

STUDENTS IN A MENU OF DEGREES PROVIDING CONTEXT FOR UNDERSTANDING AND LEARNING THE TRANSACTIONAL ATTORNEY'S ROLE

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INTRODUCTION

My focus is on Student Learning. My function as a professor is to help students learn to learn the new material now and in the future so that they are able to teach themselves in the future.¹ Students Learn from each other as well as the teacher. Professor Sophie Sparrow emphasizes the importance of law students working in *teams* to develop their skills of collaboration that are critical to the practice of law.²

Much in learning theory has been said about the importance of *context* for deep learning. I borrow the definition of Virginia Harding here: “the term Context refers to extra information that helps you to better understand something.”³ We all understand and learn better when we are given extra information about the time, place, situation and history of the event, property or people involved in the deals for which transactional attorneys add their value. These details provide the sense of something. Thus, even when I am helping students learn about litigation in my Contracts course, I provide context in the form of the documents used by the parties and the failure of the parties and their attorneys to be aware of potential disputes and methods to resolve those in order to avoid litigation.

For learning about transactions and the skills to be developed for transactional lawyering, the context includes the facts and how the facts relate or connect to other aspects of the transaction at hand. Especially in

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¹ See CATHY N. DAVIDSON, *THE NEW EDUCATION: HOW TO REVOLUTIONIZE THE UNIVERSITY TO PREPARE STUDENTS FOR A WORLD IN FLUX* 14 (2017).

² See generally MICHAEL HUNTER SCHWARTZ, SOPHIE M. SPARROW, & GERALD F. HESS, *TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM* (2009).

³ Virginia Harding, Presentation at 6th Biennial Conference on Teaching Transactional Law and Skills, *Context matters When Moving the Skills Workshop from the Classroom to Online*, June 2, 2018 in 20 TENN. J. BUS. L. 637, 637 (2018).

courses where students have little or no experience in the substantive law and, more generally in law school, in the transactional perspective and to transactions law, the context becomes critical to learning. Moreover, in the practice of law, attorneys and their clients collaborate to become aware of the CONTEXT of a particular transaction. This is the ultimate collaboration—the attorney working with a client.

Does it not make eminently good sense to integrate the variety of players in a particular type of transaction into the classroom? In this manner, learning transactional skills and doctrinal law occurs in the context of the transaction. I always imagine work in commercial real estate as being on a continuum that reflects the workers' special perspectives and skills. At one end, there are the brokers, owners of different types of real estate, lenders, and builders. At the other end are the professional service providers like attorneys, accountants, appraisers, and surveyors. The various players share related information and provide the context for all learning.

At John Marshall Law School, in the evolution of the LLM in Real Estate Law for attorneys, we have already implemented the lesson that, to be effective counselors and advisors, lawyers must know a lot about the commercial real estate industry and their clients to develop a basic understanding of the applicable law in order to provide legal services efficiently. Therefore, most courses present and consider the business concerns of the relevant clients. And we have a separate course known as the Real Estate Industry that provides a macro introduction to the field.

Many years ago, Professor Art Gaudio (who became the dean of two law schools in his career) and I dreamed of having students from the business school at a university—as well as the architecture school and the engineering school—learn in classrooms with law students learning about real estate law and practice. That dream model underestimated the difficulty of getting a variety of colleges within a university to work together in offering the same law courses to a variety of students.

But what if we brought in the individual students directly to the law school from their variety of educational and experiential learning situations? What if we can recruit students into the law school courses who have the backgrounds of “clients,” from whom our law students need to, and can, learn the context?

Such students themselves are interested in learning about the legal context of their professional or business life. This is the group of potential students who would benefit from what is being called the “menu” of law

degrees.⁴ These are the Masters of Jurisprudence (MJ) degrees being offered by the John Marshall Law School and many other law schools including top-ranked law schools like Northwestern University Pritzker School of Law and the University of Illinois College Of Law.⁵ These degrees respond to the increasing professional occupations in which legal knowledge is valuable, but where a license to practice law is not necessary.⁶ Indeed, the growth of these degrees is amazing when compared with the decrease in applications for JD degrees.⁷ Dean Rodriguez of Northwestern's Pritzker School of Law reported that, for fall 2017, the law school had nearly the same number of MSL students matriculate as JD students!

For me, all of this primarily plays out in the commercial real estate non-attorney professionals who enroll in our Masters of Jurisprudence ("MJ") in real estate law. The MJ in Real Estate Law students have a good college education, plus about 5 years of experience in one of a variety of related fields like brokerage, architecture, construction, urban planning, environmental regulation, banking, government work, etc. These students themselves have been, or have worked for, the "players" in the commercial real estate transactions, which are the focus for our work in real estate law and practice at John Marshall. These are the students who bring the context of the business of commercial real estate into our classrooms, whether my students are learning in a traditional classroom or online.⁸

⁴ See Association of American Law Schools (AALS) Section on Post-Graduate Legal Education, *Beyond the JD: The Evolution of Law School Post-JD & Non-JD Programs*, (January 4, 2018) San Diego, CA. (discussing the menu at length in response to new law student populations and new career plans and aspirations).

⁵ *Id.*, Other names for the same degree offered to non-lawyer students include Masters of Science of Law (MSL) at Northwestern, Master of Studies in Law (MSL) at Colorado and University of Illinois, and Juris Masters (JM) at Emory.

⁶ See Joni Hersch, *Increasing Diversity by a New Master's Degree in Legal Principles*, 67 J. OF LEGAL ED. 86, 116 (2017).

⁷ See Celeste M. Hammond, Remarks, *Prepared Section on Post Graduate Legal Education for AALS Annual Meeting* (January 3, 2014) (noting that, in 2013, the ABA Accreditation Committee published statistics showing new JD students down 11% from 2012 and down 24% from 2010 at the height of JD enrollment); see also Education Advisory Board, *Market Demand for Juris Master Professionals*, (in press).

⁸ See Celeste M. Hammond, *Integrating Transactional Skills into Business Law Courses: Can These Be Taught Online?*, 18 TENN. J. BUS. L. 521, 523 (2016) (describing the differences in teaching).

CHANGES IN THE LEGAL PROFESSION AND IN HOW STUDENTS LEARN SUGGESTS THE MENU OF DEGREES

The practice of law has changed dramatically and will continue to do so. The work of Richard Susskind in his books, *Tomorrow's Lawyers*⁹ and *The Future of the Professions*,¹⁰ describes how technology will transform the work of lawyers. The future may be scary, but it is also exciting!

These changes mean that the profession will end up with fewer law jobs requiring a license to practice law and a JD degree.¹¹ Some point to the recession of 2008–2010 as the clear beginning of this trend.¹² The result is that thinking like a lawyer has changed or must change due to the three driving forces: experiential education, globalization, and technology.¹³ And, now more than ever, lawyers must be entrepreneurial, nimble, and creative. As is argued by Tom Nichols in his book, *The Death of Expertise*, about professions generally, there is a dearth of experts¹⁴ in law practice and, instead, a profession with more legal engineers and legal teachers.

Recently this lack of law jobs in traditional settings like law firms has begun to be dealt with by pointing lawyers and graduating JD students to so-called “Non-Traditional Jobs.”¹⁵ Options include “compliance,

⁹ See generally RICHARD SUSSKIND, *TOMORROW'S LAWYERS – AN INTRODUCTION TO YOUR FUTURE* (Oxford Univ. Press 2d ed. 2017).

¹⁰ See generally RICHARD SUSSKIND & DANIEL SUSSKIND, *THE FUTURE OF THE PROFESSIONS: HOW TECHNOLOGY WILL TRANSFORM THE WORK OF HUMAN EXPERTS* (Oxford Univ. Press 2015).

¹¹ See MICHAEL J. MADISON, *An Invitation Regarding Law and Legal Education, and Imagining the Future*, LEGAL STUDIES RESEARCH PAPER SERIES 1, 11 (2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3122624 (follow “Download This Paper” or “Open PDF in Browser” hyperlink) (noting that the productivity of a given lawyer increases and the need for additional lawyers decreases with technological changes including digital networks, data collection, and modeling).

¹² See, e.g., Ian Holloway & Steven I. Friedland, *The Double Life of Law Schools*, 68 CASE W. RES. L. REV. 397, 399–400 (noting that a “recalibration of the legal marketplace” began to occur during the 2008–2010 recession).

¹³ See Ashley Krenelka Chase, *Upending the Double Life of Law Schools: Millennials in the Legal Academy*, U. DAYTON L. REV. (forthcoming 2018).

¹⁴ See generally THOMAS M. NICHOLS, *THE DEATH OF EXPERTISE* (Oxford Univ. Press 2017).

¹⁵ Carla J. DeVelder, *The Other Legal Jobs*, BEFORE THE BAR: STUDENT LAWYER (Feb. 1, 2013), <https://abaforlawstudents.com/2013/02/01/the-other-legal-jobs/>.

insurance, legal information providers,”¹⁶ the latter functioning much like marketing folks.

Additionally, there has been a shift in the concept of society from structured to fluid. It used to be that people in the legal profession climbed up a sort of ladder to college, then to law school, to an apprenticeship, and to success. It used to be that if you got through law school and you were smart, you were set for success.¹⁷

Now there is an entrepreneurial approach where there is social relevance and a collapse of structure and hierarchy. This has been described as a shift from climbing up the ladder on the pyramid of success to coming in laterally to a circle. Education has lost its cache.¹⁸ And, those entrepreneurial, high-tech guys like Bill Gates, Steve Jobs, and Mark Zuckerberg¹⁹ are not the only ones who have rejected that pyramid and skipped higher education. Increasingly, ambitious players in other fields are rejecting the notion of education, even legal education, as too time-consuming and too expensive to justify the JD degree.²⁰

In fact, at the 2018 annual meeting, the point was made at the AALS programs on Technology, Law & Legal Ed: now those who cannot succeed in the entrepreneurial model are becoming lawyers!

Increasingly, to be competitive in many industries, you need to be good at sifting information and having good survival skills are what matters. Even for lawyers, creativity is valued to meet critical tasks by way of, for example, digital litigation; and, the commercial real estate industry and their lawyers are buzzing about Blockchains!

Let us now look at the significant changes in how students learn. Of course, many of these changes are attributable to the technology they

¹⁶ *Id.*

¹⁷ See GALLUP, ACCESSLEX INST., EXAMINING VALUE, MEASURING ENGAGEMENT: A NATIONAL STUDY OF THE LONG-TERM OUTCOMES OF A LAW DEGREE (2018) (reporting a study of perceptions of law school graduates at various stages of their careers and graduates in other disciplines about the value of a law degree, including not only financial payoffs, but also well-being and professional engagement).

¹⁸ Technology, Law & Legal Education Program, Ass’n of Am. Law Sch, Annual Meeting (Jan. 5, 2018) (author’s notes from program).

¹⁹ See, e.g., Madison, *supra* note 10 (comparing Gates, Jobs, Bezos, Brin and Page, and Zuckerberg as the Founding Fathers of the 21st century to the American Founding Fathers of the 18th century).

²⁰ See Holloway & Friedland, *supra* note 11, at 399 (arguing that prospective law students begin to rethink “the general assumption that a legal education provided a good use of one’s time and resources.”).

use.²¹ However, even before widespread digital learning affected our students, it was the *doctrine* that began to count much more than the development of analytical skills. For many years now, commercial study aides like the Outlines and the Flash cards have begun to interfere with the Socratic Method.

The Socratic Method is student-centered with intense study of original materials (those appellate opinions) *before* the class meets. The professors who used this method discussed questions without ever revealing answers.

JD law students today do not come to class prepared to analyze appellate cases to develop their analytical skills. They are ready to listen to lectures that provide all the answers, rather than anticipating complicated discussions of alternative answers with which many of the more experienced faculty here today are familiar.

Faculty cannot get much interaction from students by asking the questions. Students are learning the answers. All they seem to care about is what the questions will be on that final exam and how they can get a good grade.

Whereas the Socratic method heralded deep learning, students today are seeking to understand the doctrine well enough to answer questions that have only one answer of the sort they are familiar with on multiple choice exams and the bar exam. Plus, the tests they take test doctrine, not deep knowledge that reflects on so-called “useless” concerns like the role of public policy.

Yet, as the inaugural programs of the new AALS section on Technology, Law & Legal Education at the 2018 meeting pointed out: JD legal education has changed very little in response to these changes in learning.²²

Besides, many have criticized the Socratic Method for not reflecting real-life practice.²³ Some have characterized the Langdellian model as being based on a foolish assumption that it is legitimate today as

²¹ Miguel Willis, *8 Law Schools on Cutting Edge of Tech + Innovation*, INNOVATIVE LAW STUDENT (Apr. 28, 2016), <https://www.innovativelawstudent.com/2016/04/7-law-schools-cutting-edge-tech-innovation/>.

²² See Madison, *supra* note 10, at 3 (commenting that “[t]he most salient feature of modern US legal education is its antiquity rather than its complexity”).

²³ Holloway & Friedland, *supra* note 11, at 298–99.

the basis of legal education.²⁴ I have argued for the use of the case method that is used in business school and medical school as a better approach than using appellate cases as course materials.²⁵ And Ashley Krenelka Chase blames the failure of legal education to reflect the needed changes, on legal education's failure to welcome millennials into the legal academy as law professors.²⁶

Even as we deal with these changes in the profession and in student learning, the value of getting the JD degree has been studied over the recent period that has been marked by the recession and the decline in law school enrollment.²⁷ And even though the issue is debated, for those who get JD degrees there is still probably an economic advantage as compared with those who have only bachelor's degrees.

The publication of an empirical study, *The Economic Value of a Law Degree* by Michael Simkovic and Frank McIntyre, in 2014²⁸ caused a lot of controversy at the highest levels. Brian Tamanaha published a criticism of the report in *Failing Law Schools*.²⁹ Brian Leiter in his blog slammed the criticism, arguing that [only] some law schools are failing, not legal education itself.³⁰

²⁴ Celeste M. Hammond, *Borrowing from the B Schools: The Legal Case Study as Course Materials for Transaction Oriented Elective Courses: A Response to the Challenges of the MacCrate Report and the Carnegie Foundation for Advancement of Teaching Report on Legal Education*, 11 TENN. J. BUS. L. 9, 20 (2009).

²⁵ *Id.* at 9, 13.

²⁶ Chase, *supra* note 12, at 1.

²⁷ Holloway & Friedland, *supra* note 11, at 399–400.

²⁸ Michael Simkovic & Frank McIntyre, *The Economic Value of a Law Degree*, 43 J. Legal Stud. 249 *The Journal of Legal Studies* 259, 284 (concluding that a law degree is associated with median increases of 73% in earnings and 60% in hourly wages when compared with a college degree and that the mean annual earnings premium is approximately \$57,200 in 2013 dollars or pretax lifetime value of \$1,000,000); *see generally* Gallup AccessLex Institute, *supra* note 16.

²⁹ Brian Z. Tamanaha, *FAILING LAW SCHOOLS* (John M. Conley & Lynn Mather eds., 2012).

³⁰ Brian Leiter, *Reflections on "The Economic Value of a Law Degree" and the Response to It*, BRIAN LEITER'S LAW SCHOOL REPORTS (July 30, 2013), <http://leiterlawschool.typepad.com/leiter/2013/07/the-economic-value-of-a-law-degree-redux-1-1.html>.

**NON-ATTORNEY STUDENTS IN MENU OF DEGREES IS A RESULT OF
THESE CHANGES IN THE LEGAL PROFESSION AND STUDENT
LEARNING AND ARE LIKELY A PART OF THE FUTURE OF LEGAL
EDUCATION**

MJ students in Real Estate Law help the learning for all the law students at the John Marshall Law School.

Most of us in legal education, and certainly all of us here today at Emory, work to make learning reflect practice and prepare our students for the changing profession, and those goals clearly will be the test of a good legal education.³¹

One way to enhance learning in the context of a variety of business transactions, including those in the commercial real estate industry, is to have students involved with a variety of worker/professional roles learn together. Now studies show that there are many occupations where legal education is valuable even for those who do not want to “practice law” in the traditional sense.³² These occupations provide work for our new types of law students who are not studying to get a JD degree.³³

My experience at JMLS has been teaching in classrooms of JD students many of whom are non-traditional. They have had work backgrounds in a variety of special fields before they chose a legal education. This has been an important aspect of the learning at John Marshall which has always had a mission of preparing its graduates for practice. Doctors, inventors, journalists, financiers, and musicians have come to our law school for a law degree. Many do not want to practice law and do not require the JD degree. They want to learn more about their industry from the legal perspective. I personally have enjoyed having such a variety of non-traditional students in my basic courses—I, too, learn from having them engaged.

Since the 1990s, the addition of new law degrees, outside the JD degree, offered by the Center of Excellence at the John Marshall Law

³¹ See, e.g., Chase, *supra* note 12, at 2 (describing the evolution of legal education where even the ABA accreditation now requires practice-based learning).

³² See Joni Hersch, *Increasing Diversity by a New Master's Degree in Legal Principles* 6, 25 (Vand. U. L. Sch., Working Paper No. 17-43, 2017); see also Education Advisory Board, *supra* note 7.

³³ *Id.*

School draw students from a variety of industries, including commercial real estate, to take courses alongside JD and LLM students.³⁴

MJ degrees in Intellectual Property, Estate Planning, Employee Benefits, and Tax and Information Technology are available for non-attorneys.³⁵ It is not surprising that for a bunch of scholars and teachers who value a mission to prepare students for the practice of law, the John Marshall Law School broke with the usual model for MJ programs that kept the non-lawyer students separate from those interested in a JD degree. Instead, all of the MJ students at JMLS take regular electives after they complete some courses that introduce them to legal analysis and legal research. At John Marshall, our MJ students are in the same classes with JD students and with lawyer LLM students.³⁶

This approach to learning provides a simulation of the real context of the industry and the relevant practice. It is part of the future of the legal profession and of legal education. There are other/additional reasons for MJ—tuition money for law schools and the increasing diversity of legal education that something easier than a JD degree may provide.³⁷

But my own reasons for welcoming non-attorneys/non-JDs into my classroom is to provide context for learning about transactions and transactional law and to support collaborative work.

So, let me end my presentation by telling you about that classroom.

Initially, there was some resistance to having non-attorneys (the MJs) in our LLM courses. In a class of 30 attorneys, we would include a cohort group of about ten MJ students. The LLM students expressed concern that the MJ element would dilute their learning level. But I found that those MJ students knew more about the law than our JD grads in the LLM knew about the real estate industry/business! And the MJ students came with an ethic of sharing and cooperating that too few new lawyers show—maybe because law school was always touted as “competitive” and practice as “confrontational.”

When I dared to have LLM and MJ students work in groups on skills development projects, I often saw the product of the MJ students as

³⁴ See THE J. MARSHALL L. SCH., <https://www.jmls.edu/> (providing basic information on LLM and MJ programs).

³⁵ *Id.*

³⁶ See Hammond, *supra* note 23, at 29.

³⁷ See Hersch, *supra* note 5, at 19, 31.

superior to those of the lawyers in the class. Of course, the latter had for the most part no experience in the industry!

And that context of the commercial real estate industry probably has been the most important reason to include non-lawyers in our classes. Let me talk about several of them:

Jim, the appraiser, is a supportive alumnus of the MJ program. He came to it after working in the commercial real estate industry for about 20 years. His participation in the class made the role of the appraiser in real estate deals—neither completely artist but nor a scientist—clearer. And he knows the value of networking. He volunteers to help us recruit MJ students and to mentor those who are currently working on their degrees.

Like several other construction contractors in these classes, some attorneys and some MJ students, Bill had worked in several management roles with large companies. He brought experience with residential and commercial development to the classroom. He had managed public school renovation and construction. After graduating, Bill used his high-tech skills to develop software that would make integrating the various tradesmen on a construction site more efficient. Wow!

Gerry was in sales for a national renewable energy firm. He brought knowledge of that industry with him. This supported those JD and LLM students who wanted to specialize in sustainability. And Gerry provided the connections to get a student-lawyer an externship in the general counsel's office of the company!

Alice is a commercial real estate broker who made a switch into real estate after a career in medicine. She has engaged students with both her learning through a lot of hard work and by her caring personality. Less experienced students look over to her when a practical question comes up in class about sales of real estate. And she is showing our JD students how to use networking for scholarships and for work contacts. She regularly is getting top grades in her courses.

I think you realize why I am so excited with the Menu of Degrees and how integrating students into the same class has helped all of them learn about real estate transactions, law and lawyering together.