning*, PBS NEWSHOUR (Sept. 17, 2012), <http://www.pbs.org/newshour/rundown/conversation-justice-david-souter/> (discussing interview with former Supreme Court Justice, David Souter, where he described the “pervasive civic ignorance” of Americans as the greatest risk to the survival of our republican form of government).

32. See Jonathan R. Cole, *Ignorance Does Not Lead to Election Bliss*, THE ATLANTIC (Nov. 8, 2016), <https://www.theatlantic.com/education/archive/2016/11/ignorance-does-not-lead-to-election-bliss/506894/>.

33. I have found, in teaching legislative process courses, that even upper-level law students lack some basic understanding of how the system is supposed to work, and the brilliance of the “checks and balances” that protect freedom. The lack of ability to easily accomplish goals is a frustration for those who seek instant gratification. I try to show my students that passing laws is hard for good reason, so that the views of many can be accounted for and addressed. However, if law students have difficulty appreciating our institutions of checks and balances, it is no wonder that other citizens struggle more profoundly.

34. See Warner *supra* note 31 (quoting retired Supreme Court Justice Souter who claimed that ignorance of civics is “how democracy dies.”). See, e.g., Television interview by Jake Tapper with James Clapper, former Director of National Intelligence, CNN (Mar. 14, 2017), <http://www.cnn.com/videos/us/2017/05/14/james-clapper-full-intv-sotu.cnn> (discussing attacks against United States governmental institutions from both “external” and “internal” sources.).

35. Bruce A. Green & Russell G. Pearce, “*Public Service Must Begin at Home: the Lawyer as Civics Teacher in Everyday Practice*,” 50 WM. & MARY L. REV. 1207, 1213–14 (2009) (“In society, lawyers in fact teach their fellow citizens how to understand their rights and responsibilities as members of a community—their obligations to obey the law, aspirations to fulfill the spirit of the law, and responsibilities to the good of their neighbors and the general public.”).

36. *Id.* at 1234 (noting that with regard to developing democracies “[the] bar ascribes to lawyers an important role in promoting and sustaining democratic legal and institutional reform, largely through work outside the everyday representation of private clients”).

democracy, as noted above the civics knowledge of the populace is lagging, and it logically falls to lawyers to shoulder a large burden in helping to close the knowledge gap and educate clients and the public regarding the rule of law and democratic institutions.<sup>37</sup> This role was one initially anticipated at the founding, but it is one that is equally important today.

Engagement of lawyers as citizens begins in law school. While the reason for the recent decline in lawyers in public service and government is likely multi-faceted, law schools have been criticized particularly for this trend, due to their failure to actively cultivate the “citizen lawyer” or promote the lawyer’s responsibility for the common good.<sup>38</sup> One possible solution to correct this shortcoming of current legal education and encourage law students to focus more on their duty to public good is to go back to the beginning, and consider how the original “citizen lawyers” were first educated.

When Thomas Jefferson appointed George Wythe, the preeminent lawyer in Virginia at the time, to head the William & Mary Law School, Jefferson wanted the law school to train public citizens to take on the responsibility of self-government; in other words, to train “citizen lawyers.”<sup>39</sup> Wythe accomplished this goal through two main tools: first, he promoted a liberal education involving not only legal doctrine, but also humanities, philosophy, natural sciences, and social sciences subjects; second, Wythe included experiential learning in his curriculum.<sup>40</sup> Wythe began a moot court, in the style that had originated in the English Inns of Court, which allowed students to bring cases and argue them before their professors.<sup>41</sup> This practice continues in most law schools today, not as a requirement, but as a supplemental learning opportunity. But even more important to the idea of educating the lawyer as a public citizen, Wythe also introduced a mock legislative body, where students, pre-

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37. *Id.* at 1221 (arguing that lawyers, through client interactions as well as interactions with others in society, such as “[f]riends, family, coworkers, employees, employers, adversaries, [and] community members,” should purposefully work to educate people on civics). The article further notes that “[i]t is also well-acknowledged that schools do not always do the job [of teaching civics] successfully and thoroughly, and people have too few other effective opportunities to learn.” *Id.*

38. See Robert J. Araujo, *The Lawyer’s Duty to Promote the Common Good: The Virtuous Law Student and Teacher*, 40 S. TEX. L. REV. 83, 87 (1999) (discussing the argument that the “case method” of legal instruction tends to harm students’ “commitment to the public interest” because it focuses students on making arguments in a value-free, dispassionate way). See also Robinson, *supra* note 3, at 50–51 (discussing recent criticism of scholars who believe law schools are not educating lawyers for leadership or civic responsibility).

39. Douglas, *supra* note 5, at 194–95.

40. *Id.* at 201.

41. *Id.*

viously taught parliamentary procedure, were organized in legislative assembly and would meet once a week to draft, debate, and amend legislation on issues then pending in the Virginia House of Delegates.<sup>42</sup>

Thomas Jefferson noted the importance of this mock legislature and similar teaching methods employed at William & Mary in training the new leaders of the government:

Our new institution at the College has had a success which has gained it universal applause. Wythe's school is numerous. They hold weekly courts and assemblies in the capitol. The professors join in it; and the young men dispute with elegance, method and learning. This single school by throwing from time to time new hands well principled and well informed into the legislature will be of infinite value.<sup>43</sup>

Today, the legal profession has reached a point where our rhetoric continues to promote the importance of the "citizen lawyer" in our society, but our law school curriculum in many ways has moved away from it.<sup>44</sup> We no longer can rely upon a foundation of strong liberal arts education in our students, making it more difficult to connect legal education to the valuable learning of humanities and social sciences.<sup>45</sup> We have few courses in public policy, legislation and regulation, and legislative drafting instruction remains rudimentary, if it exists in a law school at all.<sup>46</sup> The fact that many lawyers continue to participate in public life may be a result of the

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42. *Id.* at 201–02.

43. *Id.* at 202 (quoting a Letter from Thomas Jefferson to James Madison (July 26, 1780)).

44. See Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLINICAL L. REV. 37, 39 (1995).

A significant body of literature has developed in support of the notion that instruction in the law is fundamentally lacking unless it includes as a core component significant opportunities for learning about the social setting which shapes the practice of law and issues of justice in the adoption and application of the law. The core of these arguments questions the Langdellian model of legal instruction based on the concept of law as reason-based, abstract, and value-free, and thus best studied in a detached and scientific method. The Langdellian method, the argument goes, ignores the impact of social and political factors on law and therefore presents a picture of the legal system and lawyers' place in it that is, at best, hopelessly naive, and at worst, dangerously misleading.

*Id.*

45. See Nancy B. Rapoport, *Changing the Modal Law School: Rethinking U.S. Legal Education in (Most) Law Schools*, 116 PENN ST. L. REV. 1119, 1143–44 (2012) (noting that law students no longer have the core liberal arts education that was once nearly universal, and arguing that while diversity can be good, law schools are "seeing students with much weaker, less expansive educational backgrounds" as well as poor research and critical thinking skills).

46. See J. Lyn Entrikin & Richard K. Neumann Jr., *Teaching the Art and Craft of Drafting Public Law: Statutes, Rules, and More*, 55 DUQ. L. REV. 9, 16–17 (2017)

interests of the individual student, the efforts of individual faculty members, or the informal serendipity of the law school experience. However, without formal commitment in the curriculum, the percentage of lawyers in public life seems destined to continue on a downward trajectory.<sup>47</sup>

It is nearly undisputed, at least within the profession, that lawyers should and will continue to play significant roles in shaping law, justice, and society moving forward. However, what role does legal education play in developing lawyers capable of doing so? The next section describes one type of course—an experiential legislative course—that can have an impact on developing both the “lawyer” and the “citizen” aspects of the “citizen lawyer” identity.

### III. EXPERIENTIAL LEGISLATIVE COURSE DESIGN

Courses focusing on legislative process, and drafting statutes and rules, come in many shapes and sizes.<sup>48</sup> I, personally, have taught legislative courses in different ways, depending on the size of the class, the needs of students, and the role of the course in the larger curriculum.<sup>49</sup> Despite some differences in format or pedagogical method, legislative courses generally satisfy a core set of goals and objectives including the following:

- To foster understanding of the legislative process, and its role in making law at all levels of government.
- To foster understanding of the legislative process as both a tool to help solve the problems of clients, and as a means of

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47. See Robinson, *supra* note 3, at 12 (finding that after hitting a peak in the mid-nineteenth century where lawyers held nearly 80% of Congressional seats, the legal profession now accounts for less than 40% of Congress).

48. See, e.g., Jamie Abrams, *Experiential Learning and Assessment in the Age of Donald Trump*, 55 DUQ. L. REV. 75, 92–93 (2017) (discussing how to approach controversial and divisive topics in experiential public policy courses); Rex D. Frazier, *Capital Lawyering & Legislative Clinic*, 55 DUQ. L. REV. 191 (2017) (describing McGeorge School of Law’s Capital Lawyering Concentration which seeks to train law students in advocacy and public policy in the California legislature); Lisa A. Rich, *Teaching Public Policy Drafting in Law School: One Professor’s Approach*, 55 DUQ. L. REV. 151, 165–66 (2017) (describing the professor’s pedagogical approach in teaching a public policy drafting class at Texas A&M University School of Law).

49. At the University of Akron School of Law, I taught a Legislative Drafting course to a section of approximately twenty-five students. The course fulfilled a mandatory curriculum requirement, so while some of the students were interested in the topic, others simply used it as a conduit to fulfill their course needs. At Duquesne University School of Law, I teach a Pennsylvania Legislative Process and Drafting course that is an elective. It satisfies experiential credits, but tends to attract a smaller group of students specifically interested in law-making and politics. While the basic course goals are similar, the techniques for each group of students are necessarily different.

reforming law and improving the quality and access to justice to benefit our society.

- To encourage students to think deeply about particular legal problems, research, and solve problems through the drafting of statutes and rules.
- To provide opportunities to learn and practice statute and rule drafting skills that are necessary for crafting good law and are transferable to any area of law practice.
- To provide experiential learning opportunities that reinforce the theories of legislative process and drafting learned in the classroom.
- To enhance understanding of the political process and how it influences lawmaking.
- To encourage students to take on leadership roles within the classroom and the community.
- To provide an opportunity to engage in practice-ready skills including: negotiation, drafting, and oral communication.<sup>50</sup>

While different faculty members may focus on different goals, this list encapsulates the wide range of benefits such a course may provide to students.

One of the central facets of the legislative courses I have taught is the incorporation of a mock legislature. By taking on the role of a legislator working within the legislative body, students are able to experience the process first-hand, as opposed to learning theory and techniques purely through reading, lecture, and discussion. The learning here is very much in the doing. A class can discuss the difficulty of writing a law, forming consensus on that law, and compromising with those who have opposing views. Actually participating in this process is what deepens the student's understanding. Wythe and Jefferson inherently understood that practicing the art of statesmanship would necessarily make the William & Mary students better equipped, at the end of their studies, to accept roles in the republican government.<sup>51</sup> Today, while such experience is helpful for those who will eventually work in legislative government, it is equally important for lawyers working in almost any sector of law to have a firm grasp on the lawmaking process. In my

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50. Ann L. Schiavone, Syllabus, Pennsylvania Legislative Process and Drafting (Spring 2015) (on file with Duquesne University School of Law Dean's Office).

51. See Douglas, *supra* note 5, at 202 ("Wythe agreed with Jefferson's assessment of his purpose of training political leaders. Writing John Adams in December 1785, Wythe articulated his purpose as 'to form such characters as may be fit to succeed those which have been ornamental and useful in the national councils of America.'").

own experience I have frequently been surprised by what law students do not know about government, politics, and lawmaking. Based on this experience, it is essential that we, as educators, do a better job of grounding our students in the full landscape of the law, which includes the legislative function.

The size of the class determines the type of legislative body the course can support. If the class is in the twenty to thirty student-range, it can support a “mock senate” format, with organized committees, parties, and elected leadership. If the class is smaller—certainly anything less than fifteen students—a mock “legislative committee” is likely the best format. No matter the size of the legislative body, students should have the opportunity to research and draft legislation, present that legislation to colleagues, face questions and debate about the legislation, face critique in the form of amendment by colleagues, and ultimately face a final vote on their work by the full senate or committee.

If one of the goals of the course is to foster understanding of the political process of lawmaking, the course can be structured to incentivize competition and compromise.<sup>52</sup> By granting bonus points for individual success (passage of your bill, passage of a bill you co-sponsored; or acceptance of your amendment to someone else’s bill), and party success (passage of a bill sponsored by your party or blocking the bill of another party), students are motivated to calculate their best interest. Should the student cross the aisle to support a bill in which he or she believes? Should she stay strong and support the party? Can he trade his support for the support of another? That decision-making process differs depending on whether the student is in the majority or the minority party.

Legislative drafting is generally considered “the most difficult form of drafting,” because of the complexities of the issues, and the variety of audiences and interests that play a role in formation.<sup>53</sup> Students in legislative courses should have the opportunity to learn the theory and techniques behind such drafting and try their hand at it with multiple opportunities to draft and redraft. It is also beneficial for students to work on legislative projects that interest them. Students in my legislative courses have the opportunity to

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52. Competition and compromise are significant movers of the political process; it can sometimes be difficult to create these artificially. To the extent the class has a tendency to want to collaborate and support one another, rewarding competition is necessary. To the extent students are already competitive with one another, it may become important to reward compromise. Flexibility on the part of the professor, and even “changing rules” mid-semester, may be necessary.

53. ROBERT J. MARTINEAU & MICHAEL B. SALERNO, *LEGAL, LEGISLATIVE, AND RULE DRAFTING IN PLAIN ENGLISH* 92 (2005).

research and draft a bill on a topic of their choosing, and these are the bills considered by the legislative body. The only major restriction is that it must be a bill within the purview of the legislative body constituted for the course.

The mock legislative experience requires students to research, problem-solve, communicate orally and in writing, think deeply about a problem, and also think on their feet. They work in groups and individually to accomplish goals and have the opportunity to reflect upon their experiences. While such opportunities certainly make a student readier to pursue a career in public life, the skills are also transferable to other career paths and actively promote the lawyer as a public citizen.

In addition to the mock legislative component, I also suggest that legislative courses are excellent vehicles for service learning, sometimes called community-engaged learning. Service learning,<sup>54</sup> a staple on most undergraduate campuses, has found limited purchase in law school classrooms. The responsibility of providing students with experiential learning opportunities and community engagement is often left solely to overburdened clinics. While clinics provide excellent opportunities for law students to learn in the field and engage with marginalized populations in their community, law schools should not silo community engagement purely within the clinic context.

Incorporating service learning within existing law school courses, particularly legislative courses, can complement the current efforts of clinics to accomplish the dual goals of producing practice-ready and community-minded lawyers.<sup>55</sup> Legislative and regulatory writing projects, such as draft legislation, position papers, or other similar research documents, provide a vehicle for engagement between students and community groups. Students write for audiences outside the classroom and learn to collaborate with varied individuals and populations. They respond to client needs, and often take on the role of educator on a particular issue or issues. These students are empowered through the act of producing work that matters to

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54. See Laurie Morin & Susan Waysdorf, *The Service-Learning Model in the Law School Curriculum*, 56 N.Y. L. SCH. L. REV. 561, 565 (2011) (“Service-learning as a pedagogical approach and educational philosophy has a rich legacy and history in the United States. This approach integrates hands-on social action, volunteerism, and learning objectives into a third apprenticeship model that resembles, but is not identical to, clinical legal education.”). The authors of this article beautifully articulate the benefits of service learning and why law schools should employ it more regularly.

55. See *id.* at 568 (describing the dual goals of clinical education as providing practical skills experience and “access to justice” for underrepresented members of the community and extrapolating those goals to a service-learning course).

others, and similarly their work then can further empower the group or groups with whom they are collaborating.

In my course I assign groups of students to work with local non-profit organizations to pursue legislative solutions for issues facing the population that the organization benefits. For example, students in my courses have worked on various issues for non-profits including homelessness, human trafficking, and immigration. The students work with these groups, researching a problem, drafting the legislation, and providing written explanations of the bill. They then present it to the organization for revisions and approval. Later, the students can meet with legislators who may be willing to pursue the legislation in the local council, state legislature, or Congress. When included in a course along with the mock legislature, my students gain even more insight to the complexities of the legislative process. They also sometimes help the non-profit to better understand the process and the variables faced in reforming the law.

Regardless of whether the legislative course is focused on legislative simulation, service-learning, or incorporates both, it provides students with hands-on learning. The next section will explore the theory of experiential learning in legal education, and show why a legislative course is an ideal way to teach excellence in lawyering that is necessary for any “citizen lawyer.”

#### IV. LEGISLATIVE COURSES AS EXPERIENTIAL LEARNING FOR THE “CITIZEN LAWYER”

##### A. *The History of Experiential Learning in the Law*

Experiential learning theory is no mere fad. Its foundations reach as far back as Aristotle who famously noted that humans learn the art of building or of music by doing them.<sup>56</sup> More recent pedagogical scholarship builds upon Aristotle’s observations, finding “experience” plays a vital role in the learning process.<sup>57</sup> One of the pioneers

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56. J. E. C. WELLDON, THE NICOMACHEAN ETHICS OF ARISTOTLE 35 (MacMillan and Co., Limited 1897). “It was not by seeing frequently or hearing frequently that we acquired the senses of seeing or hearing; on the contrary, it was because we possessed the senses that we made use of them, not by making use of them that we obtained them. But the virtues we acquire by first exercising them, as is the case with all the arts, for it is by doing what we ought to do when we have learnt the arts that we learn the arts themselves; we become builders by building and harpists by playing the harp.” *Id.*

57. See Jan L. Jacobowitz & Scott L. Rogers, *Mindful Ethics—A Pedagogical and Practical Approach to Teaching Legal Ethics, Developing Professional Identity, and Encouraging Civility*, 4 ST. MARY’S J. LEGAL MAL. & ETHICS 198, 201 (2014) (“Aristotle spoke of virtue and ethics as practical wisdom, which one may develop by acquiring knowledge and engaging in

in the field, David A. Kolb, described experiential learning as “the process whereby knowledge is created through the transformation of experience.”<sup>58</sup>

Experiential learning has long been a fundamental part of legal education. The study of law is, at once, both a professional practice and an academic pursuit.<sup>59</sup> The historical record and current consensus generally agree that the best legal education requires the two models to work in concert.<sup>60</sup> The law is both an art and a science; thus to become excellent lawyers, one must learn the science, but practice the art.<sup>61</sup>

For over 800 years, the English Inns of Court furnished a hybrid learning environment for training barristers, providing “a combination of educational institution, boarding facility, and professional association” for the English litigators.<sup>62</sup> These Inns of Court sponsored moot courts to teach aspiring lawyers their craft as early as the Middle Ages.<sup>63</sup>

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habituation—an individual gains wisdom only after he combines his knowledge with personal experience. Perhaps one of the earliest proclamations of the value of experiential learning, the Aristotelian view, reappears throughout history . . .”).

58. DAVID A. KOLB, *EXPERIENTIAL LEARNING: EXPERIENCE AS THE SOURCE OF LEARNING AND DEVELOPMENT* 38 (1984) (“This definition emphasizes several critical aspects of the learning process as viewed from the experiential perspective. First is the emphasis on the process of adaptation and learning as opposed to content or outcomes. Second is that knowledge is a transformation process, being continuously created and recreated, not an independent entity to be acquired or transmitted. Third, learning transforms experience in both its objective and subjective forms. Finally, to understand learning, we must understand the nature of knowledge, and vice versa.”). Kolb’s theory of experiential learning describes the process as cyclical, with four primary stages: (1) Abstract Conceptualization (THINK); (2) Active Experimentation (PLAN); (3) Concrete Experience (DO); and (4) Reflective Observation (REFLECT/OBSERVE). He believed that a learning experience can begin at any point in the cycle, but ideally a student will move through the cycle several times over the course of a learning experience. *Id.* at 31.

59. Brian A. Moline, *Early American Legal Education*, 42 *WASHBURN L. J.* 775 (2004). “For many years, American legal education reflected two contrasting schools of thought. One held that the practice of law was primarily a craft to be learned like other crafts by the handing down of knowledge from master to apprentice. The other viewed law as a learned profession to be taught as a social science in a university setting. Both theories had vigorous partisans, and both have dominated or co-existed in uneasy compromise at different points in our history. Echoes of the dichotomy continue today in the debate over the proper role of the clinical experience in legal education.” *Id.* at 775.

60. See WILLIAM M. SULLIVAN ET. AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW, THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING*, 12–14 (2007) [hereinafter *CARNEGIE REPORT*] (discussing a comprehensive “framework” of legal education that focuses, concurrently, on three pillars: legal analysis, practical skill, and professional identity).

61. Moline, *supra* note 59, at 802.

62. *Id.* at 775.

63. Douglas, *supra* note 5, at 201.

In early America, there were no formal legal education programs, and the demand for legal services soon exceeded the supply of available English-trained lawyers, leading to the rise of the practice of “self-study” for the bar or legal apprenticeships.<sup>64</sup> Early law students in America could either attempt to “read the law” on their own, or they would work with an established lawyer in a mentor-mentee relationship.<sup>65</sup> The mentor-lawyer ideally would set out a course of study for the student including the reading of treatises, constitutions, and statutes and also provide the student with opportunities to practice the skills of lawyering.<sup>66</sup> The mentor-lawyer would receive free labor in return.<sup>67</sup> The quality of this type of education varied, depending on the quality of the mentor’s instruction, the type of experience gained, and the books available.<sup>68</sup> Thomas Jefferson and John Adams both earned admittance to the bar in this manner.<sup>69</sup>

Jefferson became a strong opponent of the apprenticeship method of study, working to bring more formal legal education to Virginia during his time as Governor.<sup>70</sup> His vision for university-based education for lawyers, however, did not exclude experiential learning.<sup>71</sup> As he noted in his letter to James Madison about the course of study at William & Mary, the “performance” of the students in the moot courts and mock legislatures were integral to training the “citizen lawyer.”<sup>72</sup> Formal law schools took root in the nineteenth century and continued their development over the course of the next 200

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64. Moline, *supra* note 59, at 778.

65. *Id.* at 779.

66. *Id.* at 780–81. “Legal education in the United States began as an extension of practice. Lawyers in the colonies were educated much as they were in Britain at the time—by ‘reading the law.’ This entailed the painstaking study of texts and treatises, . . . under the watchful eye of a practicing attorney.” Jeffrey J. Pokorak, Ilene Seidman & Gerald M. Slater, *Stop Thinking and Start Doing: Three-Year Accelerator-to-Practice Program as a Market-Based Solution for Legal Education*, 43 WASH. U. J.L. & POL’Y 59, 63–64 (2013). The apprenticeship method is looked upon with fondness by many who favor a return to practical skills, but even in early American history it was not always looked on favorably, especially by those interested in producing true citizen lawyers. Learning to be a lawyer was more to them than the narrow process of learning to “practice” law. *Id.*

67. *See* Douglas, *supra* note 5, at 190 (describing the reality of an apprentice’s life which often consisted of copying documents).

68. *See* Moline, *supra* note 59, at 781–83 (contrasting the varying experiences of lawyers within an apprenticeship program prior to the Revolution, including future Supreme Court Chief Justice Oliver Ellsworth, and future Presidents, John Adams, Thomas Jefferson, and John Quincy Adams).

69. *Id.* at 783–84. Alexander Hamilton, Aaron Burr, and John Marshall took advantage of patriot exceptions to apprenticeship requirements for veterans of the Revolutionary War and entered the bar following abbreviated self-study. *Id.* at 784–86.

70. *See* Douglas, *supra* note 5, at 197 (describing Jefferson’s various efforts for educational reform, including the establishment of a professorship of law at William & Mary).

71. *Id.* at 201–02.

72. *Id.* at 202.

years, but experiential learning never completely left legal education.<sup>73</sup> The history of early American legal education supports the view of law as both “a science that can and should be taught and an art that can only be learned by doing.”<sup>74</sup> To this day, legal education continues to balance the science and the art of the profession.

For a time, the pendulum swung away from the need for experiential learning, as law schools attempted to separate themselves from their “trade school” past and gain respect as an academic discipline.<sup>75</sup> Toward the end of the twentieth century, however, the ABA and others, recognizing a gap between legal education and the practice of law, began introspective consideration of the education of lawyers.<sup>76</sup> As a result of that introspection, in 1992 the ABA published *Legal Education and Professional Development—An Educational Continuum* (commonly known as the MacCrate Report), which set about attempting to “narrow the gap” between legal education and legal practice.<sup>77</sup> The report, among other things, identified fundamental skills and values necessary for the practice of law and encouraged law schools to incorporate such skills and values into the curriculum to bridge the gap for students entering practice.<sup>78</sup>

In 2007, further developing ideas first considered in the MacCrate Report, the Carnegie Foundation for the Advancement of Teaching published *Educating Lawyers: Preparation for the Profession of Law* (commonly known as the Carnegie Report). It urged the uniting of formal legal knowledge and the experience of practice into a “single educational framework.”<sup>79</sup> The Carnegie Report recognized three “pillars” of legal education—legal analysis, practical

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73. See Moline, *supra* note 59, at 800–01 (noting that early law schools, including Harvard, maintained more or less a “trade school” approach to teaching law, and that it was not until “the 1870s . . . [that] . . . law schools begin to establish liberal education requirements,” and adoption of a “comprehensive legal education system, integrating theory and practice” did not arise until after World War II).

74. Moline, *supra* note 59, at 802.

75. *Id.* at 800–01.

76. AM. BAR ASS’N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 5 (1992) [hereinafter MACCRATE REPORT].

77. *Id.* at 3.

78. See *id.* at 135–221.

79. CARNEGIE REPORT, *supra* note 60, at 12. See also Stephen R. Alton, *Roll over Langdell, Tell Llewellyn the News: A Brief History of American Legal Education*, 35 OKLA. CITY U. L. REV. 339 (2010). “Echoing the MacCrate Report’s recommendations, the Carnegie Report urges the legal academy to adopt modes of pedagogy that provide the opportunities for law students to learn in a way that combines the main elements of ‘legal professionalism—conceptual knowledge, [professional] skill, and moral discernment.’” *Id.* (quoting CARNEGIE REPORT, *supra* note 60, at 12).

skill, and professional identity—and called for law schools to integrate these pillars across the curriculum.<sup>80</sup>

The release of these publications, coupled with the economic downturn of 2008, which increased the pressure on law schools to produce “practice ready” law students who could compete in a contracting legal market, organically resulted in increased experiential learning in many law schools.<sup>81</sup> Additionally, the ABA has pushed all accredited law schools toward production of “practice ready” graduates, by requiring emphasis on experiential learning and skills development.<sup>82</sup> Most recently, the ABA upped the ante on experiential learning in its Standards and Rules for Approval of Law Schools and revised Standards 303<sup>83</sup> and 304,<sup>84</sup> which now require any student graduating from an ABA-accredited school to complete at least six credits of experiential learning.<sup>85</sup> These credits may be earned through clinics and externships (called “field placements”), but they also may be earned via simulation courses.<sup>86</sup> The experiential credits, whether earned via clinic, simulation, or external placement require the experience to: “(i) integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more of the professional skills identified in Standard 302; (ii) develop the concepts underlying the professional skills being taught; (iii) provide multiple opportunities for performance; and (iv) provide opportunities for self-evaluation.”<sup>87</sup> These four requirements map to the theoretical steps of experiential learning, which require students to think, plan, do, and reflect, in a cyclical fashion, such that a student will perform these steps more than once during a learning experience.<sup>88</sup>

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80. CARNEGIE REPORT, *supra* note 60, at 13–14.

81. *See* Morant, *supra* note 1, at 246 (“In fact, the changes stimulated by the decline in applications to law schools and less market demand for law school graduates have accelerated the continuing evolution of American legal education. From its inception based in apprenticeship to its present form that includes classroom instruction heavily supplemented with experiential learning, legal education in the United States continues to evolve, and the resultant programmatic changes are reflective of market realities.”).

82. *See* Legal Skills Prof, *ABA approves new accreditation standards to require more “experiential” opportunities*, LEGAL SKILLS PROF BLOG (Aug. 12, 2014), [http://lawprofessors.typepad.com/legal\\_skills/2014/08/aba-approves-new-accreditation-standards-that-require-more-experiential-learning-opportunities-.html](http://lawprofessors.typepad.com/legal_skills/2014/08/aba-approves-new-accreditation-standards-that-require-more-experiential-learning-opportunities-.html).

83. AM. BAR ASS’N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2016–2017 16 [hereinafter ABA STANDARDS], (Standard 303) (See Appendix A for full text.).

84. *Id.* at 17–18, (Standard 304) (See Appendix B for full text.).

85. *Id.* at 16 (Standard 303(a)(3)).

86. *Id.*

87. *Id.*

88. *Id.* These requirements set forth in Standard 303 reflect the Kolb model of experiential learning, requiring the learning environment to include thinking, planning, doing and

Standard 304 differentiates between simulations, clinics, and field placements, noting that simulations do not involve actual clients, clinics are conducted within the purview of the law school, and field placements are made with practicing attorneys.<sup>89</sup> All three of these experiences, whether involving real clients, or not, require a classroom component, feedback from faculty, and proper supervision of the student activities by qualified individuals.<sup>90</sup>

### *B. Legislative Courses as Experiential Opportunities*

Legislative courses provide ideal opportunities to satisfy Standard 303 for experiential learning. Whether the course is conducted as a mock legislature or via another learning model, faculty can satisfy the ABA requirements and provide students with meaningful learning experiences. Students in legislative courses will invariably be required to consider legislative solutions for real-world legal problems. Such problem solving will require students to understand the doctrine and theory connected with the area(s) of law involved, to practice skills of research, writing, and oral presentation, and to consider ethical and moral questions that may arise in the development of any legislative solution.<sup>91</sup> Faculty are there to guide and develop a student's understanding of both doctrine and skills, to provide multiple opportunities to perform specific skills, and to give students the chance to reflect on the experience both orally and in writing.<sup>92</sup>

While the mock legislature format for a legislative course likely qualifies as a simulation under Standard 304, where a service

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reflecting, as well as multiple opportunities to work through the experiential learning cycle. See KOLB, *supra* note 58, at 32–33.

89. ABA STANDARDS, *supra* note 83, at 17–18 (Standard 304).

90. *Id.*

91. Again, it is interesting to note that this process maps well to Kolb's experiential learning model with overlapping experiential cycles. For example, in the mock legislative body, the students may begin with drafting a bill. They start with brainstorming about a problem or issue (THINK), then they research, collect examples, and consider a solution (PLAN). The next step is to actually "write" the bill (DO), followed closely by presentation of the bill to peers and colleagues who critique and amend the bill resulting in revisions based on reflection (REFLECT). Similarly, the legislative process of the mock legislature is an experiential cycle. Students will learn about the legislative process and rule of order abstractly (THINK); then they will organize parties, elect leadership, constitute committees, and co-sponsor bills (PLAN). Once the bills are prepared, the action of presenting, debating, and amending bills follows (DO). While some students are acting out their roles in the legislative process, others are watching and learning from observing their colleagues and reflecting on the process (REFLECT). See KOLB, *supra* note 58, at 33.

92. Kolb's model and ABA Standard 303 require multiple opportunities for students to move through the experiential cycle over the course of a learning experience. *Id.* at 31.

learning-based course fits is less clear.<sup>93</sup> The ABA released a guidance memo on Sections 303 and 304 in March of 2015 to assist law schools in the implementation of these new requirements, but the memo is silent on the question of whether service learning may satisfy any of the requirements.<sup>94</sup> Service learning does not perfectly match any of the approved methods of experiential learning listed in Standard 304, as it is neither fully simulation, as it requires actual engagement with community partners, nor is it a clinic or a field placement, either.<sup>95</sup> A service learning opportunity usually involves real clients, and students do pro bono legal work or “law-related public service activities.”<sup>96</sup> While such activities are encouraged under Standard 303(b) as “substantial opportunities” for students, it is not clear that service learning activities will count toward the required experiential credits.<sup>97</sup> If service learning courses include classroom instruction, faculty feedback, and proper supervision, as are required for the simulation, clinical, and fieldwork options, there does not seem to be a reason why service learning could not be counted toward the experiential learning requirements, but that question currently remains open.<sup>98</sup>

Regardless of whether an experiential legislative course specifically satisfies the ABA Standards, it will fulfill the purpose of experiential learning by giving students opportunities to integrate legal concepts with practical skills and professionalism as called for by the Carnegie Report, experiential learning theory, and the Jeffersonian model of legal education.<sup>99</sup>

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93. Service-learning also lends itself to the Kolb experiential learning cycle. Again, students gather information and brainstorm, then research and plan, followed by drafting, presentation, redrafting and further lobbying on behalf of the measure. Again, it includes thinking, planning, doing, and reflecting, and multiple opportunities for repetition, until the students' work is complete. *Id.* at 31, 33–34.

94. AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, MANAGING DIRECTOR'S GUIDANCE MEMO, STANDARDS 303(A)(3), 303(B), AND 304 (March 2015) [hereinafter GUIDANCE MEMO].

95. *See* ABA STANDARDS, *supra* note 83, at 17–18 (Standard 304).

96. *See id.* at 16 (Standard 303(b)).

97. *See id.*; *see also* GUIDANCE MEMO *supra* note 94, at 1.

98. GUIDANCE MEMO *supra* note 94, at 3 (“By meeting the requirement that a course be primarily experiential in nature, the requirement that the course provide ‘substantial experience’ likely is also met, as long as the course also includes ‘direct supervision of the student’s performance by the faculty member’ and ‘opportunities for performance, feedback from a faculty member, and self-evaluation’ as further required by the Standard.”).

99. CARNEGIE REPORT, *supra* note 60, at 13–14; KOLB, *supra* note 58, at 31; Douglas *supra* note 5, at 185.

V. STATUTORY COURSES CAN HELP DEVELOP STUDENTS' IDENTITY AS "CITIZEN LAWYERS" THROUGH ATTENTION TO SOCIAL JUSTICE, LAW REFORM, AND COMMUNITY LEADERSHIP

In recent years, a number of legal scholars, especially clinical-focused legal scholars, have argued in favor of more purposeful attention to social justice education in law schools.<sup>100</sup> In his *Letter to a Law Student Interested in Social Justice*, Professor William Quigley tells the story of a group of law students he worked with in assisting New Orleans property owners in the aftermath of Hurricane Katrina.<sup>101</sup> Following a week of long hours sifting through belongings and trying to identify owners of homes scheduled for demolition, Professor Quigley sat with the students and asked them to reflect on their experiences.<sup>102</sup> After many shared tears and stories, one student quietly reflected on the privilege he felt in being able to help people in a real way.<sup>103</sup> The student observed: "The first thing I lost in law school was the reason that I came. This will help me get back on track."<sup>104</sup>

As faculty, how many stories have we heard from incoming students, or early first-year students about why they wanted to be lawyers? How many of those stories revolve around the desire to help people, a goal to improve justice, a desire to make a difference in the world? By graduation, how many of those students enter the area of the profession that drew them to the profession in the first place?

One of the primary critiques of these scholars is that while lawyers pay "lip service" to the profession's responsibility of advancing justice, there is no true commitment to that goal.<sup>105</sup> They argue that legal education works hard to instill a sanitized, purely reason-based, and abstract view of the law in students.<sup>106</sup> Discussion of legal problems and issues are too often divorced from social, emotional, moral, and political influences and implications.<sup>107</sup> Thus,

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100. See, e.g., John O. Calmore, "Chasing the Wind": Pursuing Social Justice, Overcoming Legal Mis-Education, and Engaging in Professional Re-Socialization, 37 LOY.L.A. L. REV. 1167 (2003); Spencer Rand, *Teaching Law Students to Practice Social Justice: An Interdisciplinary Search for Help Through Social Work's Empowerment Approach*, 13 CLINICAL L. REV. 459 (2006).

101. William P. Quigley, *Letter to a Law Student Interested in Social Justice*, 1 DEPAUL J. SOC. JUST. 7, 7-8 (2007).

102. *Id.* at 8.

103. *Id.*

104. *Id.*

105. *Id.* at 11.

106. Quigley, *supra* note 44, at 39.

107. *Id.*

students who enter law school specifically for the purpose of engaging in work that benefits society learn quickly that there is no room for social justice in their legal educations.<sup>108</sup>

Ultimately, these scholars urge law schools to embrace the opportunity to connect law students with “lessons of social justice,” to urge students to critique the law as it exists, and to connect the law to the world it affects and which affects it.<sup>109</sup> Anything less amounts to an incomplete legal education.<sup>110</sup>

The movement to reconnect law to the social, political, and economic context from which it arises is very much in line with the Jeffersonian view of the “citizen lawyer” and the legal education necessary to produce “citizen lawyers.” Jefferson, and others like him, insisted students learn philosophy, history, government, social sciences, ethics, and politics.<sup>111</sup> Jefferson, too, recognized that the young republic needed lawyers willing to advance the improvement of the law.<sup>112</sup>

While “social justice” was not likely a turn of phrase in Thomas Jefferson’s vocabulary, the movement to incorporate social justice in legal education dovetails well with the goal of producing “citizen lawyers”—lawyers not just committed to the individual client, or their own careers, but lawyers ready to service the public good. While not every lawyer will be called to work for the American Civil Liberties Union or Neighborhood Legal Services, all lawyers can identify as a “citizen lawyer” in all the various manifestations of the concept.

Certainly clinical legal education lends itself to teaching social justice because clinics can “bring[ ] abstract notions of justice to life”<sup>113</sup> and can challenge students to move beyond thinking like a lawyer to “engage in creative, reflective, and strategic thinking.”<sup>114</sup> But it is not just the responsibility of clinicians to connect law students to social, moral, economic, political and historical influences

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108. *Id.* at 42.

109. *Id.* at 44.

110. *Id.*

111. *See* Douglas, *supra* note 5, at 199 (“This ambitious education served a specific purpose: to provide wisdom and perspective necessary for governance. As Herbert Johnson has noted, ‘with Jefferson and Wythe the study of law was coordinated with other studies designed to place the law in context with the emerging social science disciplines, and to give the future lawyer a broader view of law as an instrument of social policy.’”).

112. *See id.* at 199 (“Jefferson believed that nations must modify their legal rules to reflect their particular social and political environment. Jefferson himself was deeply involved in reshaping the English common law to suit the American context . . . . He argued that lawmakers and judges could not properly adapt English law to the American context if their education were limited merely to a reading of the English common law.”).

113. Quigley, *supra* note 44, at 44.

114. Calmore, *supra* note 100, at 1174.

on the law, or to challenge students to think deeply about how to improve law. Law schools should support such learning across the curriculum. Many law schools<sup>115</sup> and individual professors<sup>116</sup> do promote such comprehensive learning, connecting law to its social context and to experiences of the “real world.”

ABA Standards 303 and 304 may provide additional impetus for legal education to further invest in comprehensive experiential learning, including social justice, law reform, and “citizen lawyer” education. As noted above, experiential learning by its very nature connects abstract concepts to real world events. All the various manifestations of experiential learning, whether clinics, simulation courses, field placements, or service learning courses, provide opportunities to show students that the law is not an abstract, unquestionable concept alone, but rather, a messy, imperfect man-made thing, that sometimes does not always work as you hope it will work, and that sometimes the imperfect law needs reform and development.

Participation in legislative activities including mock legislative courses, statute and rule drafting exercises, legislative-related field placements, and clinics involved in public policy and law reform, provide excellent, if largely untapped, opportunities to help students form their “citizen lawyer” identity.<sup>117</sup> Giving students the freedom to think about the law critically and to think creatively about possible solutions can often challenge students’ preconceived notions, resulting in what adult learning theory calls the “disorienting moment” where expectation and reality do not match.<sup>118</sup> It is through these disorienting moments that “real transformation” begins.<sup>119</sup>

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115. See, e.g., *George Barrett Social Justice Program*, VANDERBILT LAW SCH., <https://law.vanderbilt.edu/academics/academic-programs/george-barrett-social-justice-program/index.php> (last visited May 17, 2017); *Law and Social Justice Initiatives*, THE CATHOLIC UNIV. COLUMBUS OF AM. SCH. OF LAW, <http://lsji.law.edu> (last visited May 17, 2017); *New Maryland Carey Law Course Examines Causes of and Solutions to Baltimore’s Recent Civil Unrest*, UNIV. OF MD FRANCIS KING CAREY SCH. OF LAW, [http://www.law.umaryland.edu/about/features/feature\\_details.html?feature=411](http://www.law.umaryland.edu/about/features/feature_details.html?feature=411) (last visited May 17, 2017); *Thelton E. Henderson Center for Social Justice*, UC BERKELEY SCH. OF LAW, <https://www.law.berkeley.edu/research/thelton-e-henderson-center-for-social-justice/> (last visited May 17, 2017).

116. Many of the articles cited here are written by law professors dedicated to infusing the law school curriculum with social justice lessons. See, e.g., Jane H. Aiken & Stephen Wizner, *Law as Social Work*, 11 WASH. U. J.L. & POL’Y 63 (2003); Calmore, *supra* note 100, at 1168; Quigley, *supra* note 44, at 38.

117. See Rich, *supra* note 48 at 155–56 (discussing how legislative and public policy courses can help students develop their identity as a lawyer-statesman).

118. See Quigley, *supra* note 101, at 46.

119. See *id.* (describing a “disorienting moment” for the learner as an instance when “prior conceptions of social reality and justice are unable to explain the clients’ situations, thus

In legislative simulations, students may be required to research, write, and debate on controversial legislation currently being considered in the state or in Congress. Perhaps students will have the opportunity to think creatively about the need for reforming a current law that is not effective. In clinics, field placements, or service learning-based courses, students will tackle issues of real clients or real agencies that require legislative solutions. As discussed in Part II, the experiences of a legislative course are every bit as impactful as a criminal, litigation, or business clinic opportunity. The projects completed may be discrete, but the transformative effect on students is just as powerful.<sup>120</sup>

There is a persistent myth within the legal profession that the role of promoting social justice and safeguarding civil rights falls primarily to litigators in high profile court cases. But historically, seminal court cases are often preceded by successful efforts by lawyers and activists to change public opinion and reform laws legislatively, state by state.

Take, for example, the case of *Loving v. Virginia*, a seminal civil rights case where the United States Supreme Court struck down, as unconstitutional, a Virginia law against interracial marriage.<sup>121</sup> Prior to the Court accepting this case for consideration, significant battles had raged in states across the country, often in legislatures, resulting in the repeal of interracial marriage bans in all but seventeen states by the time *Loving* was decided in 1967.<sup>122</sup> The court case was certainly necessary to push the holdout states forward, but the movement toward civil rights did not start with the court case.<sup>123</sup>

The story of the legalization of interracial marriage is not an anomaly. Courts inherently understand that their power is derived

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proving what adult learning theory holds is the beginning stage of real perspective transformation”); see also Calmore, *supra* note 100, at 1172 (“When intuitive spontaneous performance yields nothing more than the results expected for it, then we tend not to think about it. But when intuitive performance leads to surprises, pleasing and promising or unwanted, we may respond [with reflection].”).

120. Jan Levine, Opening Remarks to Fifth Colonial Frontier Legal Writing Conference, Duquesne University School of Law (Dec. 3, 2016). In his remarks, Professor Levine described two students he taught whose perspectives on social justice issues of welfare and unions changed one hundred and eighty degrees simply from conducting research and problem solving a legislative issue concerning the topics.

121. *Loving v. Virginia*, 388 U.S. 1 (1967).

122. See Philip Bump, *What overturning interracial marriage bans might tell us about what happens next with gay marriage*, WASH. POST (Oct. 6, 2014), [https://www.washingtonpost.com/news/the-fix/wp/2014/10/06/what-overturning-interracial-marriage-bans-might-tell-us-about-what-happens-next-with-gay-marriage/?utm\\_term=.7eb9341434c9](https://www.washingtonpost.com/news/the-fix/wp/2014/10/06/what-overturning-interracial-marriage-bans-might-tell-us-about-what-happens-next-with-gay-marriage/?utm_term=.7eb9341434c9).

123. *Id.*

from the public's acceptance of their legitimacy.<sup>124</sup> Legislative and public opinion advocacy frequently precede seminal court cases because courts, especially the U.S. Supreme Court, rarely move against the majority of the public or of the states on key and controversial issues.<sup>125</sup> Thus, the legislative advocacy is just as important to legal reform as the court case.

## VI. CONCLUSION

The concept of "citizen lawyer" espoused by Thomas Jefferson, in its simplest form, supports the goal of producing lawyers educated not only in the law, but in the contextual foundation for law, and trained in the arts and skills necessary to undertake improvement and reform of law and government as necessary for the public good. "Citizen Lawyers" must be both excellent lawyers and dedicated citizens. Today, just as the participation of lawyers in public life is waning, the role of the "Citizen Lawyer" has never seemed more important for our democracy.

While, training lawyers as "citizen lawyers" is vital to the continuance of our government and legal systems, it is also good for the development of the law student. Experiential legislative courses in law school can expand students' understanding of how to reform and improve law, and help students develop their "citizen lawyer" identity. While the ABA has focused on increasing experiential learning opportunities for students by propagating Standards 303 and 304, it is up to us, as legal educators, to assure those experiences are of the quality necessary to truly impact students. Legislative courses can serve these goals, thus serving both society and the law student.

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124. See Richard H. Fallon, Jr., *Legitimacy and the Constitution*, 118 HARV. L. REV. 1787, 1833 (2005).

Justices who defy aroused public opinion risk, and know that they risk, provoking a political backlash that ultimately could cause their doctrinal handiwork to collapse. Possibly as a result of the Court's concern for its own sociological legitimacy, it has seldom remained dramatically at odds with aroused public opinion for extended periods. In ways that are still little understood, the Justices undoubtedly are influenced by popular political movements and by the evolving attitudes of their society.

*Id.*

125. *Id.*

## APPENDIX A

ABA Standards and Rules of Procedure for Approval of Law Schools  
2016–2017

## STANDARD 303. CURRICULUM

- (a) A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following:
  - (1) one course of at least two credit hours in professional responsibility that includes substantial instruction in the history, goals, structure, values, and responsibilities of the legal profession and its members;
  - (2) one writing experience in the first year and at least one additional writing experience after the first year, both of which are faculty supervised; and
  - (3) one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement. To satisfy this requirement, a course must be primarily experiential in nature and must:
    - (i) integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more of the professional skills identified in Standard 302;
    - (ii) develop the concepts underlying the professional skills being taught;
    - (iii) provide multiple opportunities for performance; and
    - (iv) provide opportunities for self-evaluation.
- (b) A law school shall provide substantial opportunities to students for:
  - (1) law clinics or field placement(s); and

- (2) student participation in pro bono legal services, including law-related public service activities.

*Interpretation 303-1*

*A law school may not permit a student to use a course to satisfy more than one requirement under this Standard. For example, a course that includes a writing experience used to satisfy the upper-class writing requirement [see 303(a)(2)] cannot be counted as one of the experiential courses required in Standard 303(a)(3).*

*Interpretation 303-2*

*Factors to be considered in evaluating the rigor of a writing experience include the number and nature of writing projects assigned to students, the form and extent of individualized assessment of a student's written products, and the number of drafts that a student must produce for any writing experience.*

*Interpretation 303-3*

*Rule 6.1 of the ABA Model Rules of Professional Conduct encourages lawyers to provide pro bono legal services primarily to persons of limited means or to organizations that serve such persons. In addition, lawyers are encouraged to provide pro bono law-related public service. In meeting the requirement of Standard 303(b)(2), law schools are encouraged to promote opportunities for law student pro bono service that incorporate the priorities established in Model Rule 6.1. In addition, law schools are encouraged to promote opportunities for law students to provide over their law school career at least 50 hours of pro bono service that complies with Standard 303(b)(2). Pro bono and public service opportunities need not be structured to accomplish any of the outcomes required by Standard 302. Standard 303(b)(2) does not preclude the inclusion of credit-granting activities within a law school's overall program of law-related pro bono opportunities so long as law-related non-credit bearing initiatives are also part of that program.*

*Interpretation 303-4*

*Law-related public service activities include (i) helping groups or organizations seeking to secure or protect civil rights, civil liberties, or public rights; (ii) helping charitable, religious, civic, community,*

*governmental, and educational organizations not able to afford legal representation; (iii) participating in activities providing information about justice, the law or the legal system to those who might not otherwise have such information; and (iv) engaging in activities to enhance the capacity of the law and legal institutions to do justice.*

## APPENDIX B

ABA Standards and Rules of Procedure for Approval of Law Schools  
2016–2017STANDARD 304. SIMULATION COURSES, LAW CLINICS, AND  
FIELD PLACEMENTS

(a) A simulation course provides substantial experience not involving an actual client, that (1) is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a set of facts and circumstances devised or adopted by a faculty member, and (2) includes the following:

- (i) direct supervision of the student's performance by the faculty member;
- (ii) opportunities for performance, feedback from a faculty member, and self-evaluation; and
- (iii) a classroom instructional component.

(b) A law clinic provides substantial lawyering experience that (1) involves advising or representing one or more actual clients or serving as a third-party neutral, and (2) includes the following:

- (i) direct supervision of the student's performance by a faculty member;
- (ii) opportunities for performance, feedback from a faculty member, and self-evaluation; and
- (iii) a classroom instructional component.

(c) A field placement course provides substantial lawyering experience that (1) is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a setting outside a law clinic under the supervision of a licensed attorney or an individual otherwise qualified to supervise, and (2) includes the following:

- (i) direct supervision of the student's performance by a faculty member or site supervisor;
  - (ii) opportunities for performance, feedback from either a faculty member or a site supervisor, and self-evaluation;
  - (iii) a written understanding among the student, faculty member, and a person in authority at the field placement that describes both (A) the substantial lawyering experience and opportunities for performance, feedback and self-evaluation; and (B) the respective roles of faculty and any site supervisor in supervising the student and in assuring the educational quality of the experience for the student, including a clearly articulated method of evaluating the student's academic performance;
  - (iv) a method for selecting, training, evaluating and communicating with site supervisors, including regular contact between the faculty and site supervisors through in-person visits or other methods of communication that will assure the quality of the student educational experience. When appropriate, a school may use faculty members from other law schools to supervise or assist in the supervision or review of a field placement program;
  - (v) a classroom instructional component, regularly scheduled tutorials, or other means of ongoing, contemporaneous, faculty-guided reflection; and
  - (vi) evaluation of each student's educational achievement by a faculty member[ ]; and
  - (vii) sufficient control of the student experience to ensure that the requirements of the Standard are met. The law school must maintain records to document the steps taken to ensure compliance with the Standard, which shall include, but is not necessarily limited to, the written understandings described in Standard 304(c)(iii).
- (d) Credit granted for such a simulation, law clinic, or field placement course shall be commensurate with the time and effort required and the anticipated quality of the educational experience of the student.

(e) Each student in such a simulation, law clinic, or field placement course shall have successfully completed sufficient prerequisites or shall receive sufficient contemporaneous training to assure the quality of the student educational experience.

*Interpretation 304-1*

*To qualify as an experiential course under Standard 303, a simulation, law clinic, or field placement must also comply with the requirements set out in Standard 303(a)(3).*