

A LAW STUDENT'S GUIDE

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*Legal Education's Knowledge,
Skills, and Ethics Dimensions*

Nelson P. Miller

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INTRODUCTION

- *Why read this guide*
- *What are the three dimensions of legal education*
- *How integrating those dimensions help you become a lawyer*

This guide is to help new law students get the most out of their legal education. The guide is for the student who has decided to attend law school. The idea behind this guide is that before you begin your law studies in depth, it would help you to know a little about law, how lawyers reason using law, and how lawyers relate to non-lawyers in providing legal services. The guide's three parts have to do with law knowledge, legal skills, and professional ethics. The recent two-year study *Educating Lawyers* from the Carnegie Foundation on Higher Learning concluded correctly that these were the three dimensions of legal education. As example, the world's largest law school, the private non-profit Thomas M. Cooley Law School, where the author is associate dean over a campus of approximately 700 law students (the school has four campuses), has for years organized its curriculum along those three dimensions. The law school curriculum integrates these knowledge, skills, and ethics dimensions of legal education to help you become a whole, balanced, competent, and effective lawyer. Law school curriculums integrate these dimensions within courses, across courses, and in co- and extra-curricular activities like volunteering, competitions, and externships. You now already know something fundamental about law schools that will help guide you to the best legal education.

Although it is seldom if ever articulated to law students, there is sound theory for recognizing knowledge, skills, and ethics as the three dimensions of legal education. As the Polish legal philosopher Leo Petrazycki demonstrated, law is attributive, meaning that it exists primarily as an attribute of persons. You may think that law is in books, cases, and codes. It is not. Unless lawyers get the book law into their minds to use it in legal matters, then it is not law. Unless lawyers can get what they have in their minds into the minds of the judges to whom they present their clients' matters, then it is not law. Unless judges can get the law (their rulings) into the minds of the parties who appear

before them, then it is not law. And unless a large enough percentage of the American people carry within them a sense of the law, then there is no rule of law. So law begins as knowledge.

Yet law practice is certainly not all about or even primarily about knowledge. As Russian psychologist Lev Vygotsky demonstrated, knowledge arises not when an individual assembles words from a dictionary of sorts within the individual's mind. Rather, knowledge arises through interaction with the environment, including writing, speaking, and encountering stimuli. Thoughts form in conjunction with speaking, whether in silent or audible speech. The speaker does not fully know what the speaker will say until it is said. The act of speaking, and of listening, arguing, and encountering, influences the thought that the speaker expresses. German epistemologist Heidegger put it another way, that the subjects of thought—for lawyers, tort law, contract law, property law, and clients and their circumstances—call to the thinker. The truth of those subjects lies outside of the thinker, who must be prepared to receive the thought. Law is, like other profound professions medicine and theology, a calling, in literal and figurative senses. Law depends on the mind's open and prepared confrontation with the subjects of thought. So law practice depends on cognitive skill, not merely the ability to acquire knowledge.

Yet law practice is not even primarily about law knowledge and its exercise through cognitive skills. As Hungarian-British chemist-philosopher Michael Polanyi demonstrated, expert or professional performances involve use-dependent action logic. A professional must exercise the knowledge-laden skill in suitable relationship with a client, patient, or patron. Expertise is personified. As Pilate was wont to learn, truth has a who-ness, not merely a what-ness. The person or attributes of the professional, whether courage, discernment, stability, loyalty, trust, valor, or discretion, are just as important as, and often more important than, the professional's skill and knowledge. Law practice and legal service depend on a fully formed professional, one whose attributes, attitudes, and dispositions reflect a healthy balance of self-management, other-interest, commitment to the profession, and devotion to the states and nation through the constitutions on which they are founded. To be effective, law school must balance and integrate law knowledge with legal skills and professional ethics or identity. Hence this guide's three sections on knowledge, skills, and ethics. Consider them in somewhat greater detail.

Knowledge. The first part of this guide, on the knowledge dimension of legal education, introduces the people, sources, structures, and systems of the law. There is a distinct legal and professional context in which students learn law subjects. It helps a great deal to know that context as you learn legal skills and doctrines. Some new law students have no education in or understanding of

the law or legal system. Others have undergraduate or graduate degrees in political science, business and public administration, criminal justice, and other law-related fields, or have relevant experience providing a basic understanding of the legal system. First-term subjects in law school tend to assume that law students have that basic understanding as they introduce legal doctrine and analysis. Use this part of the guide to confirm and improve your understanding of jurisprudence.

As you read the jurisprudence part, appreciate two additional features. First, each section ends with a brief statement of where in the law-school curriculum you should expect to learn a great deal more about the subject just covered. Your legal education is comprehensive. Responsible law schools map onto the curriculum the lawyer competencies you must learn. This guide gives you some clues as to where in the curriculum you will encounter different subjects. The specific course names and co- and extra-curricular programs are ones available at the author's law school. Most law schools have equivalent courses and programs.

“I will not say with Lord Hale, that ‘The Law will admit of no rival’ . . . , but I will say that it is a jealous mistress, and requires a long and constant courtship. It is not to be won by trifling favors, but by lavish homage.” Joseph Story, Supreme Court Justice and law professor, *The Value and Importance of Legal Studies*, 08/05/1829.

Another feature of this guide that you will immediately notice is that each section ends with reflections to help you engage the subjects. Most of the reflections include prompts for knowledge, application, integration, identity, caring, and learning. These prompts represent six aspects of learning which work together as you learn the law or, indeed, any other subject. The first prompt on knowledge will be the most obvious to you. However, notice as you read these prompts that law knowledge is use dependent. It is action logic, not static rules. So the second prompt urges you to consider the legal application of law knowledge. The third prompt helps you explore how to integrate new knowledge into your existing understanding, which is an important means of learning that new knowledge. The fourth prompt helps you consider the professional identity you will form from your law studies. The fifth prompt helps you care about the subjects and the people your new skills will aid. The final prompt helps you see how you are learning to learn, even as you learn the law. Lawyers are above all learners. Law school will help you become a significantly better learner.

Skills. The second part of this guide, on the skills dimension (legal methods), introduces ways that lawyers reason, in order to provide helpful legal

services. The premise for this part of the guide is that law schools should make explicit the analytical skills you must learn. One criticism of law schools has been that they do not make plain to you what it is that you must learn. Some law schools expect you to acquire analytical skills by immersion, meaning sink-or-swim. You can learn that way, although maybe not as quickly or efficiently as you could if what you were learning was made clearer to you. Not all lawyers recognize that they are using the subsidiary reasoning skills explained in this part of the text. They probably use these skills intuitively, having learned intuitively. You can probably forget about these subsidiary skills later, once you acquire them. Yet it may help you now, when you are starting out on a lifelong career of becoming a better lawyer, to get a head start on recognizing and building these skills. Studies show that early mastery of learning (early in a course, early in a curriculum, early in a career) tends to provide greater (and perhaps exponential) benefit. It is better to start ahead than to play catch-up.

Ethics. The third part of this guide, on the ethics dimension of legal education, introduces to you some conduct rules that lawyers follow, duties with which they comply, and qualities that they possess and develop. It also includes a framework for professional identity. Lawyers and law students often think of ethics as involving primarily conduct rules. And indeed ethics does. Yet ethics extends into the whole development of the lawyer as a professional of integrity. It includes not just conduct rules but also legal and fiduciary duties, and also professional attributes, dispositions, and attitudes. This part of the text introduces you to the rich ethical dimension within which lawyers serve. It also ends with a framework for evaluating your own identity preferences and the preferences of others, so that you appreciate the variety and diversity of strong positive ethical attributes, cultures, experiences, and views.

Legal education, though, is not solely about knowledge, skills, and ethics, or even about integrating those three dimensions of professional identity. Legal education has additional functions. One is to introduce you to the rich biographical history of lawyers and the enormously valuable work they have done through the centuries. We learn by model and imitation. You may have already been attracted to law by the lives and public service of great lawyers. This guide includes brief biographies of several famous lawyers to remind you to identify and recall famous lawyers as valuable models. Another function of legal education is to introduce you to other law students who, like you, will bring remarkable talents, gifts, and callings to law school, where they will turn them into special professional careers and futures. You will learn much from your law school classmates, as they will learn much from you. This guide includes brief biographies of several recent law school graduates, with names

and a few other details changed to protect these graduates' privacy. Use these biographies as reminders to take an interest in the law students around you.

"We can't give up specialized training in the highly complex structure of law today, but we do have to return to a feeling of what the whole legal system stands for—how it relates to our own conception of the person as human being." Paul A. Freund, American educator, *U.S. News & World Report*, 03/25/1974.

Legal education has still other functions. Another function of legal education is to demonstrate practice for you. Lawyers and law professors serve diverse populations with diverse needs, interests, and capacities. Law students can benefit by seeing lawyers in action serving those clients. So spread throughout this guide are vignettes of lawyers serving pro-bono clients, to provide you with perspective, inspiration, and encouragement toward your own unique professional future as a lawyer. Another function of legal education is to help you develop the capacity for and a healthy interest in a law-practice career. So spread through this guide are tips on law-practice careers, placement, and professional development. Consider the recommendations these tips make, and eagerly anticipate their rewards. To more deeply enrich your law school experience, spread throughout the guide are reflections on the wisdom of law practice. It is often said and written that lawyers think differently. You will soon be introduced to the distinct way in which lawyers think. Some leaders inside and outside legal education hold the opinion that lawyers need to rethink with new clarity and imagination how lawyers practice using their distinct forms of legal knowledge, skill, and ethics. The guide's reflections on lawyer wisdom represent an epistemology of law practice, meaning a study of how lawyers think as they practice.

The guide has two other features specifically to help you with your legal education. Sections end with curriculum boxes alerting you to the place within your school's curriculum where you can learn the knowledge, skill, or ethic just described. Your school may or may not offer the specific programs and courses by the specific names used in those curriculum boxes. The author uses examples from the world's largest law school where the author teaches and is an associate dean. Your school is likely to have many equivalent course and program offerings under similar names. Finally, this guide offers a series of reflections boxes at the end of each section that are an effort to encourage you think about how you will be thinking, so that you can take greater control over and responsibility for how you will serve as a lawyer. Of course, ignore any of the reflections that are distracting for you. The idea is to help you take a meta-cognitive stance toward your emerging professional identity so that law prac-

tice becomes meaningful for you, in keeping with your calling and ambition. You are wise to read a guide of this kind. Your professional development benefits by reflective assessment. Your law school's faculty, staff, and administration have chosen your school's mission and designed its program to help you become a whole, healthy, effective, and spirited professional. Appreciate and enjoy the process, even as you anticipate its rewards and conclusion in public service. And now begin your guide to legal education with an introduction to one special ancient lawyer.

Biography

The fabulist Aesop (620-560 B.C.) epitomizes how one can so know the ways of a people, and articulate that knowledge so effectively, as to be of lasting service for generations. Aesop represents the conflicted place and practice of the lawyer, as the confidant of mighty rulers while friend of and advocate for lowly subjects. So little is known about the personal and professional life of Aesop, and yet so many know Aesop's wisdom, that he makes an appropriate introduction for what it means to be a lawyer—to be known by the life of one's thought more so than for one's person, trade, or commerce.

Aesop was probably at one time a slave in ancient Greece. His fables survived by oral tradition until collected by the Greek philosopher Phalereus around 300 B.C. Aesop's fables leave some basis to believe that his profession was as a traveling advocate for others—a lawyer, though not with the modern accoutrements of the legal profession. Aristotle reports, for instance, that Aesop defended a ruler on the island of Samos. Freed from slavery, Aesop lived at the courts of rulers and sages, occasionally being called upon or voluntarily stepping forward to advocate for individuals or causes. His admiring monarch Croesus appears to have employed Aesop in settling affairs of state and local disputes in Athens, Corinth, and other parts of the realm. His fables were also undoubtedly used by others down through the ages to advocate for the resolution of small and large disputes on the morals and principles the fables reflected. Aesop was thus in person and publication, and in the folk sense, a lawgiver as well as an advocate for moral and pragmatic causes.

Wisdom was a common theme of Aesop's fables. Much of it had to do with pride (the lawyer's bane) and humility (the lawyer's bastion). An ass bearing the burden of a worshipped image mistakes the bowing of people the ass passes as worship of the ass rather than the image, resulting in a whipping by his owner for stopping to revel in the presumed worship.

And thus, “They are not wise who give themselves the credit due to others” — the moral showing that wisdom involves humility before honor. Several of the gods select their own hard- or soft-wood tree as honoring emblems, but the wise Minerva chooses the olive tree for the fruit that it bears. And thus, “Public acclaim is sheer foolishness unless we are able to produce something that is useful” — the moral showing that wisdom has purposes other than to honor its possessor. A proud cricket refused a wise owl’s request to stop its racket so that the owl could sleep. So with the lie that the owl wanted to celebrate the cricket’s beautiful tune, the owl lured the cricket near enough to capture and eat it. The wise will punish the conceited for their misbehavior.

Aesop’s wisdom, like the lawyer’s wisdom, also reflected how conflicts are resolved. A flock of sheep accept the wolves’ offer to live at peace with them if the sheep will only sacrifice the protecting sheep-dogs. But the wise old ram warns, “Why, even with the dogs at hand to protect us, we are never secure from your murderous attacks” — the fable showing that wisdom sometimes depends on long experience with concerted enemies. A bat twice falling into the clutches of weasels escapes each time with a slightly different turn on whether bats are bird-like or mouse-like. And thus, “It is wise to turn circumstances to good account” — the moral showing that wisdom is about the use, not the possession, of knowledge. An aged and infirm lion attracts prey by playing on their sympathies until a wise fox notices that the tracks into the lion’s den do not lead out. And thus, “He is wise who is warned by the misfortune of others” — the moral showing that wisdom involves sensitive observation used to properly interpret circumstances. A sow delivers a litter but a lioness only a single well-bred pup. And thus, one wise person takes more account than many soft and gluttonous people.

Aesop’s wisdom was one that respected continual growth — just as lawyers must always be learning. A butcher watches a dog run away with a piece of his shop’s meat but calls out, “you may even make the best of your purchase, so long as you have made me the wiser for it” — the fable showing that wisdom is often earned only by loss. When a wise owl warns the birds of three perils that the future would bring, the birds ignore the owl’s warnings instead regarding the owl as mad. “But afterwards, finding her words were true, they wondered at her knowledge and deemed her to be the wisest of birds” — showing that to the foolish, wisdom may have the appearance of being wise only in retrospect.

Aesop’s wisdom frequently cautioned discretion, just as the lawyer must constantly be discrete. Spying a wolf waiting by the roadside to eat him,

an ass pretends to be lame, entreating the wolf to remove a thorn from his foot so that it will not get stuck in the wolf's throat when the wolf eats him. When the wolf complied, only to have the ass kick the wolf nearly into oblivion, the wolf lamented, "Serves me right [for] I'm a butcher by trade, not a doctor"—showing that the wise stick to their own profession. Aesop's wisdom was of the most common type, obtained not so much by great learning as by astute observation of people and their pride, appetite, and foibles. And his manner of expressing that common wisdom was equally wise—his parables open especially to those who would discern the wisdom in them. Among the wise courtiers and sages with whom he lived, Aesop, like the lawyer, was the wisest.
