

A THEORY OF COURSE SELECTION AND CURRICULAR PLANNING

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INTRODUCTION

Students receive much advice about courses, seminars, clinical offerings, externships and other curricular options. Some of this advice comes from other students, some from faculty, some from employers or prospective employers. Often the advice is conflicting. Now, there is nothing wrong with conflicting advice; different advisors have different views about what one ought to do in law school, and you should solicit the advice of a variety of knowledgeable patrons. You should, in particular, speak with the teachers of those courses that you are contemplating if you have any doubts about coverage, methodology or, especially, goals and objectives.

Most of the advice offered students has this in common: It is ad hoc, untroubled by any theoretical unity. “Take Trial Advocacy”; “You have to have Tax”; “Clinic will teach you how to practice law.” Some of this advice may be perfectly sound, but much of it is ill-informed — and little of it presents a coherent picture of a course of study or consistent guidelines to help you choose from among the several choices on the academic menu. This paper is written to address that lack.

THE THEORY

You will be a law student for three or four years. You will practice for twenty, thirty, forty or more years. It makes sense to do here what you cannot do -- or cannot do as well -- when you leave here. Thus, in contemplating a course schedule for any given semester, you should ask yourself whether you are as capable — or nearly as capable — of mastering on your own the learning of the courses you are considering.

If we -- you and the School of Law -- have done our jobs during the first year, you are probably fairly adept at learning a body of legal doctrine at a reasonable level of mastery. What, then, does the School of Law have to offer you beyond this?

You have the opportunity to rub minds, as it were, with the faculty. Now, it is not necessarily the case that the faculty is brighter or more sophisticated than many of those you are likely to meet in practice. But the faculty has the time and inclination to think deeply about fundamental issues in law and policy and to work at deeper levels than the economics of law practice typically allows outside the corridors of the academy.

You have the opportunity to study material that interests you because it interests you, rather than because you are being paid to work on it. Law school should be a time of

experimentation and discovery, not just a time to absorb more law. Further, you can take the opportunity to discover areas of knowledge that might interest you, but about which you know little. Perhaps most important, you have the opportunity to work really hard on something. It is perhaps less important what that thing is, than that you gain the experience of mastering something to the bottom.

There are a variety of skills, often not addressed in the first year, that are much more difficult to master without the guidance and feedback of knowledgeable professionals whose job it is to provide it. Some of these skills are analytic (e.g., the ability to work with statutory material or to synthesize large or complex bodies of information); some are performative (e.g., the ability to counsel, interview, conduct a direct or cross-examination), though even these skills require a mastery of doctrine and analytic abilities. The most important of these skills is the ability to learn from your own experience. It is only through mastery of that skill that you can continue your education throughout a life-long career. Mastery of that skill requires constant and guided reflection on planning, executing and evaluating a wide range of activities. That guidance is more likely to be found within the precincts of the law school than elsewhere.

APPLICATIONS OF THE THEORY

What does all this mean at the operational level, where the rubber meets the road and the student must make course selections? In no particular order:

1. Don't overload on large section heavily doctrinal courses. Much of this material you ought to be able to master on your own. Indeed, you will spend much of your career doing precisely that. For example, when many of the faculty went to law school there was no such separate subject matter as environmental law (what little there was fell under the rubric of nuisance); there was not much in the way of intellectual property law besides the statutory courses in patent and copyright; what little health care law existed was tort law. Ten, twenty, thirty or more years from now there will be fields and specialties we can barely imagine, and today's students will need to educate themselves. This you will be able to do.
2. On the other hand, you will need to have enough of a doctrinal background in enough basic subject areas to be able to orient yourself in emerging fields. It would have been difficult, for example, to master environmental law with no background in administrative law.
3. On the other, other hand (one problem with law professors is that we have too many hands), too much of legal education is a mile wide and a half-inch deep. Just as overly narrow specialization without a larger context is a mistake, so too is learning less and less about more and more. You should take the opportunity to master some issue or problem or field in depth. This might include taking a number of courses in a particular area, undertaking one or more writing projects, engaging in experiential learning, perhaps taking graduate courses in a related discipline.

4. Take teachers as well as courses. And take as many different teachers as you can. We each have a particular slant, a particular approach, and you are likely to profit from the multiplicity of views.
5. Most of the required curriculum is heavily devoted to case analysis. Statutory and regulatory material, which require some different analytic and rhetorical tools, are too much neglected. Yet the ability to deal with such material is critically (and increasingly) important in contemporary law practice. Thus, you should have some experience in working with such materials while in law school. Courses like Income Tax, Environmental Law, Commercial Law (and related UCC offerings) are some avenues for gaining the necessary exposure to these sorts of materials.
6. Do some work in areas with which you are unfamiliar. Many students have little or no background in business or finance, for example. For such students, a course like Business Associations can be important as much for the factual contexts in which the cases arise as for the legal doctrine they announce. Moreover, you may discover an interest in an area with which you are now unfamiliar.
7. You should also take courses that explore the wider world in which law is embedded, including graduate courses in other disciplines. Comparative law courses, “Law and . . .” offerings, the various jurisprudence offerings (including my own “The Idea of Law in Western Culture Seminar”) are just a few examples from the curricular menu that can serve this purpose.
8. Consider courses that will assist you in thinking about how to develop the skills required to practice law: Counseling & Negotiation, Trial Practice, Pre-Trial Civil Litigation, etc. Specific instruction in these skills is important, but much more important, such courses can provide you with a methodology that you can use to learn from your own experiences throughout your career. If, as you engage in the various activities that form the basis of these kinds of courses, you develop the habit of planning your objectives, performing the task and, especially, evaluating your own performance in the light of those objectives, you will have established a pattern of professional behavior that will be very helpful throughout your professional life.
9. Clinical education (including high quality externships) offers these same opportunities to an even greater degree. By adding the responsibilities of actual representation, clinical education provides the opportunity to reflect deeply on what it means to be a lawyer in our society. If all that a clinical experience provides is the chance to practice practicing law, it will have failed you as an educational experience. A well-conceived clinical experience should offer structured reflection on the work you will be performing, and you should talk with your proposed clinical teacher to assure that that opportunity will be offered.
10. The need to become proficient in developing the skills of the lawyer has special importance and special urgency with respect to the skill of writing. Law school provides

the opportunity to develop that skill, but it is an opportunity that you must seek out. And you should. You should take many opportunities to undertake supervised writing projects. Again, it is important to speak with those with whom you plan to undertake such projects to be sure that the supervision will provide the kind of experience that you have a right to expect.

CONCLUSION

You will get lots of conflicting advice about how best to use your time and energy during your law school career. It is up to you to decide whether and to what extent to follow the advice you are given. You are responsible for your own education, and that responsibility extends not just to yourself, but to those in the future who will be dependent on what you will take from this experience. Whatever advice you choose to follow, or if you follow no advice at all, it is impossible to overstate the importance of *deciding* what you will do. If you simply drift through the years of law school, taking courses because of the time of day they are offered or because the instructor will not require you to work very hard, or because he or she is reputed to be entertaining, you are squandering a resource that is both scarce and not easily replicable later in your life or career. Your time here (despite how it may feel at the moment) is really quite brief. Use it wisely.