

**TRAINING LAWYERS, CULTIVATING CITIZENS,
AND RE-ENCHANTING THE LEGAL PROFESSIONAL**

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Law schools ought to have a vision for how they contribute to the public good. This article identifies two views of how public value might fit into the mission of the law school. The additive view holds that pursuing public value (cultivating “citizens”) and training “lawyers” are distinct objectives. This view underlies traditional claims that the law school should be housed in the university, and also accounts for the historic tension between academic law schools and the profession.

By contrast, the integrative view holds that training lawyers and cultivating citizens are mutually reinforcing. This view inheres in the desire to ennoble the concept of professionalism, an old tendency that is presently in ascendance. A law school that embraces professionalism can place public value at the core of its mission, deploying its internal incentive structures in the service of the public good. However, the concept is at risk of becoming diluted or being imperfectly translated into practice. Furthermore, a sole focus on professionalism may marginalize or exclude certain conceptions of citizenship.

To optimize its public value, the law school that embraces professionalism should take pains to ensure it retains its robust meaning. It can do so by locating discussions about public purpose in the privileged parts of the law school, and by investing in pedagogical innovations that truly integrate conceptions of “citizen” and “lawyer.” These efforts should be supplemented by innovations that promote diverse conceptions of the citizen that do not fit cleanly into the rubric of professionalism.

Les écoles de droit devraient avoir une vision de leur contribution au bien collectif. Cet article identifie deux visions de la manière dont la valeur collective peut cadrer dans la mission d’une école de droit. La vision additive vise la quête de valeur publique (produire des «citoyens») et la formation d’«avocats», soit des objectifs distincts. Ce point de vue repose sur les prétentions traditionnelles que l’école de droit fait partie de l’université et explique la tension historique qui existe entre les écoles de droit et la profession comme telle.

En revanche, la vision intégrative estime que la formation d’avocats et la production de citoyens se renforcent mutuellement. Cette vision est inhérente au désir d’élever le concept de professionnalisme, vieille tendance qui est actuellement dominante. Pour une école de droit qui valorise le professionnalisme, la valeur collective se trouve au cœur même de sa mission, déployant ses structures incitatives internes au service du bien collectif. Le concept risque cependant de se diluer ou de mal se traduire dans la pratique. De plus, le seul fait de viser le professionnalisme peut marginaliser, voire exclure, certaines conceptions de citoyenneté.

Pour optimiser sa valeur collective, l’école de droit qui valorise le professionnalisme doit s’employer à en respecter le sens. Elle peut le faire en ayant des discussions sur l’utilité publique dans des endroits privilégiés de l’école de droit et en investissant dans des innovations pédagogiques intégrant vraiment les notions de «citoyen» et «d’avocat». À cet effort, il faut ajouter des innovations encourageant les conceptions variées de citoyen qui ne cadrent pas parfaitement dans la rubrique de professionnalisme.

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I. INTRODUCTION

Critiques that malign law schools for their “broken economic model” frame the problem of value in legal education too narrowly.¹ Law schools represent a massive investment of human potential, public funding, cultural pedigree, and diversified financial risk. All this investment is in the service of understanding how law — a complex and contested, yet ultimately public, good — operates. While debt loads and the labour market are important concerns, the law school must ultimately be evaluated in terms of its broader public value.

To evaluate, one must first understand. And understanding public value is a difficult endeavour. It requires articulating the disparate, sometimes fuzzy goals of diverse institutions populated by people with different perspectives, goals, political beliefs, backgrounds, theoretical commitments, and approaches to pedagogy. Yet the questing is worth the effort. Public value is the foundation of the law school’s relevance. If we cannot see that foundation clearly, attempts to shift it or build upon it could be disastrous.

This article identifies two opposing visions of how public value fits into the law school’s mission. First is an “additive” view: one that conceives the law school’s public mission as something in addition to its function of training lawyers. Second is an “integrative” vision: the notion that training lawyers and pursuing public value are mutually reinforcing goals.²

These trends imply very different prescriptions and trade-offs for law schools. The integrative view goes hand in hand with a desire to revitalize and breathe meaning into the concept of “professionalism.” Adherents of integration can pursue public value by broadening and deepening the concept of professionalism within the law school, and by aligning the law school’s diverse activities and curricular elements towards this singular goal. The chief benefits of “professionalism,” in this revitalized sense, are its capacity to achieve consensus among diverse constituencies and to deploy the incentive structures of the law school in the service of broader public objectives.

By contrast, the additive view suggests that there will always be some expression of public value that cannot be assimilated into “professionalism,” however robustly that term is interpreted. This view compels law schools to actively cultivate and sustain notions of public value that are distinct from professional goals. The chief benefit of the additive vision is therefore not consensus but diversity: it ensures that law schools support and encourage a broad set of ways in which its graduates contribute to society.

¹ See e.g. Brian Z Tamanaha, *Failing Law Schools* (Chicago: University of Chicago Press, 2012), Part IV; David Segal, “Law School Economics: Ka-Ching!” *The New York Times* (16 July 2011), online: <http://www.nytimes.com/2011/07/17/business/law-school-economics-job-market-weakens-tuition-rises.html>.

² The *Carnegie Report* also uses the language “additive” and “integrative,” although in the context of discussing courses in a law school curriculum (William M Sullivan et al. *Educating Lawyers: Preparation for the Profession of Law* (San Francisco: Jossey-Bass, 2007) at 58-59 [*Carnegie Report*]). This article uses them in a broader, thematic way.

This article begins by illuminating the additive and integrative views in selected works from the literature on legal education and then expands on the implications of each view and suggests some modest prescriptions.

II. ADDITIVE AND INTEGRATIVE VIEWS

To illustrate the two opposing views, this article considers how two terms, “lawyer” and “citizen,” have been conceived of in relation to one another. By “lawyer” I mean the paradigmatic product of the “law school”:³ the unit of labour destined to supply the market for legal services.⁴ By “citizen,” I mean the product of an education oriented towards citizenship, a term I use as shorthand for the notion of public value. Its use requires some explanation.

As a way of talking about foundational purposes of legal education, “citizenship” is an imperfect term, with its connotations of privilege, exclusion, and inequality.⁵ It can imply a narrow view of public life as related exclusively to the state, apparently excluding a wide range of social activity.⁶ Despite these shortcomings, legal educators frequently use the term to convey a sense of mission with public purpose.⁷ When scholars choose to define it, they may do so in relatively broad terms — for example, as “intelligent participation in the politico-legal life of the community.”⁸ But it is often left undefined, drawing its strength, perhaps, from its “capacious” nature.⁹

³ As have other contributors to The Future of Law School Conference, I adopt the term “law school” for the purposes of this article while acknowledging the limitations of that term. See Roderick A Macdonald & Thomas B McMorrow, “Decolonizing the Law School” (2014) 51:4 *Alta L Rev* 717 at 718, n 2 and accompanying text.

⁴ The American Bar Association’s “law services provider” captures this usage well: Task Force on the Future of Legal Education, “Working Paper” (1 August 2013) at 3, online: American Bar Association <http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/taskforce_comments/aba_task_force_working_paper_august_2013.authcheckdam.pdf>.

⁵ See e.g. Ayelet Shachar, *The Birthright Lottery: Citizenship and Global Inequality* (Cambridge, Mass: Harvard University Press, 2009); Jennifer Nedelsky, *Law’s Relations: A Relational Theory of Self, Autonomy, and Law* (Oxford: Oxford University Press, 2011) (“[w]here I to use the term ‘citizen’ as a stand-in for the more ambiguous notion of protected-and-participatory-membership, I would be tacitly excluding people I do not mean to exclude” at 405, n 22).

⁶ *C.f.* John Dewey, *Democracy and Education: An Introduction to the Philosophy of Education* (Auckland: Floating Press, 2009) (“[u]nder the influence of German thought in particular, education became a civic function and the civic function was identified with the realization of the ideal of the national state.... To form the citizen, not the ‘man,’ became the aim of education” at 89-90).

⁷ See Annie Rochette, “Values in Canadian legal education,” online: (2011) 17:2 *Web JCLI* <<http://www.webjcli.org/>> [Rochette, “Values”] (identifying the “value” of citizenship in institutional documents of the faculties of law at the Universities of Calgary, Windsor, and Toronto); Annie Rochette, *Teaching and Learning in Canadian Legal Education: An Empirical Exploration* (DCL Thesis, McGill University Faculty of Law, 2010) [unpublished] (reporting on individual teachers wanting “their students to become citizens who would contribute to society” at 131, 202); Kim Brooks, “SchulichLawDean” (Twitter account), online: Twitter <<http://twitter.com/SchulichLawDean>> (the current Dean of Law at the Schulich School of Law at Dalhousie writing, “I’m a tireless advocate for the people who make the Schulich School of Law at Dalhousie great, the city of Halifax, legal education, and engaged citizenship”).

⁸ Roger Brownsword, “Law School for Lawyers, Citizens, and People” in Fiona Cownie, ed, *The Law School — Global Issues, Local Questions* (Aldershot, UK: Ashgate, 1999) 26 at 29; Roger Burridge & Julian Webb, “The Values of Common Law Legal Education: Rethinking Rules, Responsibilities, Relationships and Roles in the Law School” (2007) 10:1 *Legal Ethics* 72 at 74.

⁹ Audrey Macklin, “Who Is the Citizen’s Other? Considering the Heft of Citizenship” (2007) 8:2 *Theor Inq L* 333 at 334. See also Kathleen Knight Abowitz & Jason Harnish, “Contemporary Discourses of Citizenship” (2006) 76:4 *Review of Educational Research* 653 (identifying seven “citizenship discourses” in educational literature on K–12 classrooms in the US: the classic discourses of civic republicanism and liberalism, and the “critical discourses [including] feminist, reconstructionist, cultural, queer, and transnational” at 656); Dewey, *supra* note 6 (“[citizenship] may be used to indicate a number

This article uses “citizenship” as a term that captures different conceptions of public value in legal education that are distinct from the objective of supplying a market for legal services. Fostering “participation,”¹⁰ inculcating “values,”¹¹ developing “political”¹² consciousness, training “critical thinking,”¹³ cultivating “humanity,”¹⁴ developing “civic-mindedness,”¹⁵ promoting a sense of “agency”¹⁶ — are all examples of attributes that would fall under such a rubric. The goal of this article is not to reconcile or subsume such diverse objectives into one concept but rather to find a term that can operate as shorthand to capture the general inclination to articulate such aspirational concepts.

This section uses the formulation “lawyer *and* citizen” to illustrate the additive conception of citizenship — the sense that public value is something in addition to training lawyers. The integrative view, by contrast, is captured by the formulation “lawyer *as* citizen.”

A. LAWYER AND CITIZEN: CITIZENSHIP AS ADDITIVE

The “additive” vision of citizenship is the idea that by learning law in a university environment, students are acquiring *more than* an induction into a professional class. The university’s contribution to citizenship is separate from what is needed to train as a lawyer. Such citizenship virtues not only “add to” professional training, they cultivate a parallel identity from that of lawyer.

The background claim is that universities, and *a fortiori* public universities, have taken on the mission to produce graduates who are critical thinkers, broadly knowledgeable, and cognizant of the various contributions that different disciplines make to social progress and understanding.¹⁷ The claim that the university has a distinct capacity to cultivate citizens surfaces in the arguments that liberal arts colleges provide a very different legal education

of qualifications which are vaguer than vocational ability. These traits run from whatever make an individual a more agreeable companion to citizenship in the political sense: it denotes ability to judge men and measures wisely and to take a determining part in making as well as obeying laws” at 207). The term has such elasticity that it is even used by those who resolutely reject the notion that the state defines law, let alone an identity of public purpose. See e.g. Roderick A Macdonald, “Custom Made — For a Non-chirographic Critical Legal Pluralism” (2011) 26:2 CJLS 301 [Macdonald, “Custom Made”] (“[t]oday, the puzzle is to discover the extent to which legal texts issued by legislatures and courts ... authorize a stylized conversation *that only tangentially touches the manner in which citizens experience the everyday normativity of everyday life*” at 308 [emphasis added]).

¹⁰ See Brownsword, *supra* note 8 at 29; Burridge & Webb, *supra* note 8 at 74.

¹¹ See Rochette, “Values,” *supra* note 7; Jeremy Cooper & Louise G Trubek, eds, *Educating for Justice: Social Values and Legal Education* (Aldershot, UK: Ashgate, 1997).

¹² See Duncan Kennedy, “Politicizing the Classroom” (1994) 4:1 S Cal Rev L & Women’s Stud 81.

¹³ See generally Susanna Calkins, “Enhancing Critical Thinking in Law Students” (Keynote Address for Canadian Association of Law Teachers Annual Conference, Montreal, May 2012), [unpublished]; Raquel Medina Plana, “Critical thinking inside law schools: An outline” (2012) 2:5 Oñati Socio-Legal Series 7, online: Social Science Research Network <<http://ssrn.com/abstract=2115429>>. See also James R Elkins, “Alternative Currents: One Teacher’s Thinking about the Critical Thinking Movement” (1999) 23:4 Legal Studies Forum 379 at 380-81; John O Mudd, “Thinking Critically about ‘Thinking Like a Lawyer’” (1983) 33:4 J Legal Educ 704 at 706.

¹⁴ See Martha C Nussbaum, “Cultivating Humanity in Legal Education” (2003) 70:1 U Chicago L Rev 265 [Nussbaum, “Cultivating Humanity”].

¹⁵ See Anthony T Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (Cambridge, Mass: Belknap Press, 1993) at 14-15, 119-20 [Kronman, *The Lost Lawyer*].

¹⁶ See Roderick A Macdonald & Jason MacLean, “No Toilets in Park” (2005) 50 McGill LJ 721.

¹⁷ See generally John Henry Newman, *The Idea of a University defined and Illustrated: in Nine Discourse Delivered to the Catholics of Dublin*, (Salt Lake City: Project Gutenberg, 2008), online: Project Gutenberg <<http://www.gutenberg.org/files/24526/24526-h/24526-h.html>>.

than do law schools.¹⁸ But it also appears when people argue that by situating law schools within universities, “[t]he outlook is broadened, its larger social significance kept more closely in mind,”¹⁹ and that “university ideals ... broad[en] and deep[en] the law-consciousness of the legal profession.”²⁰

That universities have something special to add underlies the “fierce” debates — historical and renewed — over who controls legal education.²¹ This jurisdictional fight resembles a spatially constructed debate, over whether the lawyer’s domain of the professional association, or the citizen’s domain of the university, should “hous[e]” the law school.²² This recurring debate, which Harry Arthurs has described as one over “whether law faculties ought to provide a liberal education in law or occupational training for legal practice,”²³ embodies the dichotomous view of training “lawyers” versus educating “citizens.”

The linguistic opposition of citizen and lawyer in the literature on legal education also reinforces the dichotomy. Duncan Kennedy, for example, describes his famous article on reproducing hierarchy as an “evocation of the social-psychological pressures that work to make entering students into lawyers *and citizens* who will participate willingly in the reproduction of the system.”²⁴ Harry Arthurs writes of “the continuing failure of law faculties to convince their students that the education offered to them is in their best interests *not only as citizens but as future lawyers*.”²⁵ That becoming a “citizen” is something different from becoming a lawyer is thus a powerful sub-theme in the minds of those who think deeply and carefully about what the mission of what legal education should be.²⁶

¹⁸ See Woodrow Wilson, “Legal Education of Undergraduates” (1894) 17 Reports of the American Bar Association 439 (undergraduate legal education gives students “a clear idea of how [law] is ... generated in society and adapted from age to age in its immediate needs and uses” as opposed to lawyers who “do not think, but swallow formulas” at 443); Austin Sarat, “Crossing Boundaries: From Disciplinary Perspectives to an Integrated Conception of Legal Scholarship” in Austin Sarat, ed, *Law in the Liberal Arts* (Ithaca: Cornell University Press, 2004) 84 (liberal arts legal education can help question “the nature of law’s boundaries,” explore the “capacity of law to be many things at once,” and explore “law’s ambivalent and shifting ... relation to morality and politics” at 91-92); Stephen Waddams, *Introduction to the Study of Law*, 6th ed (Toronto: Thomson Canada, 2004) (“the ‘liberal arts’ approach is quite likely in practice to be ... positively harmful to the prospective law student” at 27).

¹⁹ JA Corry, quoted in John McLaren, “Searching for the Soul of Canadian Common Law Legal Education: An Historiographic Update” (Paper presented at the Future of Law Schools Conference, University of Alberta, 27 September 2013) at 17-18 [unpublished].

²⁰ Ernst Freund, quoted in Martha Nussbaum, “Crossing the Midway, By and By” *The Record Online* (Spring 2013), online: University of Chicago Law School <<http://www.law.uchicago.edu/alumni/magazine/spring13/crossing>> [Nussbaum, “Crossing the Midway”]. Freund used this argument to persuade the then president of the University of Chicago to open up a professional law school at the University, instead of a department of Jurisprudence as originally intended.

²¹ See C Ian Kyer & Jerome E Bickenbach, *The Fiercest Debate: Cecil A Wright, the Benchers, and Legal Education in Ontario 1923–1957* (Toronto: University of Toronto Press, 1987); HW Arthurs, “The Tree of Knowledge / The Axe of Power: Gerald Le Dain and the Transformation of Canadian Legal Education,” online: (2012) 8:6 Comparative Research in Law & Political Economy Research Paper Series 25 at 5 <<http://digitalcommons.osgoode.yorku.ca/clpe/>> [Arthurs, “Tree of Knowledge”]; Task Force on the Canadian Common Law Degree, *Final Report, October 2009* (Federation of Law Societies of Canada, 2009) [Task Force, *Final Report*].

²² JA Corry, quoted in McLaren, *supra* note 19 at 17.

²³ Arthurs, “Tree of Knowledge,” *supra* note 21 at 5.

²⁴ Duncan Kennedy, “Introduction” in Duncan Kennedy, ed, *Legal Education and the Reproduction of Hierarchy: A Polemic against the System* (New York: New York University Press, 2004) 1 at 1 [emphasis added].

²⁵ Harry Arthurs, “‘Valour Rather Than Prudence’: Hard Times and Hard Choices for Canada’s Legal Academy” (2013) 76:1 Sask L Rev 73 at 93 [emphasis added].

²⁶ See also Julian Webb, “Ethics for Lawyers or Ethics for Citizens? New Directions for Legal Education” (1998) 25:1 JL & Soc’y 134 (the hope that legal education can “provide an ethical education for the citizens of the new millennium ... is not simply a matter of saying ... that the virtuous lawyer is, by definition, a good citizen” at 149-50); Brownsword, *supra* note 8.

When someone states that law schools should produce lawyers *and* citizens, they are likely not suggesting that only those who choose not to practice law should develop qualities of citizenship. Take, for example, Georgetown Law's "aspirations for [its] graduates" in its Long Range Plan:

First, *as lawyers*, they should be capable of addressing imaginatively and constructively novel problems arising from new institutional arrangements and technologies, based on familiarity with the theoretic foundations of legal materials. Second, *as leaders in their profession*, they should enjoy and have the capacity to assess, criticize, and reform laws and institutions. Third, *as citizens with the capacity to lead public debate*, they should pursue social justice with wisdom, knowledge and integrity.²⁷

The author of this statement likely intends that graduates will cultivate all three identities (lawyer, professional leader, and citizen), yet, like overlapping acetate sheets depicting various bodily systems, each identity is conceptually distinct.²⁸ This is so, despite the broad conception of "lawyer" contained in the quotation. The distinctive qualities of the citizen — here, "wisdom, knowledge and integrity" and the inclination to "social justice" — add something to even the most aspirational and liberal articulation of what it means to be a lawyer. Such an example epitomizes the view that "citizen" and "lawyer" are inherently separate concepts whose combination is best conceived of through the mental process of addition.

B. LAWYER AS CITIZEN: THE INTEGRATIVE VISION AND REINVIGORATING "PROFESSIONALISM"

Conversely, there is a line of thinking that views citizenship attributes and legal practice as mutually reinforcing. On this view, educating lawyers cultivates skills that have broad public value beyond the practice of law; correlatively, such citizenship attributes are necessary for adequately preparing students to practice law well.

This integrative vision has roots in the nineteenth century tradition of the "lawyer-statesman," a concept that Anthony Kronman expounded theoretically in the late twentieth century. Later iterations of the idea also surface in Harry Arthurs' "humane professionalism" and in the *Carnegie Report's* "civic professionalism." While not identical, these three concepts share the notion that the citizen-lawyer dichotomy is false, and that the two concepts are mutually reinforcing. The integrative view also corresponds with an ambition to reinvigorate the concept of the legal "professional." To develop these connections, Kronman's argument is outlined below and used to understand the other iterations of this integrative vision.

1. THE LAWYER-STATESMAN IN *THE LOST LAWYER*

In *The Lost Lawyer*, Anthony Kronman envisions that lawyer and citizen are intertwined in at least two ways:

²⁷ "JD Program," online: Georgetown Law <<http://www.law.georgetown.edu/academics/academic-programs/jd-program/index.cfm>> [emphasis in original].

²⁸ See e.g. Anatomical Chart Company, *Rapid Review Anatomy Reference Guide: A Guide for Self-Testing and Memorization*, 3d ed (Philadelphia: Lippincott Williams and Wilkins, 2010).

The outstanding lawyer, as this ideal presents him, is, to begin with, a devoted citizen. He cares about the public good and is prepared to sacrifice his own well-being for it, unlike those who use the law merely to advance their private ends. The spirit of citizenship that sets the lawyer-statesman apart from the purely self-interested practitioner of law can to that extent be understood in motivational terms. But it is not only his motives that make him a better citizen than most. He is distinguished, too, by his special talent for discovering where the public good lies and for fashioning those arrangements needed to secure it. The lawyer-statesman is a leader in the realm of public life, and other citizens look to him for guidance and advice, as do his private clients.²⁹

A concept of citizenship is thus both a precondition to being a lawyer (“to begin with”) and an essential part of the lawyer’s training (it gives the lawyer his “special talent”). Only in the hypothetical case of the “purely self-interested practitioner of law,” a narrowness in professional role that Kronman goes on to reject,³⁰ are “lawyer” and “citizen” conceived of as separate.

Instead, the lawyer-statesman ideal intimately combines these concepts. The statesman has two chief virtues, which are both taught in law schools and necessary for practicing law well. These are the virtues of deliberative wisdom (which Kronman also calls “practical wisdom,” referencing Aristotle)³¹ and civic-mindedness.³²

Deliberative wisdom requires an ability to practice imaginative sympathy, a “bifocal” ability to be simultaneously compassionate and detached.³³ When confronted with intractable values, the statesman must be able to sympathize with both views — to “place oneself imaginatively in the position of others and to entertain their concerns in the same affirmative spirit they do, while remaining uncommitted to the values and beliefs that give these concerns their force.”³⁴ Only by doing so may the statesman “say whether his own preliminary views should be revised and . . . make an informed choice among the alternatives before him.”³⁵ Such a good is related to the virtue of civic-mindedness, a commitment to the public interest as opposed to narrow self-interest.

Inside the law school, the case method cultivates the virtue of sympathetic detachment.³⁶ By placing themselves in the positions of opposing litigants, students cultivate an

²⁹ Kronman, *supra* note 15 at 14-15. Kronman uses the masculine pronoun throughout his book, a practice I adopt for convenience in discussing Kronman’s writing.

³⁰ *Ibid* at 128-34, 147-49.

³¹ *Ibid* at 41.

³² *Ibid* (“two traits set the statesman apart: first, love of the public good, and second, wisdom in deliberating about it” at 54).

³³ *Ibid* at 72. Kronman also refers to the quality as “sympathetic detachment” (*ibid* at 98).

³⁴ *Ibid* at 98.

³⁵ *Ibid*.

³⁶ Kronman writes *ibid* at 113:

[B]y playing the roles of the original contestants or their lawyers[, the case method] forces [law students] to see things from a range of different points of view and to entertain the claims associated with each, broadening their capacity for sympathy by taxing it in unexpected ways. But it also works in the opposite direction. For the student who has been assigned a partisan position and required to defend it is likely to be asked a moment later for his views regarding the wisdom of the judge’s decision in the case. To answer, he must disengage himself from the sympathetic attachments he may have formed as a committed, if imaginary, participant and reexamine the case from a disinterested judicial point of view. The case method thus works simultaneously to strengthen both the student’s powers of sympathetic understanding and his ability to suppress all sympathies in favor of a judge’s scrupulous neutrality.

appreciation for multiple and possibly irreconcilable moral positions; by adopting a judicial perspective, they cultivate an instinct to exercise “reasoned judgment under conditions of maximum moral ambiguity.”³⁷ Thus the case method, common training to all lawyers, instills the “special talent” for deliberating about the public good.

The case method also instills civic-mindedness by emphasizing the judge’s perspective.³⁸ The judge, by definition, is “public-spirited” and “concerned with the well-being of the larger community.”³⁹ This manifests in the judge’s “interest in the administration of justice, in the integrity or well-being of the legal system as a whole.”⁴⁰ By judicial role-playing, students assume the public-spirited attitude and soon, “[b]y a process of transference that the case method deliberately exploits, the judicial attitude that a student begins by mimicking becomes to some degree his own.”⁴¹

Outside the law school, in legal practice, citizenship qualities also play an integral role. Kronman argues that all typical “law jobs” require imaginative sympathy, the core of deliberative wisdom.⁴² The good counselor assists his client in deliberating about ends, which requires the lawyer to view things from the client’s perspective — to exercise “third-personal deliberation.”⁴³ Advocates also function sometimes as counselors, so should view it as an important attribute.⁴⁴

The good lawyer must also possess the quality of civic-mindedness. To be fully effective, both counselor and advocate need to view their clients’ situations from the judge’s perspective. They can only do this if they share the judge’s commitment to the law’s well-

³⁷ *Ibid* at 117 (“[t]he result is ... an expanded capacity for sympathetic understanding coupled with the ability to see every claim with the coldest and most distant, most judicial, eye; a broad familiarity with diverse and irreconcilable human goods coupled with an indefatigable willingness to enter the fray, hear the arguments, render judgment, and articulate the reasons that support it, even when all hope of moral certainty is gone” at 117-18).

³⁸ *Ibid* (the “priority of [the judge’s] role over others is embedded in the method,” largely because of the “disproportionate amount of class time ... devoted to questioning whether the case at hand was rightly decided” at 117).

³⁹ *Ibid* at 118.

⁴⁰ *Ibid* (this concern for integrity is encompassed by “the concern for doctrinal coherence ... for the responsiveness of doctrine to social and economic circumstances [and] a concern for the bonds of fellowship that legal conflict strains but that must be preserved to avoid other, more destructive conflicts” at 118).

⁴¹ *Ibid* at 119.

⁴² Kronman draws from Karl Llewellyn’s typology that there are three types of law job: judge, counselor, and advocate (*ibid* at 121, citing KN Llewellyn, “The Normative, the Legal and the Law-Jobs: The Problem of Juristic Method” (1940) 49:8 Yale LJ 1355). Kronman focuses his argument on counselor and advocate, the judge being an obvious point.

⁴³ Kronman, *ibid* at 130. I am grateful to Alice Woolley for raising an important counterpoint to the image of horizontality between lawyer and client that I read into Kronman’s account. Woolley suggests, and I do not dispute, that by emphasizing the lawyer’s “special” talent for judgment, the lawyer-statesman ideal risks implying a hierarchical relation between lawyer and client, of which lawyers may not be conscious or conscientious. Furthermore, the ideal may fail to account for the hierarchies of class, race, and gender at play in the “halcyon” days of the lawyer-statesman that, more than any particular intellectual quality, might have accounted for the lawyer’s special influence. Woolley cautions that the lawyer-statesman ideal may “ignore the possibility that the client may be special, or may be exceptional in their judgment” (conference question to, and email correspondence with, the author, October 2013).

⁴⁴ Kronman, *ibid* at 148.

being⁴⁵ — if they, like the judge,⁴⁶ are “connoisseurs”⁴⁶ of law who care about the legal system’s “internal goods”:⁴⁷

The good lawyer does care about the soundness of the legal order.... [H]e shares the judge’s public-spirited devotion to it. This is in fact a condition for his being successful at his work. The good lawyer’s public-spiritedness is not, moreover, something tacked onto his professional skills, a kind of moralistic addendum to his craft. Rather, it is an essential component of that craft and cannot be separated from it.⁴⁸

Thus, the “good lawyer” must possess both deliberative wisdom and an internal commitment to the integrity of the legal system. These are no mere frills or extras, but constituting features of what it means to be a professional. Kronman’s work, therefore, provides a gold standard for the view that “lawyer” and “citizen” are integrated concepts.

2. THE LAWYER-STATESMAN AS AN OLD CONCEPT

In the United States, the term “lawyer-statesman” is a vestige of Republican ideals of lawyering around the time of the American Revolution, when lawyers viewed themselves as “uniquely situated and qualified to diffuse throughout society the culture of civic virtue.”⁴⁹ Whether as crafters of the Constitution or everyday commercial lawyers, the elite lawyers of this period assessed their role as being to infuse society with the high ideals of law. Law was the “integrative paste ... for binding the separate and particular activities of a business society into a political unity,”⁵⁰ a “‘connecting chain’ ... linking ... specific interests ... into a general interest.”⁵¹ These lawyers, paralleling Kronman’s argument that the task of judging inheres in all law jobs, applied these universals to their everyday problems, operating as “republican mediators” encouraged to “run their offices as little chancery courts.”⁵²

This professional ideal was much the same during the same period in the United Kingdom and its colonies. As recounted by Wes Pue, George Stephen in 1846 spoke of the “solicitor’s business ... extend[ing] to everything,” with lawyers as “professional men” exercising “zeal and ... integrity,” requiring a training as “gentlemen.”⁵³ In Calgary in 1913, Ira Mackay described the “lawyer [as] really the only man in the community who really makes it his business to understand the delicate and complex organization of government and law by which the community directs its activities for common ends.”⁵⁴ From McGill University in 1919, the English law teacher R.W. Lee described the role of the legal educator as being to

⁴⁵ *Ibid* at 138-39.

⁴⁶ A connoisseur of a field of activity is both specially equipped to make “discriminating judgments regarding [the field’s] ends and aims” but also — crucially — cares about the field’s “internal goods” (*ibid* at 140-41).

⁴⁷ *Ibid* at 140.

⁴⁸ *Ibid* at 145-46.

⁴⁹ Robert W Gordon, “Lawyers as the ‘American Aristocracy’: A 19th Century Ideal That May Still Be Relevant” (1985) 20:1 *Stanford Lawyer* 2 at 4 [Gordon, “American Aristocracy”].

⁵⁰ *Ibid* at 6.

⁵¹ *Ibid* at 5, paraphrasing John Quincy Adams.

⁵² *Ibid* at 7.

⁵³ George Stephen, *Report of the Select Committee on Legal Education; together with the Minutes of Evidence, Appendix and Index* (London, UK: House of Commons, 1846) at xxxv-xxxvi cited in W Wesley Pue, “Educating the Total Jurist?” (2005) 8:2 *Legal Ethics* 208 at 210 [emphasis omitted].

⁵⁴ Ira A MacKay, “The Education of a Lawyer” (Address delivered at the Third Annual Meeting of the Law Society of Alberta, Calgary, 18-19 December 1913), (1941) 4:4 *Alta L Q* 103 at 115 cited in Pue, *ibid* at 211.

develop “a sense of professional honour and of civic duty” to be employed in “wise and sympathetic handling of the problems of our national life.”⁵⁵ The intertwining of professional role and public duty thus has a long heritage and pedigree in the British commonwealth.⁵⁶

Despite the “elitist, exclusionary, classist, and imperialist” character of some of the authors and speakers, and the “unacceptable” (by contemporary standards) values such as “British,” “Christian,” and “gentlemanliness,” Pue sees the enunciation of value as a good thing, arguing that the rejection of these particular values need not lead to a commitment to “value-neutral” legal education, a position that itself has its own neoliberal values.⁵⁷ The facial terms used conceal a broader theme, one that views professional training and education for citizenship as very tightly related: “However articulated, the common thread has been a belief in the powerful cultural agency of lawyers *and* a commitment to shaping their innermost beings so as to produce the sort of professional most likely to make positive contributions to the larger community.”⁵⁸

In both the American and British versions of the lawyer-statesman, then, a preoccupation with “contributions to the larger community” was intimately connected to the professional role of the lawyer, whether in private practice or more officially public roles. This old notion, that the lawyer and citizen are indivisible, has also surfaced more recently, in two major studies on legal education in Canada and the US.

3. LAW AND LEARNING AND HUMANE PROFESSIONALISM

Harry Arthurs’ 1983 flagship report, *Law and Learning*,⁵⁹ argued that Canadian law faculties aspire towards the cultivation of “humane professionalism,” which includes learning legal rules (and how to use them), legal skills, and “developing a humane perspective on law, and a deeper understanding of law as a social phenomenon and an intellectual discipline.”⁶⁰ While Arthurs does not develop the “humane” concept as thoroughly as Kronman does “lawyer-statesman,” the term has a similarly public-spirited component.⁶¹ By fusing “humane” and “professional,” Arthurs also arguably demonstrates a commitment to the integrative vision of lawyer and citizen.

Such a claim is somewhat surprising given that much of the language in the report, if read in isolation, could be interpreted so as to reinforce a schism between the “humane” world of the university and a separate world of the profession. If the “basic premise” of the report is

⁵⁵ RW Lee, “Legal Education: Symposium” (1919) 39:3 Can LT 138 at 141 cited in Pue, *ibid*.

⁵⁶ Pue, *ibid* (discussing Australia and “British” Africa at 213-14).

⁵⁷ *Ibid* at 281; see also Gordon, “American Aristocracy,” *supra* note 49.

⁵⁸ Pue, *ibid* at 220 [emphasis in original].

⁵⁹ Consultative Group on Research and Education in Law, *Law and Learning: Report to the Social Sciences and Humanities Research Council of Canada* (Ottawa: Social Sciences and Humanities Research Council of Canada, 1983) [*Law and Learning*]. Subsequent references to *Law and Learning* will attribute the views of the report to Harry Arthurs, as has been done repeatedly in the past. See e.g. Ruth Murbach, “Editorial” (2003) 18:1 CJLS 1.

⁶⁰ *Law and Learning, ibid* at 47.

⁶¹ For example, Arthurs writes that “humane” education would encourage students to “question the assumptions underlying legal rules, reasoning or institutions” (*ibid* at 47); “identify standards of reason, of justice, of effectiveness, by which legal outcomes produced by the interaction of skills and doctrine may be judged, and perhaps found wanting” (at 49); and “identify ... ‘policy issues’, ‘value choices’ or ‘practical implications’ ... [in] conventional legal materials” (at 53).

that “what Canadian law schools are doing ... is not academic but professional,”⁶² it would be easy to think that Arthurs, in *Law and Learning*, intended to reinforce a duality between the humane, public values of the university on the one hand and a more narrow professionalism on the other.

And yet, Arthurs takes pains to distinguish the professional from the “narrowly vocational.”⁶³ The “humane intellectual activities” make a “vitaly important and easily overlooked” contribution to “preparation for professional practice,” enabling lawyers to become agents of change.⁶⁴ Arthurs demonstrates his rich vision of the legal professional when he asks, in the introductory chapter: “Are Canadian lawyers ... being educated ... to offer [clients] wise counsel in the social and economic implications of their legal problems, to adapt to changing laws and client needs, to assume positions of political and community service and leadership, to evaluate critically and help improve the administration of justice?”⁶⁵

This vision shares many aspects of Kronman’s lawyer-statesman: a capacity for deliberative wisdom (offering “wise” counsel in social and economic context), civic-mindedness (“political and community service leadership”), and a commitment to the internal goods of the legal system (“improve the administration of justice”). By referring to both private practice and more public activities, Arthurs’ framing recalls the exalted twin functions of the Republican lawyer-statesman.

Such an exalted view of the lawyer may be tied to a deeper ambition of the *Law and Learning* report, what Julian Webb describes as “the redemption of (legal) professionalism itself.”⁶⁶ Webb describes the “schizophrenic” nature of professionalism, a term that has been used to stand “both for narrow self-interest, cynicism, and social remoteness, as well as for the more noble commitments to justice, integrity, and altruism.”⁶⁷ By conjoining “humane” and “professionalism,” Arthurs (on Webb’s account) is attempting to “restore the balance, to re-assert that moral virtue which should attach to professionalism, but which ‘professionalism,’ without more, cannot sustain.”⁶⁸

Arthurs, to be sure, does not integrate lawyer and citizen as intimately as the lawyer-statesman ideal does.⁶⁹ Indeed, Arthurs thinks there are limits to what a professional lawyer

⁶² *Ibid* at 55.

⁶³ *Ibid* (“Canadian law schools imagine themselves to be offering a legal education that is humane and professional, rather than narrowly vocational” at 47).

⁶⁴ *Ibid* at 50. Humane professionalism can help lawyers “adapt to changes when they occur, to assist in bringing about such changes through law reform and other public activities, and to accomplish change themselves in ... serving individual clients whose interests do not coincide with accepted solutions” (at 49-50).

⁶⁵ *Ibid* at 4.

⁶⁶ Julian Webb, “The ‘Ambitious Modesty’ of Harry Arthurs’ Humane Professionalism” (2006) 44:1 *Osgoode Hall LJ* 119 at 127 [Webb, “Ambitious Modesty”].

⁶⁷ *Ibid*.

⁶⁸ *Ibid* at 128.

⁶⁹ There is no equivalent expression to that of Rufus Choate: “I repeat that, while lawyers, and because we are lawyers, we are statesmen” (Rufus Choate, “The Positions and Functions of the American Bar, as an Element of Conservatism in the State: An Address Delivered before the Law School in Cambridge, July 3, 1845” in Thomas E Woods Jr, ed, *The Political Writings of Rufus Choate* (Washington, DC: Regenery, 2002) 189 at 202. Also cited in Gordon, “American Aristocracy,” *supra* note 49 at 7).

can be expected to do,⁷⁰ and he accordingly argues for the need for a distinctive place for the legal academic and scholar — a “safe haven.”⁷¹ Yet just because the academic and the professional may have different roles does not mean that the two are at odds with each other. They are more than symbiotic;⁷² together, they make possible the essentially public function of the legal professional, and ensure that law is developed, critically interrogated, and refreshed with public purposes in mind.

Thus to see these roles as integrated is not to regard them as identical: “citizen” and “lawyer” may be distinct terms, but they are mutually constitutive and reinforcing. This integrative model is very closely tied to a robust, positive interpretation of the term “professional,” one that seeks to reclaim its essentially public purpose.⁷³ These themes run through the core of a more recent comprehensive study of North American legal education: the 2007 *Carnegie Report*.⁷⁴

4. THE *CARNEGIE REPORT* AND CIVIC PROFESSIONALISM

The 2007 *Carnegie Report* has a long pedigree. In 1928, the Carnegie Foundation for the Advancement of Teaching sponsored a comprehensive study, undertaken by Alfred Reed, of the practices and curricula at most major law schools in Canada and the US.⁷⁵ The rationale behind the *Reed Report* reflected many of the themes of the lawyer-statesman explored above: “that the lawyer is a member of a public profession [having] responsibilities which can be effectively discharged only through a due appreciation of his public relation”;⁷⁶ that lawyers recognize “their public responsibility to the body politic,”⁷⁷ and that, most of all, “fit methods for training and testing lawyers constitute, at bottom, a problem of government as well as of education.”⁷⁸

Almost eighty years later, the Foundation sponsored a new study, as part of a five-part series of studies into the professional training of nurses, doctors, engineers, clergy, and lawyers.⁷⁹ The 2007 *Carnegie Report* shares the public-spirited vision of the legal professional of the *Reed Report*, but offers renewed prescriptions and analyses in light of

⁷⁰ Arthurs writes in *Law and Learning*, *supra* note 59 at 57:

[Practitioners’] competence and understanding is by definition situational, based on familiarity with the law as it is, and as it changes over time. Their creativity and critical perspectives are largely confined within the boundaries of the known legal world. Exceptional individuals apart, few practicing lawyers are schooled in the conceptual approach that would enable them to create new structures, to achieve new syntheses of knowledge, or to function actively rather than reactively in order to foresee the new demands thrown up by a changing society.

⁷¹ Arthurs writes *ibid* at 55:

Our own survey of law teachers and deans shows that most of them indeed seek to explore intellectual and social issues, while other surveys of law students suggest that many of them at least enter law school with similar intentions. But something happens: the professional overwhelms the academic. And so it almost always will, until there exists somewhere in each region of Canada — if not in each province, if not in each law school — a safe haven for academic work.

⁷² See Webb, “Ambitious Modesty,” *supra* note 66 at 126-27.

⁷³ See also Robert W Gordon, “Professionalisms Old and New, Good and Bad” (2005) 8:1 *Legal Ethics* 23 at 29.

⁷⁴ *Supra* note 2.

⁷⁵ Alfred Zantlinger Reed, *Present-Day Law Schools in the United States and Canada* (Boston: Merrymount Press, 1928) [*Reed Report*].

⁷⁶ Henry S Pritchett, “Preface” in *Reed Report*, *ibid* at xi.

⁷⁷ *Ibid*.

⁷⁸ *Ibid* at xiii.

⁷⁹ See “Professional and Graduate Education,” online: Carnegie Foundation for the Advancement of Teaching <<http://www.carnegiefoundation.org/previous-work/professional-graduate-education>>.

contemporary practices. The *Carnegie Report* embodies the integrative view of citizen and lawyer in two ways: it performs a renewed call for the enchantment of the term “legal professional,” and it adopts an explicit and emphatic mode of “integration” to accomplish this goal.

The authors of the *Carnegie Report* state in the introduction that the aim of the book is to contribute to the understanding of “civic professionalism” by “linking the interests of educators with the needs of practitioners and the members of the public the profession is pledged to serve.”⁸⁰ This implies that the “professional” has an essentially public purpose whose fulfillment is made possible by a combination of expertise and broad education:

To be a professional in the full sense is to understand oneself as claimed by a craft and a purpose in whose service to use that craft. Yet precisely because that purpose is a public one, directed toward others, professionals can also be conscious of the limits and specificity of their domain. With this awareness, professionals can appreciate other ways of living and contributing to the larger life of their times. They can be citizens as well as experts.

...

It is because of their sense of who they are and how they understand themselves in the world that these professionals’ skills become positive assets for everyone.⁸¹

The second paragraph makes it clear that the broader awareness of “other ways of living and contributing to the larger life of their times” is essential to the public function of the professional. Professional skills are “assets for everyone” precisely “because of” this perspective of the “citizen.”

In teasing out the distinctive contribution of the *legal* professional, the *Carnegie Report*’s authors invoke many of the themes of the lawyer-statesman:

Unlike physicians or engineers, legal professionals act as social regulators.... Those admitted to practice assume an official public role. This is most salient in the instance of judges ... [b]ut it is also part of the official designation of all licensed attorneys as officers of the court. This designation means that, in principle, lawyers have obligations to see to the proper functioning of the institutions of the law.⁸²

Lawyers thus have a public role, not only in their capacities as public officials (as “officers of the court”), but also in private practice (as “social regulators”). Moreover, they are committed to the internal goods of the legal system (“see to the proper functioning of the law”). Also, as with Kronman, the paradigmatic role of judge (where the public role is “most salient”) carries over into other law-jobs (those of “all licensed attorneys”).

The similarities with Kronman’s account extend to the *Carnegie Report*’s understanding of the role of counselor. Recall that Kronman emphasized the need for the counselor to

⁸⁰ *Carnegie Report*, *supra* note 2 at 4.

⁸¹ *Ibid* at 30-31.

⁸² *Ibid* at 82.

possess deliberative wisdom, exercising “third-personal deliberation.” Although treated more briefly, similar themes arise in the *Carnegie Report*’s description: “In learning ... [the] role of counselor, the student is also learning a normative model of professionalism, a model that puts the lawyer in the role of cooperative problem solver with the client rather than the distanced expert who solves the client’s problem.”⁸³

Thus the legal professional grounds his or her identity in a public purpose, reinforced by a commitment to the legal system’s internal goods, and exercises the skill of sympathetic detachment (as a “cooperative problem solver”) in his or her various roles. This is not merely “vocational” (in Arthurs’ words)⁸⁴ and no thin or cynical conception of the professional (that Webb highlighted).⁸⁵ Rather, the “professional” is infused with a spirit of civic-mindedness and ethical or moral responsibility⁸⁶ that apply to both public and private functions.

If professionalism is the guiding light, then a logic of integration is the path that leads to the light. For a study that had such a wide-ranging objective and broad empirical basis,⁸⁷ the *Carnegie Report*’s main substantive recommendation is clear and concise: to integrate the three “apprenticeships” of legal professional education. These are: the “cognitive” apprenticeship, the focus on “knowledge and ways of thinking of the profession”;⁸⁸ the “practice-based” apprenticeship, the “forms of expert practice shared by competent practitioners”;⁸⁹ and the apprenticeship of “identity and purpose,” the reflection on the “purposes,” “attitudes,” and “values” of the profession, which include “both individual and social justice, and ... virtues of integrity, consideration, civility, and other aspects of professionalism.”⁹⁰ Each apprenticeship traditionally “compet[es]”⁹¹ with the others in legal education; the authors decry this separation and urge educators to discover how the three may be mutually reinforcing and compatible.⁹²

For example, the *Carnegie Report* urges that clinical teaching be more closely related to case method teaching. The former cultivates the narrative mode of thinking, the notion that “things and events acquire significance by being placed within a story, an ongoing context of meaningful interaction.”⁹³ This type of thinking can function as a corrective to the

⁸³ *Ibid* at 102.

⁸⁴ *Law and Learning*, *supra* note 59 at 47.

⁸⁵ Webb, “Ambitious Modesty,” *supra* note 66 at 127.

⁸⁶ *Carnegie Report*, *supra* note 2 (“[p]rofessional education is ... inherently ethical education in the deep and broad sense. The distillation of the abilities and values that define a way of life is the original meaning of the term *ethics*. It comes from the Greek *ethos*, meaning ‘custom,’ which is the same meaning of the Latin *mos, mores*, which is the root of ‘morals.’” at 30 [emphasis in original]).

⁸⁷ *Ibid* at 15-16. Having conducted empirical research at 16 diverse law schools in Canada and the US, the researchers’ “objective was to understand as well as possible what the experience of law school is like, both for today’s faculty and administration and for today’s students.” They write *ibid* at 16:

We also asked about the goals and aspirations of students and teachers, about their successes and their difficulties and frustrations in negotiating the challenges of legal education. We inquired about faculty scholarship and how it was related to teaching, and we sought to understand how faculty life was different, depending on faculty background, the particularities of the school, and the nature of its student body. From all these conversations, we developed a richly detailed picture of how law school goes about its great transformative work, while we probed gaps and the unintended consequences of key aspects of the law school experience.

⁸⁸ *Ibid* at 28. See generally *ibid*, c 2.

⁸⁹ *Ibid* at 28. See generally *ibid*, c 3.

⁹⁰ *Ibid* at 28, 132. See generally *ibid*, c 4.

⁹¹ *Ibid* at 28.

⁹² *Ibid* (“[i]n short, we propose an integration of student learning of theoretical and practical legal knowledge and professional identity” at 13).

⁹³ *Ibid* at 96.

dominant emphasis on “analytic” thinking, the chief mode of the case method, which “detaches things and events from the situations of everyday life and represents them in more abstract and systematic ways.”⁹⁴ Professional practice requires “blend[ing]” these two types of thinking; figuring out how to do so is the “most complex and interesting pedagogical challenge in the preparation of legal practitioners.”⁹⁵

The authors argue that such an integration of clinical and cognitive learning also has a humanizing effect on students, encouraging them to have a greater appreciation of the “equities,” which the decontextualized practice of case method reasoning may sideline.⁹⁶ “Practical courses in lawyering ... are thus the logical complement to the forced decontextualization” of the first-year experience,⁹⁷ but the *Carnegie Report* cautions against “more additions” of such courses to the curriculum, pleading instead for a “a truly integrative approach in order to provide students with a broad-based yet coherent beginning for their legal careers.”⁹⁸

Similarly, the authors underscore the need to integrate, and not simply add, courses in professional responsibility and ethics. Learning the law is an “ensemble experience”; standalone courses in professional responsibility miss “an important aspect of professional preparation,”⁹⁹ and current curricular approaches tend to marginalize ethical, philosophical, religious, or equitable concerns.¹⁰⁰ The claim is not simply that as citizens, ethics, or even philosophy, matter. Rather (as with Kronman), they are essential to the actual work of the lawyer:

In actual professional practice ... [a]t moments when judgment is at a premium, when the practitioner is called on to intervene or react with integrity for the values of the profession, it is the quality of the individual’s formation that is at issue. *The holistic qualities count: the sense of intuitive engagement, of habitual disposition that enable the practitioner to perform reliably and artfully.*¹⁰¹

⁹⁴ *Ibid.*

⁹⁵ *Ibid* at 97.

⁹⁶ The authors write *ibid* at 57-58:

Matters concerning the ‘equities’ of a situation may be aired in class discussion, but almost always as second thoughts about ‘policy’. Or the theme of justice may arise negatively, much as the theme of ‘bias’ might, when an instructor asks why a court reached a decision that seems clearly to violate precedent or accepted doctrine. In either case, the tacit message can be that for legal professionals, matters of justice are secondary to formal correctness.

This interpretation is drawn in part from the linguistic anthropological work of Elizabeth Mertz, who found that discussion of policy, “social or moral considerations,” and “social causes and impacts” in first-year contract law classrooms has a much more “free-form” discourse as contrasted with the tightly constructed discourse around “legal opinions.” Elizabeth Mertz, *The Language of Law School: Learning to “Think Like a Lawyer”* (Oxford: Oxford University Press, 2007) at 76-77. The implication of such “anecdotal” or “speculative” conversations that employ a “broad grab bag” of considerations is “problematic”: the “approach maintains a tight, technical center, but also permits an expansive periphery of policy considerations. In this way, the legal reading taught in law school classes at once closely limits the kinds of warrants permitted for legal conclusions (to layers of legal-textual authority) and at the same time encompasses virtually any kind of social data or issues deemed culturally relevant” (*ibid* at 77).

⁹⁷ *Carnegie Report, ibid* at 59.

⁹⁸ *Ibid.*

⁹⁹ *Ibid* at 58.

¹⁰⁰ *Ibid* at 84. See also Deborah L Rhode, *In the Interests of Justice: Reforming the Legal Profession* (Oxford: Oxford University Press, 2000) (“[f]ew law schools make systematic efforts to integrate legal ethics into the core first-year or upper-level curriculum”; however, “with modest effort, most faculty could readily incorporate relevant topics of professional responsibility in their substantive fields. The real problem is that most prefer not to” at 201-202).

¹⁰¹ *Carnegie Report, ibid* at 85 [emphasis added].

Holism in training and perspective is thus a key ingredient for performing professional tasks, in the same way that Harry Arthurs argued that the “ability to stand at a distance from conventional wisdom, to view it critically” has not only intrinsic worth, but concrete benefits for practice.¹⁰²

Integrating the apprenticeship of identity and purpose with the other elements of legal education, through “dramatic pedagogies of simulation and participation”¹⁰³ thus has an instrumental justification — it prepares students better for professional activities. But this is a broad definition of “professional activities,”¹⁰⁴ aligned with the “critical public dimension of the professional life”¹⁰⁵ essential to a robust, even “noble”¹⁰⁶ conception of professionalism. Thus the overarching recommendation of the *Carnegie Report*, to integrate the three apprenticeships, both prescribes how to train professionals better and contributes to the re-enchantment of the notion of professionalism, relying on the claim that the holistic qualities of citizenship are integral to the lawyer’s role and self-conception.

III. IMPLICATIONS

A. PROFESSIONALISM

In the integrative view, the legal professional has an essentially public purpose — whether in officially public roles or as private practitioner, where the paradigm of the civic or equitably-minded judge informs counseling and advocacy. To exercise these public functions, the lawyer should not only care about the legal system but should employ a holistic, humane perspective in executing his or her legal knowledge and skills. Many aspects of being a citizen are integral to becoming a good lawyer: an ethical consciousness, a capacity to deliberate about incommensurable goods, a dedication to the integrity of the justice system, an ability to employ the narrative mode of thinking, and an appreciation of social and political context.

Such a view, with its re-enchantment of the concept of professionalism, has incredible promise for the future of law schools. Instead of viewing citizenship attributes as extras, a robust conception of professionalism views them as integral to training lawyers. A law school that champions professionalism embraces the opportunity to deploy its internal incentive structures in the service of a broadly public mandate. Training “professionals” may defuse the fierce debates by defining a new, capacious common interest. Professionalism can be a central concept around which diverse stakeholders in legal education can rally.

Embracing professionalism would have several other benefits. Law schools could develop the concept by privileging it as one worthy of intellectual inquiry and research.¹⁰⁷ Also, in

¹⁰² *Law and Learning*, *supra* note 59 at 49.

¹⁰³ *Carnegie Report*, *supra* note 2 at 28.

¹⁰⁴ *Ibid* (“[p]rofessional activities typically blend and mix what the academic treatment of law works hard, for legitimate intellectual reasons, to keep separate: knowledge, know-how, and ethical judgment” at 81).

¹⁰⁵ *Ibid* (the “apprenticeship of identity and purpose ... opens the student to the critical public dimension of the professional life ... in attempting to provide a wide, ethically sensitive perspective on the technical knowledge and skill that the practice of law requires” at 28).

¹⁰⁶ Webb, “Ambitious Modesty,” *supra* note 66 at 127.

¹⁰⁷ See e.g. Trevor CW Farrow, “Sustainable Professionalism” (2008) 46:1 Osgoode Hall LJ 51.

the same way that “thinking like a lawyer” is a shared value among most law graduates, law schools could, through emphasis and reiteration, help ensure that professionalism emerges as a similarly ubiquitous value. And by revitalizing professionalism in both of these ways — depth and breadth — law schools would make themselves indispensable to professional associations, whose continued influence (and privilege of self-regulation) depends in part on their ability to demonstrate their profession’s contribution to the public good.¹⁰⁸

There is one important caveat. If it is to do all of this promising work, *professionalism* must retain its most robust meaning — that integrative view of citizen and lawyer that Kronman, Arthurs, and the *Carnegie Report* authors advance. The danger of relying on one consensual term is that it may be reduced to its lowest common meaning. Given how complex and various “thick” understandings of the term might be, there is an acute risk that professionalism would become a label for only a subset of its possible virtues.

Moreover, the transition from concept to execution can come at the loss of nuance. Such a risk is exemplified by the Federation of Law Societies of Canada’s requirement that accredited law schools offer a stand-alone course in professional ethics and responsibility.¹⁰⁹ Such a recommendation would seem to ignore the *Carnegie Report*’s caution against such stand-alone courses (they miss “an important aspect of professional preparation”) and their principal argument in favour of integration.¹¹⁰ If the Task Force indeed used the *Carnegie Report* as its “guide” for this recommendation,¹¹¹ such a gap between it and the recommendation suggests that insights from legal scholarship about professionalism are vulnerable to translating imperfectly into practice.¹¹²

The stand-alone strategy may encourage a limited understanding of professionalism in other ways. Students’ understanding of the term may become synonymous with, and thereby limited by, the contents of the course. Also, students may not perceive the stand-alone course to be as important as other, traditional core courses. Law schools could respond to these shortcomings in a number of ways, each of which would help them integrate a robust understanding of professionalism into their formal and hidden curricula.

Law schools could begin by locating discussions about public purpose in the privileged parts of the law school, so that they are perceived as what the institution “really” cares about. They could invest and innovate in, and create incentives for, pedagogical strategies that robustly integrate conceptions of “citizen” and “lawyer.” For example, core courses, especially in first year, could be redesigned to cover a broader panoply of ways in which law

¹⁰⁸ See *Law Society Act*, RSO 1990, c L-8, ss 4.1- 4.2 (especially s 4.2(3): “The Society has a duty to protect the public interest”).

¹⁰⁹ See recommendation 4(C)(1.4) in Task Force, *Final Report*, *supra* note 21 at 11.

¹¹⁰ *Carnegie Report*, *supra* note 2 at 58.

¹¹¹ John Hunter, “Professional Education in the Modern Law School” (Oral presentation delivered at the Future of Law School Conference, University of Alberta, 27 September 2013). Hunter, the Chair of the Task Force on the Canadian Common Law Degree, credited the *Carnegie Report* for establishing a “strong pedagogical rationale for introducing legal ethics and professionalism at the law school.”

¹¹² Although the Task Force *Final Report* refers to the “integrated three part curriculum” of the *Carnegie Report* (*supra* note 21 at 30), it does not address directly its decision to disregard the recommendation about integration. The closest it gets is its disclaimer that “[n]othing ... limits law schools from continuing pervasive approaches in addition to the stand-alone approach” (*ibid* at 34). The Task Force *Final Report* does not reference the *Carnegie Report* at all in its Ethics and Professionalism section (*ibid* at 31-35).

and lawyers contribute to the public good. The current emphasis on doctrinal law, especially in private law courses, could yield in part to examples of legal processes other than courts,¹¹³ to communicate the plural ways in which lawyers function as social “architects” (in Lon Fuller’s words)¹¹⁴ or “social regulators” (in the words of the *Carnegie Report*).¹¹⁵

Law schools could also model diverse visions of professionalism outside the formal curriculum. Career development offices could facilitate sessions in which law professors and legal professionals (from a broad range of sectors) jointly tease out the transferrable skills and understandings that legal study cultivates, and explore how these might be employed to accomplish public goals. The practice of a judge coming in to give a talk about professionalism in orientation week could be creatively expanded to other fields, other forums, and other times of the year, to convey broader and deeper messages about how students can use their legal education in the service of the public good.

A law school that adopts professionalism as an animating concept may also wish to limit the frequency with which it mentions the term. While the *underlying* ideas should recur in different forms, overusing the term itself may reduce it to a mere label for an undefined subset of concerns. The goal of a school that embraces professionalism is to sustain a complex, multi-layered sense of public purpose and to perform a dynamic re-imagining of an old term; simply incanting the word over and over is more likely to deaden the concept, in the way that a cliché stultifies the mind.¹¹⁶ The greatest danger in embracing the term “professionalism” may be the tendency to focus on the label at the expense of its underlying complex ideas.¹¹⁷

¹¹³ Contracts teachers, for example, could incorporate examples from statutes to explore policy questions and different institutional responses. They could teach contract law from a forward-looking, or problem-solving, perspective. Or they could examine how informal law governs contracting behaviour. See e.g. H Miles Foy III, “Legislation and Pedagogy in Contracts 101” (2000) 44:4 Saint Louis ULJ 1273; Vincent C Immel, “Use of the Contracts Courses as a Vehicle For Teaching Problem Solving” (2000) 44:4 Saint Louis ULJ 1205; Julie Macfarlane & John Manwaring, “Using Problem-Based Learning to Teach First Year Contracts” (1998) 16:2 Journal of Professional Legal Education 271; Lawrence M Friedman & Stewart Macaulay, “Contract Law and Contract Teaching: Past, Present, and Future” [1967] 4 Wis L Rev 805.

¹¹⁴ Lon L Fuller, “The Lawyer as an Architect of Social Structures” in Kenneth I Winston, ed, *The Principles of Social Order: Selected Essays of Lon L Fuller* (Durham, NC: Duke University Press, 1981) 264 cited in Carrie Menkel-Meadow, “Peace and Justice: Notes on the Evolution and Purposes of Legal Processes” (2006) 94:2 Geo LJ 553 (arguing that Lon Fuller’s many writings evidenced that he “thought it important that lawyers and law students study all [legal] processes in their locational specificity” at 563).

¹¹⁵ *Supra* note 2 at 82.

¹¹⁶ See James Boyd White, “Meaning What You Say” in Austin Sarat, *supra* note 18, 109 at 118-19; George Orwell, “Politics and the English Language” (1946) 13:76 Horizons 252.

¹¹⁷ Compare the example of the McGill Faculty of Law, which invented the term “transsystemic” to capture a truly indigenous and novel approach to teaching law. See generally Shauna Van Pragh, “Preface — Navigating the Transsystemic: A Course Syllabus” (2005) 50 McGill LJ 71. In recent years, that faculty is moving away from the term, a testament to the fact that labels often outlive their usefulness. Professionalism, which is much more generic, much less indigenous, and susceptible to a narrow meaning (*c.f.* Webb, “Ambitious Modesty,” *supra* note 66), should therefore be approached with even greater caution. On the limits of language to express ideas in law, see Macdonald, “Custom Made,” *supra* note 9.

B. CITIZENSHIP

However successful a law school might be at integrating a robust notion of professionalism, there is the danger that such a singular concept (even on its broadest possible meanings) would limit, marginalize, or exclude certain conceptions of what it means to be a citizen. For this reason, in the articulation of a law school's mission, it is important to preserve a zone that lies outside the bounds of "professionalism." Consider, for example, the following four objectives of legal education. While each of these would have a place in the law school animated solely by professionalism, the strong version of each might encounter resistance.

Martha Nussbaum articulates a strong version of the widespread claim that legal education should inculcate critical thinking.¹¹⁸ She argues that law schools should encourage students to "take charge of [their] own thinking ... and becom[e] ... reflective critic[s] of traditional practice."¹¹⁹ This requires practice in "analyzing and constructing arguments in a Socratic fashion ... [and thinking] reflectively about the values of ... society, learning to defend values that are sound and to criticize those that do not stand the test of deliberation."¹²⁰ While critical thinking is certainly consistent with a notion of professionalism,¹²¹ the full realization of this virtue in law school may require students to question the fundamental premises of the legal system, towards whose internal goods the professional is necessarily committed.¹²² Critical thinking requires distance from a subject; all participants in a law school animated by professionalism would be presumed to be, at some level, insiders.

Duncan Kennedy argues that law schools should be a polarized place where political conflicts are brought to the surface and doctrine exposed for ideological bias.¹²³ A law class is a success for him when students divide sharply along their own political lines, "form alliances that shift over time ... discover each other as political allies ... [and build] their own experience of law as a political activity."¹²⁴ This endeavour of the critical legal studies movement is to show how law expresses politics; the citizen here is the person with political consciousness and commitment. While politics certainly would be present in a law school animated by professionalism, the political spectrum might narrow. Kronman, for example, argues that case method compels a conservatism and "gradualism"¹²⁵ in politics and that the lawyer-statesman rejects the "worldlessness of revolution."¹²⁶ Law schools guided solely by

¹¹⁸ Nussbaum, "Cultivating Humanity," *supra* note 14. See also Calkins, *supra* note 13; Plana, *supra* note 13; Elkins, *supra* note 13; Mudd, *supra* note 13.

¹¹⁹ Nussbaum, "Cultivating Humanity," *ibid* at 267.

¹²⁰ *Ibid* at 269.

¹²¹ I am grateful to John Hunter for signaling in his presentation my failure to emphasize this point sufficiently (*supra* note 111). See e.g. Common Law Degree Implementation Committee, *Final Report, August 2011* (Federation of Law Societies of Canada, 2011), online: Federation of Law Societies of Canada <http://www.flsc.ca/_documents/Implementation-Report-ECC-Aug-2011-R.pdf> (Ethics and Professionalism competency includes the skill to "identify and engage in critical thinking about ethical issues in legal practice" at 17).

¹²² See e.g. Kronman, *supra* note 15 at 140-41.

¹²³ Duncan Kennedy, "Legal Education and the Reproduction of Hierarchy" (1982) 32:4 J Legal Educ 591.

¹²⁴ Kennedy, "Politicizing the Classroom," *supra* note 12 at 84.

¹²⁵ Kronman, *supra* note 15 at 159.

¹²⁶ *Ibid* at 108. This rejection of revolution would seem to preclude certain functions for the law school, such as Duncan Kennedy's strategy of "building a left bourgeois intelligentsia that might one day join together with a mass movement for the radical transformation of American society" ("Legal Education and the Reproduction of Hierarchy," *supra* note 123 at 610). Libertarian views (which Kronman has argued against in a different context (Anthony Kronman, "Contract Law and Distributive Justice" (1980)

professionalism might be inclined to minimize exposure to political views at the extreme ends of the spectrum, limiting students' capacities not only to expand their substantive political commitments, but also to exercise their ability to deliberate about competing political philosophies.

Policy-based reasoning in legal education may also be at risk of attenuation in a law school guided solely by professionalism. Many professors teach law in order to cultivate a public policy aptitude — the virtue of being able to design and critique means for attaining different social ends.¹²⁷ Such pedagogical approaches, most prominent in (but not exclusive to) teaching by law and economics scholars, ask students to think of the implications of the policies underlying legal choices, to extrapolate about the type of behaviour that will be encouraged by certain rules or choices, or to generate arguments for why one policy should be favoured over another.¹²⁸ Such factors usually require an approach that is exogenous to the legal discipline, often inviting students to ask, in the legal realist tradition, not what judges say, but what they “will do in fact.”¹²⁹ A focus on professionalism, by contrast, necessarily privileges the internal perspective of the legal system, emphasizing the mastery of skills and discourses bounded by legal rationality and existing practices. One study has demonstrated that in a traditional Contracts class, discussions of policy are “anecdotal or speculative” in contrast to the rigorous, “tight,” and “cent[ral]” discussion of doctrine.¹³⁰ Such findings suggest that policy aptitude may be considered marginal in a law school wholly committed to professionalism.

Roderick Macdonald espouses a view of the citizen as a “jurisgenerative” agent.¹³¹ This citizen participates in law making through the expression of “implicit and inferential normativity” “independent of any expression ... in the words of a natural language.”¹³² On this view, legal education can serve to deepen the student's understanding of the normative or legal character of everyday life, and to resist the impression that he or she is a “subject” of unilateral legal prescriptions.¹³³ This strong form of legal agency may have applications in a strictly professional school. For example, if law pervades human activity (above and beyond its formal manifestations), then learning law pluralistically can help the lawyer advise a client based on the full range of normative forces with which he or she is confronted. That said, a deep commitment to critical legal pluralism also impliedly rejects the idea that

¹²⁷ 89:3 Yale LJ 472)) would also fit poorly into Kronman's vision of the lawyer-statesman. See e.g. Joseph William Singer, “Legal Realism Now,” Book Review of *Legal Realism at Yale: 1927–1960* by Laura Kalman, (1988) 76:2 Cal L Rev 465 at 475.

¹²⁸ C.f. Anthony T Kronman & Richard A Posner, *The Economics of Contract Law* (Boston: Little, Brown, 1979) (suggesting that one pedagogical goal of studying contract law from a law and economics perspective is to help students participate in the “design of optimal legal policy” at 153). See also MJ Trebilcock, “The Doctrine of Inequality of Bargaining Power: Post-Benthamite Economics in the House of Lords” (1976) 26:4 UTLJ 359 (economic analysis of law can recommend “policy expedients” to attain a “socially optimal” level of information produced by the supply side of the market at 373).

¹²⁹ Oliver Wendel Holmes, “The Path of the Law” (1897), reprinted in (1997) 110:5 Harv L Rev 991 at 994. See also KN Llewellyn, *The Bramble Bush: Some Lectures on Law and Its Study* (New York: Columbia University School of Law, 1930) at 3.

¹³⁰ Mertz, *supra* note 96 at 77.

¹³¹ Martha-Marie Kleinhans & Roderick A Macdonald, “What is a Critical Legal Pluralism?” (1997) 12:2 CJLS 25 at 39. The term “jurisgenerative” is originally from Robert Cover and, while a similar concept is employed, it is not specifically used by Macdonald. See Robert Cover, “Forward: *Nomos* and Narrative” (1983) 97:1 Harv L Rev 4.

¹³² Macdonald, “Custom Made,” *supra* note 9 at 303, 308.

¹³³ See Roderick Macdonald & David Sandomierski, “Against Nomopolies” (2006) 57:4 Northern Ireland Legal Quarterly 610.

lawyers have a monopoly over legal practice.¹³⁴ It would be difficult for such a view to fully flourish in an environment that presumptively privileges the legal profession as the body tasked with pursuing the public good through law.

Although each of these four visions of the citizen could be rationalized to be in the service of some form of professional training, the full expression of each would likely be inhibited by an institutional commitment to professionalism as its *sole* animating idea. Law schools should therefore facilitate a domain for exploring plural and deep articulations of what it means to be a citizen. How could they do this?

The first point is that many law schools already do this in many ways, for example by offering specialized seminar courses, cross-listed courses, and the ability to take a certain amount of credits outside the law faculty.¹³⁵ The law school animated by professionalism would have to resist the pressures to curtail such practices. But a redefined mission would create the need and opportunity for other innovations. For example, law schools could expand the definition of experiential legal education to include experiences that do not resemble traditional legal practice. Legislative bodies, administrative tribunals, the civil service, policy think tanks, small businesses, direct action organizations — the list is endless — all involve formal law in some way. All could give law students a first-hand way of thinking through how they want their legal education to inform their contributions. Students could also be supported in order to conduct sociolegal research into the role and presence of informal law in a broad range of human behaviour. In short, the same pedagogical arguments that suggest that practical education enhances learning could (and should) be applied to a broader set of citizenship objectives.¹³⁶

Of course, such an initiative would require resources — intellectual and financial — as would championing and better integrating other less “professionalized” elements of the law school, such as the graduate program.¹³⁷ Whatever the approach taken, law schools should invest and innovate in order to signal to students that who they are becoming as professionals and as citizens are equally important concerns.

IV. CONCLUSION

The current crisis in the debate on legal education yields an opportunity to reaffirm and redefine the law school’s contribution to the public good. Because questions of efficiency and market demands currently predominate, the space is wide open to shift the debate toward one about public value — a much more virtuous and sustaining inquiry. Academic law

¹³⁴ That legal professionals do not have a monopoly over legal advice, legal practice, or the broader concepts of law reform is a direct implication of the anti-nomopolistic commitment. Macdonald & Sandomierski, *ibid*; Macdonald, “Custom-Made,” *supra* note 9 at 310, 326.

¹³⁵ See e.g. Martha Nussbaum, “Crossing the Midway,” *supra* note 20 (outlining the strong administrative support for interdisciplinary pursuits at the University of Chicago).

¹³⁶ See e.g. *Carnegie Report*, *supra* note 2 at 95; Roy Stuckey et al, *Best Practices for Legal Education: A Vision and A Road Map*, 1st ed (Clinical Legal Education Association, 2007), online: Clinical Legal Education Association <http://www.cleaweb.org/Resources/Documents/best_practices-cover.pdf>. For a comprehensive recent survey on experiential legal education in Canada, see Douglas Ferguson, “Experiential Learning Programs in Canadian Law Schools” (Paper Presented at Canadian Association of Law Teachers’ Annual Conference, Victoria, British Columbia, June 4, 2013), [unpublished].

¹³⁷ See Rosalie Jukier & Kate Glover, “Forgotten? The Role of Graduate Legal Education in the Future of the Law Faculty” (2014) 51:4 *Alta L Rev* 761.

schools are well situated to lead such a charge. They have traditionally pursued public value, in large part through their accreted identity as being of “the university,” so much of the job can be done by simply teasing out and articulating current and past practices.

But they also house a large number of people whose occupation it is to write and think. These human resources, if directed to the task, could greatly advance the question of public value beyond traditional expressions. Work is needed at both the theoretical and practical levels. Each law school should articulate its own distinctive expression of how it can best contribute to the diverse constituencies of the public. Advances in pedagogy need to be employed and translated beyond their current ambit to serve this renewed expression of value. This is hard work, but with the right institutional culture and incentives, law professors are surely up to the task.

This article has suggested that the integrative and additive understandings of “citizen” and “lawyer” are helpful heuristics for structuring such an inquiry. A law school may legitimately decide to pursue its contribution to the public good through a vehicle such as “professionalism” that elegantly integrates the training of lawyers and the cultivation of citizens. If it does so, it should consider the full depth of the term, rigorously pursue it, and be on guard against it being co-opted by narrower interests.

But law schools would not fully accomplish (or even articulate) their public mission by heeding these recommendations alone. However perfectly and richly professionalism inheres in a law school, there will be worthy visions of public value that are incompletely met in pursuit of this ideal alone. Just what these notions of “citizenship” are will vary from institution to institution. But a law school that fails to identify and cultivate some will inevitably espouse at most a partial vision of its public mission. To fall short in this way is to leave inchoate the foundational justification for its existence.