

Learning Law Young: Towards a More Robust, Impactful Civics Education Modeled Off of Jewish Law Learning

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ABSTRACT

Civics education curricula across the United States place too heavy an emphasis on teaching students descriptive information on our government rather than skills to participate within the government system. Even when a more practical-oriented approach to civics is being taken, the efforts made place a great focus on community involvement but little effort on skills-training (concerning, for example, argument, governmental criticism, and policy innovation). These realities lead to complacency and do little to inspire students to effectuate change. This Article argues for a more robust civics education that focuses on learning law young, or, rather, empowering students with the tools of critical thinking, understanding of systemic relationships, ability to question, and reform-mindedness that are important to tackle larger issues. To learn law young means endowing students with a methodological approach to questioning rights, duties, and obligations, as well as a common language for doing so. The Jewish educational tradition is instructive as a model for this sort of learning—from the Jewish Law obligation to educate, the skills that a *yeshiva*'s law learning model cultivates, and the positive consequences of this education on active community participation. If the objective of civics education is to cultivate the “good” active citizen, then this tool—not learning substantive law itself, but an ability to *approach* law questions—is essential.

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INTRODUCTION

Greater racial justice, political accountability, environmental protection, effective gun control laws—these are but a few of the causes a newer, bolder generation are bringing to the forefront of our national consciousness.¹ Members of our youngest generations take to the streets to push for systemic changes, reacting to the terror they feel of having to “deal with the issues and decisions that were made by people in generations before us.”² According to a 2020 poll, “83% say they believe young people have the power to change the country, [and] 60% feel like they’re part of a movement that will vote to express its views.”³ This youthful, activist energy has been praised and lauded, shamed and mitigated, but, above all and undoubtedly, has helped shape this epic age in our national story.

The question for the next generation, however, should not just be *how* do I get involved—for every day presents a new movement or issue for which to take a stand—but *am I equipped* to get involved? Or do I have the tools in my toolbox to intelligently participate in the activism and civic engagement my cause requires? This is an important question. Opponents often cite young peoples’ lack of systemic knowledge; appreciation of core governmental values; understanding of rights, duties, and obligations; their “incapacity”; and their “immaturity” in an effort to undermine their legitimacy as protestors and block their voices from participating in our “complicated” system.⁴ These popular issues for which they advocate, opponents suggest, implicate multiple interests and require nuanced solutions that take into account interwoven institutional values that they are too young to appreciate.

1. William H. Frey, *The 2020s Can End America’s Generational Divide in Politics*, BROOKINGS: AVENUE (Jan. 28, 2020), <https://www.brookings.edu/blog/the-avenue/2020/01/28/the-2020s-can-end-americas-generational-divide-in-politics/>.

2. Charlotte Alter, *How Millennial Leaders Will Change America*, TIME (Jan. 23, 2020, 6:04 AM), <https://time.com/5770140/millennials-change-american-politics/>; Steven Rose, ‘*Our Rage and Terror Give Us Power*’: *What Drives Woung Activists?*, GUARDIAN: BOOKS (June 3, 2019), <https://www.theguardian.com/books/2019/jun/03/young-people-are-full-of-rage-and-terror-and-that-gives-us-power-meet-the-activists>.

3. *Poll: Young People Believe They Can Lead Change in Unprecedented Election Cycle*, TUFTS (June 30, 2020), <https://circle.tufts.edu/latest-research/poll-young-people-believe-they-can-lead-change-unprecedented-election-cycle>.

4. *See, e.g.*, DAVID WILLIAM ARCHARD, CHILDREN, FAMILY AND THE STATE (2003) (contending that children lack adult rationality and understanding of the nuance of the issues).

Servicing the demand for institutional competency has been, at least in part, the purview of public school civics education since 1790.⁵ The founders had contemplated a public school that cultivated an active and engaged citizenry capable of participating intelligently in—and even innovating—our policies and institutions.⁶ Yet, our paradigm fails in this task due to the lack of uniformity in curricular content across schools, problems of access, low prioritization of civics by governments, and, most importantly for our purposes, a failure of civics classes to confer actual practicable activist knowledge and skills.⁷

This Article proposes a new approach to civics learning which better serves the important objective of cultivating a more active, empowered citizenry able to navigate complex policy issues at younger ages. We argue that U.S. civics education should be augmented from just passively teaching descriptive facts about government, towards approaching systems-understanding through learning law young, or instructing youth in how to approach the rights, duties, obligations, and constitutional questions underpinning the institutions contemplated by these descriptive facts and thereby garner critical skills that are now exclusively at the disposal of the law student. This is not just about teaching young students laws per se, but a new way of thinking. A close study of two jurisprudential approaches that law teachers mobilize in teaching law to law students will obviate the unique way that learning

5. JACK CRITTENDEN & PETER LEVINE, CIVIC EDUCATION (Edward N. Zalta et al. eds., 2018).

6. See e.g., Letter from Thomas Jefferson to William Charles Jarvis (Sept. 28, 1820) (on file with Founders Online) (“I know of no safe depository of the ultimate powers of the society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but inform their discretion by education.”); Letter from James Madison to W. T. Barry (Aug. 4, 1822), in TRANSCRIPTION: THE WRITINGS OF JAMES MADISON (Gaillard Hunt ed., 1900–1910) (“A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.”); George Washington, U.S. President, Eighth Annual Message to the Senate and House of Representatives (Dec. 7, 1796) (transcript available at Yale Law School Library) (“And a primary object of [Public Education], should be the education of our youth in the science of government. In a Republic what species of knowledge can be equally important? And what duty is more pressing on its legislature, than to patronize a plan, for communicating it to those who are to be the future guardians of the liberties of the country?”).

7. Kathleen Hall Jamieson, *The Challenges Facing Civic Education in the 21st Century*, J. AM. ACAD. ARTS & SCI. 65, 66 (2013).

law can cultivate skills, methodologies, and inspire creativity in students contending with American values, systems, and processes. Further, an exploration of how Jewish communities already reap benefits, especially in terms of community activism and involved citizenship, from educating children in Jewish Law serves to substantiate an argument for revising the American civics paradigm and, indeed, offers a model for that revision. To be sure, empowered with the skills from learning law young, our next generation can better treat issues with care and cultivate a national community brought together by an understanding and more nuanced respect for our system.

Part I sets out the problems with the current civics learning paradigm and obviates gaps in current reform efforts. Part II considers the tools and methods used by law teachers to confer *law-think* skills to students, identifies those skills concretely, and argues that learning law would be equally useful for the regular citizen. Part III furthers this contention by articulating why and how Jewish education has included learning law young for centuries, the benefits law learning affords Jewish students, and how these manifest on a community level. In turn, we argue that Jewish Law education could be a strong model for a robust civics education. Part IV concludes the argument and reflects on a path forward.

I. CIVICS EDUCATION TODAY: A CASE STUDY IN COMPLACENCY

A civics education in a democracy should be one in self-government where the citizen learns to not “passively accept the dictums of others or acquiesce to the demands of others.”⁸ To do this, the teacher must educate the student “in all the processes that affect people’s beliefs, commitments, capabilities, and actions as members or prospective members of the community.”⁹ These can be processes and institutions that both empower and obscure values, norms, and rights.¹⁰ Students should be contending with philosophical questions as profound as *what makes a good citizen* as well as descriptive facts like *what rights are guaranteed under the Constitution*. Students ought to be informed on

8. Margaret Stimmann Branson, *The Role of Civics Education*, CTR. FOR CIVIC EDUC. (Sept. 1998), https://www.civiced.org/papers/articles_role.html.

9. CRITTENDEN & LEVINE, *supra* note 5, at 1.

10. *Id.*

history, understand public community issues, be instilled with the capacity to think critically, and to have a willingness to engage different points of view on issues concerning our government and social society.¹¹

Though wise, necessary, and reasonable objectives, the reality is that our current iteration of civics education fails to meet them.¹² Among the many challenges facing civics education today,¹³ one central to this piece is the generally descriptive nature of national civics class curricula.

There are three largely accepted dimensions to a robust civics education: knowledge (facts and ideas about democracy and government), skills (the ability to navigate rules and processes), and values (democratic ideals and commitment to those ideals).¹⁴ A 2003 study found that civics standards in most state curricula focused far too much on the first category, passing off “a laundry list of people, events, and dates to be memorized” as civics education, and failing to serve the ends of developing civic competence and critical thinking.¹⁵ The landscape has not changed since then. As of 2018, the curricula of most public schools across states “largely reflect an approach to civics knowledge that emphasizes structures and functions rather than critical

11. CARNEGIE CORP. OF N.Y. & CIRCLE, THE CIVIC MISSION OF SCHOOLS 12 (2003), https://media.carnegie.org/filer_public/9d/0a/9d0af9f4-06af-4cc6-ae7d-71a2ae2b93d7/ccny_report_2003_civicmission.pdf.

12. See e.g., *A.C. v. Raimondo*, 494 F. Supp. 3d 170 (D.R.I. 2020), *aff'd sub nom. A.C. by Waithe v. McKee*, 23 F.4th 37 (1st Cir. 2022) (Ultimately dismissed at the district and appellate levels. Indeed, in 2019, students in Providence, Rhode Island, went so far as to assert that their state education mandate’s failure to require a robust civic education raises constitutional concerns. In *A.C. v. Raimondo*, Plaintiffs contended that their government failed to provide them “with an education that is adequate to prepare them to function productively as civic participants capable of voting, serving on a jury, understanding economic, social and political systems sufficiently to make informed choices, and to participate effectively in civic activities.” Their argument called out the deficiencies in the civics education paradigm nationwide, arguing that a *strong* civics education is not just one “about the mechanisms of our democratic system, but its spirit; about what it means to be an American and even what America means.” Their calls beg for knowledge that is rooted *not* in the acquisition of discrete factual information about our system alone—which, as we shall see, is the *modus operandi* of the current civics learning model—but in cultivating a skillset to criticize and assess issues of political prioritization, legal and institutional values, and government dynamics).

13. See Jamieson, *supra* note 7 for further discussion on the issues facing civics education.

14. HEATHER MALIN ET AL., YOUTH CIVIC DEVELOPMENT AND EDUCATION: A CONFERENCE CONSENSUS REPORT 9 (2013).

15. PAUL GAGNON, EDUCATING DEMOCRACY: STATE STANDARDS TO ENSURE A CIVIC CORE 71, 117 (The Albert Shanker Institute ed., 2003).

analysis and active civic participation.”¹⁶ This results in a culture of complacency¹⁷ and inaction at best and, at worst, susceptibility to misinformation and the disquieting lure of extremist ideological indoctrination.¹⁸ Whereas our younger generation should feel responsible for the goings-on of our systems, the “fly-by kinds of course requirements that students merely check off of a to-do list” yield a generation of students who are pacified and reticent to even take an interest in major issues or ideas.¹⁹

To be sure, reform efforts are being made to rectify these issues. They do so by embracing the second dimension of civics-education: “skills-building.” For example, in 2010, the National Council for the Social Studies created a common core curriculum for informed and engaged citizenship to be directly adopted by state departments of education.²⁰ The dominant focus of this new curriculum was and is building critical thinking, participatory, and problem-solving skills as part of students’ civics learning.²¹ This is done by requiring active engagement components within civics lessons, like opportunities for working with news-media fluency, frequent current events discussions, community service, attending school board meetings, “simulations of democratic processes and procedures,” and action civics programming.²² Philosophically, these skill-focused experiences will

16. Michael Rebell, *The Schools’ Neglected Mission: Preparing All Students For Civic Participation*, CTR. FOR EDUC. EQUITY 1, 3 (2018).

17. Lucy Hardy, *Youth Inaction: What Does Complacency Mean for the Future of Democracy?*, RESULTS (July 2, 2012), http://results.org/blog/youth_and_advocacy_what_does_complacency_mean_for_the_future_of_democracy/.

18. Colleen Flaherty, *A Failure to Educate*, INSIDE HIGHER ED (Jan. 8, 2021), <https://www.insidehighered.com/news/2021/01/08/capitol-riots-failure-educate> (discussing the openness to misinformation in the media concerning politics, blaming lack of civics education for the Capitol Riots).

19. Stephanie Kanowitz, *Decline of Civics Education Means Students Less Prepared to Become Informed Citizens*, WASH. DIPLOMAT (Oct. 31, 2018), <https://www.goacta.org/news-item/decline-of-civics-education-means-students-less-prepared-to-become-informed-citizens/>.

20. COUNCIL OF CHIEF STATE SCH. OFFICERS, *VISION FOR THE COLLEGE, CAREER, AND CIVIC LIFE (C3) FRAMEWORK FOR INQUIRY IN SOCIAL STUDIES STATE STANDARDS 4* (2012), <https://files.eric.ed.gov/fulltext/ED542755.pdf>.

21. *College, Career, and Civic Life (C3) Framework for Social Studies State Standards*, NAT’L COUNCIL FOR SOC. STUD., <https://www.socialstudies.org/standards/c3> (last visited Mar. 28, 2023).

22. Michael Hansen et al., *2018 Brown Center Report on American Education: An Inventory of State Civics Requirements*, BROOKINGS (June 27, 2018),

inspire students to develop “civic behaviors,” or the “civic agency and confidence to vote, volunteer, attend public meetings, and engage with their communities.”²³ And, certainly, this would be a more effective, practicable form of civics education than simply requiring rote memorization of historical facts for students to pass a citizenship test before graduation.²⁴ Sadly, as of 2018, only twenty-three states have properly adopted the new standards,²⁵ *no* states have “local problem-solving components in their civics requirements,”²⁶ and only one state requires community service for graduation.²⁷

Yet, even if there were a quicker reception of this program or other practical-skills circular reforms, one still might ask: is that enough to meet the larger objectives of combatting complacency, empowering students to proactively and informedly work against bigger issues within the system, or appreciating the nuance of American government, law, order, and values? Perhaps not. A more comprehensive reform should consider amplifying all three dimensions—not just the one—of a robust civics education. Yes, the current paradigm—if correctly employed—might inform students how to participate in local

<https://www.brookings.edu/research/2018-brown-center-report-on-american-education-an-inventory-of-state-civics-requirements/>.

23. Rebecca Winthrop, *The need for Civic Education in 21st-century schools*, BROOKINGS (June 4, 2020), <https://www.brookings.edu/policy2020/bigideas/the-need-for-civic-education-in-21st-century-schools/>.

24. See Amanda Litvinov, *Forgotten Purpose: Civics Education in Public Schools*, NEA NEWS (MAR. 16, 2017), <https://www.nea.org/advocating-for-change/new-from-nea/forgotten-purpose-civics-education-public-schools> (14 states have adopted this approach); Sadly, the current paradigm does not even do rote memorization well. See Amanda Robert, *Americans are divided by age and race on the fairness of the justice system, ABA civics survey finds*, ABA J. (Apr. 29, 2021, 2:38 PM), <https://www.abajournal.com/web/article/2021-civics-survey> (In a 2021 Civic Literacy Survey, less than half of participants could name the current Chief Justice of the Supreme Court, and one in five demonstrated confusion on the rights guaranteed under the First Amendment to the Constitution. Still more, the survey showed considerable differences of opinion when it came to defining items like the meaning of “defund the police,” or the consequences of “aggressive prosecution,” or even agreeing with the notion that “the nation’s judicial system adheres to the rule of law, under which all individuals are treated equally in the eyes of the law.”).

25. BROWN CTR. ON EDUC. POL’Y AT BROOKINGS, 2018 BROWN REPORT ON AMERICAN EDUCATION 20 (June 2018), https://www.brookings.edu/wp-content/uploads/2018/06/2018-Brown-Center-Report-on-American-Education_FINAL1.pdf.

26. Catherine Brown & Sarah Shapiro, *The State of Civics Education*, CTR. FOR AM. PROGRESS (Feb. 21, 2018), <https://www.americanprogress.org/article/state-civics-education/>.

27. *Id.*

communities and a history of why that matters, but a *robust* civics education should do more. An education in civics should open the door for students to engage with the complex values, structures, and ideas of policy, become nuanced in how they criticize the government, and acquire the tools to question their own value-sets and, commensurately, those of their country. Learning law—learning how to approach legal questions—fosters this broader thinking; A legal education deals with navigating skills-learning, knowledge acquisition, and value judgments. Considering what a legal education might provide the civics student is useful in assessing a path forward for this important aspect of public education.

II. THINKING LIKE A LAWYER: THE LAW SCHOOL APPROACH TO TRAINING LAW STUDENTS

When the wide-eyed prospective first year law student (1L) joins their classmates for their first day of law school, they likely come to the bustling community of aspiring change-makers knowing no law. That is to say, no substantive contract law, property law, or criminal law. Any factual knowledge they would have acquired up to that point—be it elementary math, middle school science, high school calculus, or college-level American history—would be of relatively little use to them as they wade into the judicial opinions and legal ideas of the first-year law school curriculum. What *may* be of use to them are the methodological skills they have acquired as a result of their substantive learning up until that point—the critical reading skills they honed as a literature major in college, or the analytical skills required to ace calculus. These skills are transferrable *tools in their toolbox*, and they have little to do with the substantive facts, figures, or topics that originally prompted their acquisition.

So, too, does law learning focus on the cultivation of tools in one's toolbox: skill sets over substance. As 1L turns to third year (3L), the student will learn not only *what* the law is but also *law as a methodology*, law-think, or, as the proverbial adage goes, *how to think like a lawyer*.²⁸ As Bethany Henderson puts it, “[T]hinking like a lawyer

28. See, e.g., Bethany Rubin Henderson, *Asking the Lost Question: What Is the Purpose of Law School*, 53 J. LEGAL EDUC. 48, 57 (2003); Jack Chorowsky, *Thinking Like a Lawyer*, 80 U. DET. MERCY L. REV. 463, 464 (2003).

means developing and honing analytical skills—a set of intellectual habits. It means nurturing reflexes that support you when faced with questions and issues, regardless of the subject matter. And it means imposing order and structure on your thoughts and ideas—figuring out how to convey them in the clearest, most precise and most powerful way possible.”²⁹ As we shall see, the conferral of the *law-think* skill is imbued in *how* teachers approach teaching law and cultivating in students an understanding of *what* the law is, why it operates, and how. The end result: a new methodology, one could say, for approaching questions and problems of all kinds—from family issues, political policy, real estate transactions, and even personal life issues.

In these next sections, we will explore two jurisprudential slants teachers confer in their discussions of cases, precedent, and laws—how they read discrete legal issues as representations of the larger system—and why they are effective in cultivating for students a nuanced perception of our legal system *and* building *law-think* skills.³⁰ Either way, to learn law is to be invited to critically explore values in tension, complex policies, questions, and ideas—the very same things that underlay the causes that youth activists seek to change today. There is a reason that over half of our previous presidents had passed the bar before assuming office,³¹ and this same reason—the ability to approach problems like a lawyer—counsels in favor of inviting civics students to learn law young.

A. Law and Morality Teaching

We consider, first, the teacher who espouses a moral pedagogy of law teaching. Historically, legal education “rests on a fundamental

29. Chorowsky, *supra* note 28, at 464.

30. It should be noted that a categorical assessment of these jurisprudential slants, or even intimating that professors do only one or the other, risks oversimplifying how one approaches teaching law. Oftentimes these jurisprudential views overlap, different subjects require different approaches, and lines are blurred. The methodologies here are meant only to show how different ways of teaching law showcase different skills, but no method is necessarily better or worse than the other. If anything, this discussion is meant to show the vibrancy of debate around different ways to distill the important precepts and ideas that underpin a legal education.

31. Chelsea Beran, *Before They Were Presidents...They Were Lawyers*, L. TECH. TODAY (Feb. 15, 2016), <https://www.lawtechnologytoday.org/2016/02/before-they-were-presidents-they-were-lawyers/>.

belief in the separation of law and morality.”³² Christopher Columbus Langdell, a thought-leader behind modern legal education, stressed that legal reasoning was a “deductive process by which one derived right and wrong answers from principles inherent in the opinions of appellate judges.”³³ The legal mind, commensurately, is rational, analytical, logical, and dispassionate. Grounded in the “pragmatism of problem solving,” “legal education becomes a form of discrimination, of selection, of seeing and valuing facts that count toward a decision.”³⁴ While there are many benefits gained from a razor-focused disposition and eagerness to take apart cases for technical solutions, there are also obvious drawbacks.³⁵ Indeed, it was Oliver Wendell Holmes, though a legal realist in his own right, who argued that the teacher ought to instruct students in law “in the grand manner,” which intimates that legal education has a dimension beyond the substantive right and wrong technical answers.³⁶

A pedagogy that stresses learning law in the context of fairness, justice, and morality asks students to consider more than “what the law says,” but judge the law’s *rightness* in terms of its institutional impact on vision and values.³⁷ In other words, to see the “rule of law” as separate from given positive laws. One considers “constantly the normative bases for individual, corporate, and governmental responsibilities”³⁸ as well as the power dynamics inherent in the resolution of disputes. What are the moral obligations of the legal actors? What is the role of the lawyer in serving as a positive force

32. James Elkins, *Moral Discourse and Legalism in Legal Education*, 32 J. LEGAL EDUC. 11, 12 (1982); see also Angela P. Harris & Marjorie M. Shultz, *A(nother) Critique of Pure Reason: Toward Civic Virtue in Legal Education*, 45 STAN. L. REV. 1773, 1777 (1993).

33. Harris & Shultz, *supra* note 33, at 1776 (referencing Thomas C. Grey, *Langdell's Orthodoxy*, 45 U. PITT. L. REV. 1 (1983)).

34. Elkins, *supra* note 32, at 14.

35. Elkins, *supra* note 32, at 16 (discussing the problems with the “morality of rule veneration”). The debate currently rages as to whether Langdell’s “purist” approach to law learning is optimal for the modern student. See, e.g., Harris & Shultz, *supra* note 32, at 1774 (discussing the purist approach as divorced from other subjects, values, larger social questions).

36. Michael I. Swygert, *Striving to Make Great Lawyers — Citizenship and Moral Responsibility: A Jurisprudence for Law Teaching*, 30 B.C. L. REV. 803, 804 (1989) (quoting Oliver Wendell Holmes, *The Use of Law Schools*, in COLLECTED LEGAL PAPERS, 37, 47–48 (1920)).

37. Jane H. Aiken, *Striving to Teach Justice, Fairness and Morality*, 4 CLINICAL L. REV. 1, 11 (1997).

38. Swygert, *supra* note 36, at 807.

within the system?³⁹ And, how ought we weigh disparate case outcomes based on fairness and consistency with notions of justice?⁴⁰ By adopting the disposition that “the law expresses values that require both affirmation and critical scrutiny,”⁴¹ the instructor invites students to simultaneously learn the law, learn a value-set, and “see how their experience affects their values, and how these values affect their assessment of the law.”⁴²

What sort of value-set is important for the budding lawyer? The benefit of a moral legal education manifests when a young lawyer goes out and *does right* by the client, “doing what is [] proper, not only what is legal.”⁴³ Thinkers who argue in favor of infusing morality in legal education argue that injustice “depends on people’s inability to examine how their own values may reinforce dominance,” or in misapprehending the weighty role that any one individual actor can play in the judicial and legal process.⁴⁴ These values are the strength of the lawyer. Through the study of opinions, legislation, statutes, and administrative orders, the lawyer builds more than any subjective opinion on a given constitutional issue, but an appreciation for how this or that case fits into “a normative morality of higher principles.”⁴⁵ In other words, the teacher instructs the student on notions of “human dignity, human aspiration, procedural fairness, due process, equal treatment, [and] fundamental human rights” in the law’s founding.⁴⁶ In turn, the law student works to perpetuate these values—to *do right*, to abide by the moral obligation and responsibility to act towards these systemic aims, the common good, and common goals.⁴⁷

Understanding one’s moral obligations within the system also has a very tangible practical dimension in terms of the conferral of skills. If

39. Concerns about the role and responsibility of the attorney as arbiter of justice or moral counsel often go to the forefront of courses in Legal Ethics and Professional Responsibility. See Elkins, *supra* note 32, at 28. And, indeed, there are those that think that the moral preoccupations of law are realistically relegated to these fields alone. See Lee Modjeska, *On Teaching Morality to Law Students*, 41 J. LEGAL EDUC. 71, 72 (1991).

40. E.g., Aiken, *supra* note 37, at 11.

41. Elkins, *supra* note 32, at 46.

42. Aiken, *supra* note 37, at 11.

43. Swygert, *supra* note 36, at 807.

44. Aiken, *supra* note 37, at 11–12.

45. Swygert, *supra* note 36, at 809.

46. *Id.*

47. *Id.*

one is conscientious of their moral direction as a lawyer and views the system as also working towards complimentary normative goals, the lawyer gains an ability to tap into a sense of community morality—the bounds of *right* and *wrong* in the system, a clear view of institutional values. Having a pulse on this can help one predict tomorrow’s positive law, anticipate injustice, and forge policy in a way consistent with these values.⁴⁸ Law-think, in other words, cultivates in students a compass such that “personal convictions have become the most reliable guide . . . to institutional morality.”⁴⁹

In addition to acquiring a sense of community morality, there are two other very notable results produced by this approach to learning law.⁵⁰ The first is that students—future reformers—become conditioned *to believe in the integrity of the law*.⁵¹ While one may dispute the

48. *Id.* at 811.

49. See Ronald Dworkin, *Hard Cases*, 88 HARV. L. REV. 1057, 1107 (1975) (“The sharp distinction between background and institutional morality will fade, not because institutional morality is displaced by personal convictions, but because personal convictions have become the most reliable guide he has to institutional morality.”). Dworkin argued that judges rely on their own impression of community morality to decide “hard” cases in a way that promotes order consistent with our democratic principle. *Id.* at 1063. Attorneys, commensurately, rely on their understanding of community morality and sense of institutional values to frame legally consistent arguments and push similarly valued policy. See generally *id.* at 1105 (“Individuals have a right to the consistent enforcement of the principles upon which their institutions rely. It is this institutional right, as defined by the community’s constitutional morality, that Hercules must defend against any inconsistent opinion however popular.”). Dworkin observes that the legal-thinker in practice, over time, arrives at such a point where their “personal convictions have become the most reliable guide . . . to institutional morality.” *Id.* at 1107. Functionally, therefore, the moral pedagogy of law teaching takes the position that—through legal education—one is better positioned to anticipate institutional changes, address needs, and informedly exercise judgment on policies in a way always (at least subconsciously) aligned with the needs and values of the system. See *id.*

50. There are, of course, many more great results from this education. One that deserves at least a small mention is conferral upon the student a sense of self-worth, of *empowerment as an individual change-maker within the collective system*. A versatility and familiarity with mechanisms and processes, an understanding of the principles and values at work in the system, and the substantive knowledge—all of this strengthens one’s sense of self and elevates their impression of their potential impact on the system. This, we have seen, is especially true for students of marginalized backgrounds both from within and without the law school context. See e.g., Carol Weinstein, *The Classroom as a Social Context for Learning*, 42 ANN. REV. PSYCH. 493, 519 (1991).

51. See, e.g., James Elkins, *Professing Law: Does Teaching Matter*, 31 ST. LOUIS U.L.J. 35, 41–43 (1986). Reinforcement of the belief in the good of the system is showcased especially in the prototypical law school ethics course. *Id.* at 37. Among other more substantive objectives, the ethics course at a law school cultivates character, virtue, and values in newly minted legal professionals. James Moliterno, *An Analysis of Ethics Teaching in Law Schools: Replacing Lost*

inherent corruption of institutions, the inequity of policy, or disagree with this or that law, students' urge to reform *starts at a place of hope* that the system is good rather than a place of disillusionment manifested in a desire to abolish institutions or systemically disengage entirely.⁵² The lawyer—the beneficiary of a bastion of knowledge of institutional values and the constant tension of ideals manifesting as law—even when reforming, holds steadfast to the hope that there are good actors and good institutions trying to do the right thing.⁵³

The second result is—perhaps surprisingly—“law obedience.” In appreciating the system as a reflection of higher normative principles and acknowledging the prevalent balance between the ideals present in the law, the lawyer is more likely to obey discrete positive rules even when they disagree with them for no other reason than an understanding that the law generally promotes order, fairness, and democracy.⁵⁴ To follow the law is to preserve order and confer necessary legitimacy upon

Benefits of the Apprentice System in the Academic Atmosphere, 60 CIN. L. REV. 87, 94 (1991). Students engage with larger questions including the role of the lawyer within the system, expectations of the professional, and “professional socialization.” Elkins, *supra* note 51, at 42–43. The teacher, at once, instills a sense of duty and obligation towards both the profession and to act in the interest of justice. *Id.* Implicit in this is an indoctrination into the idea that the two go hand-in-hand; that by acting *through* the law as intended, one also works towards justice. *Id.* at 43. Thus, to assess “competence” is to really judge whether a given attorney is holding themselves out in a way that helps further systemic goals and faith in the system as a whole. *Id.* at 42. To teach the proper way of conducting oneself with a client is to perpetuate a certain type of behavior—a behavior favored by the system—until it becomes second nature. *Id.* at 43. To be *ethical*, therefore, is built on a belief that the system in which one is acting and conforming to what is *right* and *correct*. *Id.*

52. Elkins, *supra* note 51, at 43 (“By making a commitment to law *and* its failure, there is an expression of hope that the failure of law is not inevitable.”).

53. See e.g., Jessica Taft, *Is It Okay to Critique Youth Activists? Notes on the Power and Danger of Complexity*, in CHILDREN AND YOUTH AS SUBJECTS, OBJECTS AND AGENTS: INNOVATIVE APPROACHES TO RESEARCH ACROSS SPACE AND TIME 193, 194 (Deborah Levinson et al. eds., 2021). By contrast, some critics contend, youth activists are inclined towards institutional abolition, finding the system *too broken to fix*. See *id.* (contending further that youth activists' passion, while an excellent attribute, is often construed as impulsive, or “wowing,” and obviating an inability, or, worse, resistance, to understanding the system as a whole, reflective of some immaturity, incapacity, and shallowness).

54. For a general bibliography on the moral obligation to obey the law, see generally J. Hasnas, *Is There a Moral Duty to Obey the Law*, 30 SOC. PHIL. & POL'Y 450 (2013); Kent Greenawalt, *The Natural Duty to Obey the Law*, 84 MICH. L. REV. 1 (1985).

the system.⁵⁵ As Thomas Aquinas remarked, the need to obey what one considers an “unjust” law “is not based on the good of *being* law-abiding, but only on the desirability of not rendering ineffective the just parts of the legal system.”⁵⁶ A legal education, therefore, endows a perpetual appreciation for the multi-layered nature of the system and the competing interests of laws and policy.

Importantly, however, this is not to say that the lawyer *must* acquiesce to *all* positive laws *always*. Lawyers are able to evaluate the inherent injustice of a law and commensurately practice all manner of civil and private disobedience in contexts where a moral obligation seems to supersede any duty to obey the law. Indeed, a legal education endows them with an even greater capacity for doing so, as well as a commensurately higher standard by which to judge injustice.⁵⁷ John Rawls contended that, in all cases, civil disobedience should be limited to “instances of substantial and clear injustice,” where “normal appeals to the political majority have already been made in good faith and . . . have failed,” and the dissenter has already considered it “wise and prudent” based on the circumstances.⁵⁸ However, the lawyer, trained on the distinction between the rule of law and the positive law at issue, has an ever greater “duty . . . of caution in evaluating each of these steps.”⁵⁹ A legal education empowers one to reflect deeply on the very basis of injustice and its bearing on the larger system and to respond to it by informed, efficient, and legitimate means. In other words, an education in the rule of law translates to tempered responses, painstakingly considered circumstances, and informed judgments about policy. Are these skills not helpful to the non-lawyer civics students as well?

i. New Legal Realism and Critical Legal Studies

Moving away from a moral pedagogy of law, “new legal realism” and “critical legal studies” (CLS) offer a more functional and grounded approach to learning law as it impacts real people. Whereas the rule of

55. Judith A. McMorrow, *Civil Disobedience and the Lawyer's Obligation to Obey the Law*, 48 WASH. & LEE L. REV. 139, 147 (1991) (“Any legal system must maintain a core level of acceptance and legitimacy to function effectively.”).

56. *Id.* at 147–48.

57. Robert M. Palumbos, *Within Each Lawyer's Conscience a Touchstone: Law, Morality, and Attorney Civil Disobedience*, 153 U. PA. L. REV. 1057, 1062–63 (2005).

58. Judith A. McMorrow, *supra* note 55, at 148 (footnotes and internal quotations omitted).

59. *Id.* at 148–49.

law conversations encountered above persist mostly in the study of doctrine made available through appellate opinion and formalist observations concerning precedents,⁶⁰ these approaches—favoring a practical, empirical, interdisciplinary, and socially contextualized approach to law learning⁶¹—typically find their manifestation in more clinical or experiential settings. Importantly, however, these jurisprudential lenses can and are applied to the same questions and cases as the morality approach.⁶² Indeed, law students will encounter all of these jurisprudential approaches in their three years of school, and all of these are instrumental in the art of law-think.

Pedagogically, the teacher here is concerned with capturing the “area of contact between judicial behavior and the behavior of laymen.”⁶³ The learning experiences are based on a nose-to-ground philosophy that veers away from the “doctrinal education to interdisciplinary education . . . precisely because the normative expectations for behavior to which courts are quite plainly sensitive are not those captured by [theory alone].”⁶⁴ In other words, cases are brought “down to earth,” parsed down to the technical language of normative expectations on how cases will be resolved, distilled, and analyzed according to the idea that law is decided by people with their own biases, prejudices, and influences.⁶⁵

60. Emily S. Taylor Poppe, *New Legal Realism Goes to Law School: Integrating Social Science and Law Through Legal Education*, in RESEARCH HANDBOOK ON MODERN LEGAL REALISM 6 (Shahin Taleh et al. eds.) (forthcoming 2020).

61. *See id.* at 3.

62. The approach itself, borne in many ways out of Jerome Frank’s “clinical-lawyer schools” concept in the ‘30s and the older legal realism movement in the ‘20s and ‘30s, is most seen in the context of clinical or experiential learning that is now widespread across law school curricula. For a full bibliography on this educational philosophy, Frank published two articles in 1933 calling for the creation of clinical lawyer-schools. *See generally* Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907 (1933); Jerome Frank, *What Constitutes a Good Legal Education?*, 19 A.B.A. J. 723 (1933); *see also* Jerome Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303 (1947). For a discussion of Frank’s ideas within the context of the history of clinical legal education, see George S. Grossman, *Clinical Legal Education: History and Diagnosis*, 26 J. LEGAL EDUC. 162, 166 (1973–1974).

63. Karl Llewellyn, *A Realistic Jurisprudence—The Next Step*, 30 COLUM. L. REV. 431, 455–56 (1930).

64. Brian Liter, *Legal Realism and Legal Doctrine*, 163 U. PA. L. REV. 1975, 1983 (2015).

65. Elizabeth Mertz, *Inside the Law School Classroom: Toward a New Legal Realist Pedagogy*, 60 VAND. L. REV. 483, 513 (2007) (“[Law] does not convey abstract meaning in a legally-created vacuum, and thus cannot be understood without systematic study of the contextual molding that gives it foundation in particular cultures and societies.”).

New legal realism pushes students to consider law *not* as a siloed “grand discipline” distinct from others but as one highly influenced by other fields, by its actors through social and political contexts, and by its practice through a lawyer’s experiences and background. In this way, students become open to realizing the economic, philosophical, and social norms that can influence judicial decision-making, legal systems, and ideas.⁶⁶ The pedagogy emphasizes the law’s impact on those who lack power in society, reducing legal questions to consider their real human impact and searching for real answers to real issues.⁶⁷ This is important as “students believe what they are told, explicitly and implicitly, about the world they are entering[;] they behave in ways that fulfill the prophecies the system makes about them and about that world.”⁶⁸ Thus, by teaching with a mind towards furthering justice, acknowledging privilege, meeting the needs of the vulnerable, and understanding law and legal meaning more broadly, teachers are cultivating a more culturally literate class of lawyer.⁶⁹

Unsurprisingly, therefore, the school of thought is driven by an adherence to evidence-based teaching practices and multiple perspectives, inviting interdisciplinary approaches to law in the interest of the following central objective: showing that the “law’s key task is effective translation of the ‘human world’ using legal categories.”⁷⁰

CLS endeavors to go even further in conceiving the law as an amalgamation of competing policies and real influences that impact decision-making.⁷¹ CLS claims that the legal system has been “socially constructed to reflect prevailing interests of power and domination” and that “the mythology of legal discourse serves to mystify and pacify the

66. *Id.* (“Like all human language, legal language is embedded in a particular setting, shaped by the social contexts and institutions surrounding it.”).

67. Katherine Kruse, *Getting Real about Legal Realism, New Legal Realism and Clinical Legal Education*, 56 N.Y. L. SCH. L. REV. 295, 298 (2011–2012).

68. Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591, 591 (1982).

69. *See id.*

70. Mertz, *supra* note 65, at 505 (footnote omitted).

71. Jerry L. Anderson, *Law School Enters the Matrix: Teaching Critical Legal Studies*, 54 J. LEGAL EDUC. 201, 212 (2004); *see also* Carrie Menkel-Meadow, *Feminist Legal Theory, Critical Legal Studies, and Legal Education or “The Fem-Crits Go to Law School”*, 38 J. LEGAL EDUC. 61, 67 (1988) (criticizing how “[i]n law school the student enters a world ordered in top-to-bottom ways that seem grossly ironic in a discipline whose mottos include ‘Equality Under the Law’”).

oppressed.”⁷² Therefore, to view “rules as [] static, and almost immutable[,] . . . does not prepare either the social reformer who wants to change the rules or even the traditional lawyer who must anticipate for clients possible changes in the direction of rules.”⁷³ It is the occupation of the student-turned-lawyer to mobilize their empirical skills, as well as their knowledge of the law’s influences, to “penetrate the surface of social reality,” expose the actual workings of society, and deconstruct the status quo by utilizing institutions to re-appropriate power. This is an incredibly empowering model of the lawyer, one in which their knowledge base endows them with the responsibility to effectuate change for all citizens.

Naturally, therefore, the practical learning outcomes conferred by these technical, deconstructive approaches to law learning, somewhat different from the first value-based approach, are all about individual problem-solving and socialization.

The first skill is the ability to *isolate a number of different layers and influences for any given issue*. Consider, for instance, the reformer who seeks to advocate for welfare as a tool for helping the impoverished. An education steeped in these jurisprudential lenses obviate dozens of different questions that go into answering this one: does welfare—empirically—help those in poverty or merely perpetuate dependency? If it does, to what extent is that an issue for the state? Do welfare systems contravene countervailing interests of autonomy and liberty? To what extent does public opinion of “dependency” impact our conception of welfare? What political interests are at stake when it comes to the retention or dissolution of welfare programs? Would somebody outside my position think of different answers than I to any of these questions? An appreciation of the dialectic tension between countervailing interests ultimately allows for more comprehensive and creative responses to these questions.

But more than just *asking* the questions, learning law through a critical lens also teaches you how to navigate these problems and resolve tensions through analysis, critical thinking, and the coordination of multiple interests and values. As an example, consider Martha

72. Andrew Altman, *Legal Realism, Critical Legal Studies, and Dworkin*, 15 PHIL. & PUB. AFFS. 205, 216–35 (1988).

73. Menkel-Meadow, *supra* note 71, at 68.

Fineman's vulnerability theory project.⁷⁴ Fineman developed an alternative human rights paradigm criticizing the "dominant conception of the universal legal subject as an autonomous, independent, and fully-functioning adult."⁷⁵ By challenging the "myth" of autonomy and acknowledging the universally constant vulnerability of all individuals, she makes an argument for recasting the welfare state as a necessarily responsive one, de-stigmatizing it as a product of collective responsibility to care for those less resilient than others.⁷⁶ She argues that "dependency is universal and inevitable in our individual lives and inherent in the human condition."⁷⁷ The fact that some "manifest the realities of dependency" and are stigmatized is abhorrent and indicative of the "self-delusion" of welfare debates.⁷⁸ Indeed, "we all live subsidized lives."⁷⁹ To wit, Fineman, through legal instrumentation, redefines conceptions of the "legal subject," "the State," "equality," "injury," "responsiveness," "justice," and "civil society" to reflect the universal, constant vulnerability of the human condition.⁸⁰ Agree or disagree, to argue for the entire reconception of welfare through the mechanisms of our legal system exemplifies the power of the CLS-trained mind steeped in data adherence, creative consideration of conflicting values, knowledge of systemic inner-workings, and defiance of ingrained biases.

Both the CLS and new legal realism approaches are all-encompassing and multilateral; indeed, their reliance on on-the-ground facts helps us in the art of methodologically compromising ideas to resolve issues efficiently, effectively, and in a way mindful of our larger systemic goals and individual interests. These methods involve removing oneself from the hierarchical notion of "law" as having a true

74. See Martha Albertson Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, 20 YALE J.L. & FEMINISM 1, 9–15 (2008).

75. Martha Albertson-Fineman, *What Vulnerability Theory Is and Is Not*, SCHOLARBLOGS, <https://scholarblogs.emory.edu/vulnerability/2021/02/01/is-and-is-not/> (last visited Mar. 28, 2023).

76. Martha Albertson Fineman, *The Nature of Dependencies and Welfare Reform*, 36 SANTA CLARA L. REV. 287 (1996).

77. *Id.* at 292.

78. *Id.* at 291.

79. *Id.* at 288–89, 291.

80. See generally *id.*; MARTHA ALBERTSON FINEMAN, *THE AUTONOMY MYTH: A THEORY OF DEPENDENCY* (2005); Martha Albertson Fineman, *Cracking the Foundational Myths: Independence, Autonomy, and Self-Sufficiency*, 8 AM. U.J. GENDER SOC. POL'Y & L. 13, 18 (1999).

right and wrong, from tacitly endorsing the idea that law is somehow this distant, unchangeable, noble system, and from the idea of only considering the facts that one is *supposed* to consider (based on how things have been done before) while deciding things in a larger, more dynamic way. As a natural consequence of empowering thinkers holistically, these functional approaches to law learning encourage pluralistic approaches to larger systemic problems. Approaches and considerations, we argue, that should be learned earlier through civics education as a tool for the burgeoning citizen-activist.

B. Learning Law Young: Combatting Complacency

One commonality between the above approaches to learning law—one moralistically and the others technical and functional—is the perpetuation of a vision of law as a system of thought that is *larger* than any one problem, *dynamic* in its room for improvement, *comprehensive* in its reach, and *malleable* by active actors. Learning law from either lens or both begs students to affirmatively engage with persisting social questions, tap into societal moral values, engage with empirical realities undergirding hot-button issues, develop their own unique responses to deeply rooted questions of justice, and acquire both a fluency in and versatility with the mechanisms in which law operates. While this critical approach to navigating legal systems, governmental institutions, and constitutional ideas is part and parcel to *law-think*, it should also be a central aim of civics education.

But, given the versatility of how one can teach law, the dynamic nature of law as a discipline, and the diversity of learning outcomes, it should come as no surprise that encouraging learning law young is no novel concept.⁸¹ But, of course, it is not always done in an empowering way. In 2001, Hong Kong announced a change to their “national” civics education that incorporated learning their constitution, the basic law, national security education, as well as moral and ethical education.⁸² Born out of a familiar concern that the younger generation’s “passive

81. It exists prevalently in the context of Jewish-Yeshiva education, just as an example.

82. Selina Cheng, *Schools to Add Empathy, Law-Abidingness, Diligence and ‘Loving China and Hong Kong’ to Moral Education*, H.K. FREE PRESS (Dec. 1, 2021, 8:00 AM), <https://hongkongfp.com/2021/12/01/schools-to-add-empathy-law-abidingness-diligence-and-loving-china-and-hong-kong-to-moral-education/>.

attitudes” might “undermine society’s development in the long term,” their “Values and Education Curriculum Framework” was designed to cultivate national pride and empower citizens to diligently and effectively participate in civic functions.⁸³ While a very similar objective to that which we describe here, Hong Kong’s approach to encouraging students to learn law has one fundamental distinction: the government de-emphasized the cultivation of critical thinking skills,⁸⁴ mobilizing law learning to set “standards and principles behind which people judge right from wrong, their decisions, behavior[.] and attitudes.”⁸⁵ Students ideally would then take greater care to weigh their personal viewpoints (read: disagreements) against the “country’s welfare and common values held by society.”⁸⁶

This is *not* the project of learning law young we construe in this context. To learn law is not to confer standards on values, spoon-feed right and wrong, or indoctrinate students nationalistically. The jurisprudential slants discussed above show the student-empowering aspects of law learning, pushing them to dialogue, question, and build beliefs. Learning law teaches students how to ask questions, how to think about values and rights, and how to form informed opinions. Through the deconstruction of large and daunting institutional ideals—ideals presently taught as a part of a civics education, albeit in a descriptive fashion—the American system can become more accessible to students and the propensity for creative innovation more familiar. Again, law learning in this context is a *methodology* rather than the conferral of values and substantive knowledge or standards.

Unlike Hong Kong’s law learning paradigm focused on the amplification and conferral of values or the current civics learning model focusing squarely on knowledge, learning law presents an amplification of all three dimensions of a “robust” civics education. As discussed, *law-think* is a skill first and foremost, and it is also a sharp tool for both deconstructing complicated issues and appreciating the goals and ideals of the existing system. But, law learning is also about knowledge—thinking about the data that supports a decision on a

83. *Id.*

84. *Id.* (The new guidelines delete “critical thinking” and replace it with *understanding and caring about the country’s society and economy with* “rationality and [from] multiple perspectives.”).

85. *Id.*

86. *Id.*

technical legal issue, the people that would be affected by a policy change, the systems that would be implicated by a legal decision. The critical thinking tool, in other words, cannot be applied without also learning about people, institutions, and influencers that contribute to disputes. But, talking about the confluence of all of these facts—again, which students already learn as a part of civics training—in the specific context of how judges decide cases and how legislators cooperate to create laws, provides a forum for students to learn how to prioritize social values and constraints, negotiate ideas, and build working systems necessary in a democracy. They get to know traditions and principles through the exploration of precedent, they get to judge for themselves injustice, and they get hands-on training in cultivating opinions and resolving current issues.

Learning about law and morality shows how this sort of education is also about understanding the values inherent in our democracy and society. Students think critically about how laws ought to be applied, where they align themselves in an argument, and in what ways—and to what degrees—should countervailing interests, conflicting duties, and mitigating situations be brought to bear to reconcile injustice with the rule of law. Learning law, in this way, cultivates a student who always thinks on multiple levels—one who is “less inclined to fall for rhetorical arguments that spark an emotional response without offering a clear vision of what should be done and how it can be done effectively.”⁸⁷ Indeed, the student walks away not only with a certain perception of “justice” but also a value-set that can be used to evaluate what is and is not just.

Both jurisprudential approaches to learning law are valuable for the skills they endow, and indeed, should both feature in any sort of law learning curriculum that could take place in a civics classroom. But, as a final point, on a universal level, the value in law-think for the non-lawyer—as distinct from the iteration presented in Hong Kong—is also in simply offering an education that *requires* students—without getting out of their seats—to engage with different ideas, multiple perspectives, and plural approaches to common, pressing problems. This, in our view,

87. Michael J. Broyde & Ira Bedzow, *Why We Should Teach Legal-Reasoning Skills to Students*, EDUC. WK. (June 17, 2019), <https://www.edweek.org/teaching-learning/opinion-why-we-should-teach-legal-reasoning-skills-to-students/2019/06>.

is a fundamentally American project. Law-think is neither about standards nor is it about obeying the law blindly—though the respect they gain for the law may indeed impugn them to do so—but rather it is about combatting complacency, working together, hearing each other out, and cultivating a younger, more eager, capable, and inquisitive generation able to tackle complex issues and put forward changes that reflect the spirit and progressiveness necessary for sustaining the American experiment. Indeed, law learning is an education that informs one of both “the mechanisms of our democratic system” and “its spirit”—“what it means to be an American and even what America means.”⁸⁸

III. JEWISH LAW LEARNING AS A CONTEMPORARY MODEL FOR LEARNING LAW YOUNG

The Jewish tradition, forged amidst diaspora and external persecution and characterized by a constant preoccupation with rearing the next generation, is miles ahead in terms of their views on *how, to what end, and why* we teach children (Jewish) law young, as well as the role such an education might play in cultivating a better citizen of the Jewish community. In these next sections, we discuss the Jewish approach to education—from an affirmative duty to educate children in Jewish Law to the substance of that education and the positive impact such learning has on community cohesion—and show why the Jewish Law learning approach is an optimal model for revising the U.S. civics education paradigm. For, indeed, the law-learning process in the Jewish community addresses so many of the civics-related issues—from generating complacency to failing to impart values and critical thinking and poor skills-building—that we have thus far discussed in this Article.

A. The Jewish Obligation to Educate Children in Law: Law, Ethics, and Belonging from Generation to Generation

In every legal system, a gap exists between the law as it is actually enforced by the courts and the ethical categorical imperative of law as

88. A.C. v. Raimondo, 494 F. Supp. 3d 170, 176 (D.R.I. 2020), *aff'd sub nom.* A.C. by Waithe v. McKee, 23 F.4th 37 (1st Cir. 2022).

the ideal.⁸⁹ Although it was rejected by Justice Holmes in his famous “bad man” rule,⁹⁰ a strong claim can be made that the measure of an enlightened and advanced legal system and society is its success in bridging this gap, at least as a teaching exercise for students. This is clearly the case within the Jewish religion-legal system, one that explicitly rejects the clear separation of law and ethics. Indeed, even the purpose of the study of Jewish Law is not merely to teach people what they should do, but rather to equip them to understand how law functions, grasp the arguments that matter to a legal system, and endow good people the skills to be proper Jews within an evolving Jewish Law.⁹¹ One could call the Jewish model of law teaching and law learning its own form of civics—intentionally educating Jews for the betterment of Jewish peoplehood and citizenship⁹²—one that is mandated for adults

89. See, e.g., ISAAC HERZOG, *THE MAIN INSTITUTIONS OF JEWISH LAW* 381–86 (1936) (providing a general analysis of the moral claims in Jewish Law as compared with those in English common law); see also Michael J. Broyde & Michael Hecht, *The Return of Lost Property According to Jewish & Common Law: A Comparison*, 12 J.L. & RELIGION 225 (1995–1996) (looking at these same findings in a different context); MENACHEM ELON, *JEWISH LAW: HISTORY, SOURCES, PRINCIPLES* (Bernard Auerbach & Melvin J. Sykes trans., The Jewish Publication Society 1994).

90. Justice Holmes subscribed to the view, extremely popular in its day, that the law should only attempt to provide guidance for acceptable “legal,” rather than proper or ethical, conduct. See Oliver Wendell Holmes, *The Path of the Law*, 10 HARV. L. REV. 457 (1897). As such, Justice Holmes believed:

If you want to know the law and nothing else, you must look at it as a bad man, who cares only for the material consequences which such knowledge enables him to predict, not as a good one, who finds his reasons for conduct, whether inside the law or outside of it, in the vaguer sanctions of conscience.

Id. at 459.

91. See, e.g., Oren Gross, *Venerate, Amend . . . and Violate*, 46 ARIZ. ST. L.J. 1151 (2015).

92. To see the true purpose of learning Jewish Law in the Jewish tradition, one can see well the idea of citizenship by examining one of the cases where Jewish Law stepped forward and averred that this is a moment when no Jewish Law should be studied. As is well known and widely recorded (SHULHAN ARUKH, Orach Chayim 554:1) in the Jewish Law literature, the study of Jewish Law is “prohibited” once every year during Tisha Be’Av, the day that commemorates the destruction of the First and Second Temple and the First and Second Jewish Commonwealth. Why did the Talmudic rabbis prohibit Torah study on the day the Jewish commonwealth was destroyed? We suspect that the reason is that the study of Jewish Law is a function of citizenship, and the destruction of the Jewish nation—twice—is commemorated by the Talmudic rabbis by abandoning in a ritual way a core aspect of “being a Jewish citizen.” That is why one can answer practical questions of Jewish Law even on Tisha Be’Av, no matter how

and children.

We see this notion supported in the very essence of the Jewish legal duty to educate one's children and oneself. Jewish Law⁹³ and ethics demand of society that certain basic rights be provided for all children. Most of these rights are intuitive. There are obligations to feed and care for children, house them, refrain from abusing children, and love one's children to the extent a legal system can mandate love.⁹⁴ But, even further, there is an area of obligation not generally considered a "child's

much study is needed to answer them, but one cannot simply study as one cannot aspire to be a good citizen on the day the nation was destroyed.

93. Jewish Law (called "*halacha*" in Hebrew) is the term used to denote the entire subject matter of the Jewish legal system, including public, private, and ritual law. A brief historical review will familiarize the new reader of Jewish Law with its history and development. The *Pentateuch* (the five books of Moses, the *Torah*) is the historical touchstone document of Jewish Law and, according to Jewish legal theory, was revealed to Moses at Mount Sinai. The Prophets and Writings, the other two parts of the Hebrew Bible, were written over the next 700 years, and the Jewish canon was closed around the year 300 B.C.E. The time spanning from the close of the canon until 250 C.E. is referred to as the era of the "tannaim" (the redactors of Jewish Law), which closed with the editing of the *Mishnah* by Rabbi Judah the Patriarch. The next five centuries was the epoch where the two *Talmuds* (Babylonian and Palestinian) were written and edited by scholars called "amoraim" ("those who recount" Jewish Law) and "savoraim" ("those who ponder" Jewish Law). The Babylonian Talmud is of greater legal significance than the Palestinian Talmud and is a more complete work.

The post-Talmudic era is conventionally divided into three periods: the era of the "geonim," (scholars who lived in Babylonia until the mid-eleventh century), the era of the "rishonim" (the early authorities, who lived in North Africa, Spain, Franco-Germany, and Egypt until the end of the fourteenth century), and the "aharonim" (the latter authorities, which encompass all scholars of Jewish Law from the fifteenth century up to this era).

From the period of the mid-fourteenth century until the early seventeenth century, Jewish Law underwent a period of codification. This period led to the acceptance of the law code format of Rabbi Joseph Caro, called the *Shulhan Arukh*, as the basis for modern Jewish Law. Many significant scholars, themselves as important as Rabbi Caro in status and authority, wrote annotations to his code that made the work and its surrounding comments the modern touchstone of Jewish Law. The most recent complete edition of the *Shulhan Arukh* (1896) contains no less than 113 separate commentaries on the text of Rabbi Caro. In addition, hundreds of other volumes of commentary have been published as self-standing works, a process that continues to this very day.

For a more literary history of Jewish Law, see generally Elon, *supra* note 89; for a shorter review of the literary history of Jewish Law, see Suzanne Last Stone, *In Pursuit of the Counter-Text: The Turn to the Jewish Legal Model in Contemporary American Legal Theory*, 106 HARV. L. REV. 813, 816–17 (1993).

94. See Michael Broyde, *Law, Economy and Charity: Formations in Torah and Talmud*, in THE IMPACT OF THE MARKET ON CHARACTER FORMATION, ETHICAL EDUCATION, AND THE COMMUNICATION OF VALUES IN LATE MODERN PLURALISTIC SOCIETIES 115 (Jürgen von Hagen et al. eds. 2020). For more on human rights in Judaism generally, see Michael J. Broyde & Shlomo S. Pill, *Human Rights in Judaism: With a Focus on Religious Freedom*, in KEY CONCEPTS IN INTERRELIGIOUS DISCOURSES: THE CONCEPT OF HUMAN RIGHTS IN JUDAISM, CHRISTIANITY, AND ISLAM 19 (Georges Tamer & Catharina Rachik, eds., 2023).

right” or parental duty in the common law tradition, but which Jewish Law views as a fundamental obligation owed by parents (and society) to children, and, reflexively, a fundamental obligation *on* the child themselves: the duty to educate children in law and, correspondingly, for them to learn law.

The obligation for children to learn law is part and parcel to three major aspects of the Jewish duty to educate, namely that a parent—and if the parent cannot, then the community—provides for the religious, moral, and secular education of children and seeks to position the child to be a good citizen, both as a child and—even more importantly—as an adult.⁹⁵ The obligation towards good, involved citizenship is as much a part of the parental duty as the obligation to feed and to clothe. To some extent it is different than any other obligation, preparing the child for adult life intellectually. And, indeed, according to many, the duty to educate can even be said to be the basis for the right of parents to have custody of their child—even custody rights can be affected by abandonment of the duty to educate.⁹⁶

The duty to educate—whether religiously, morally, or secularly—necessarily implies learning what Jewish Law is and how Jewish Law works, both for oneself and one’s children, given *halacha*’s intentional blending of law, personal ethics, and sense of community connectedness. Consider, for instance, the custom that the very first thing one should teach children to read is the biblical content concerning how God gave the law to Moses.⁹⁷ The child is pushed, as early as possible, to think about a central Jewish narrative, about how Jewish society is organized, and, in turn, to appreciate their place within that storied history. Invariably, the child is encouraged to develop a lifelong

95. Broyde & Pill, *supra* note 94, at 29. Indeed, to this very day, American constitutional law does not mandate that the government provide for the education of children, although once it provides for the free public education of some, it must do so for all. *Plyler v. Doe*, 457 U.S. 202, 221–23 (1982). Until the mid-nineteenth century, education in the United States was almost solely administered by private entities, mainly the dominant Protestant sects. *See Abington Sch. Dist. v. Schempp*, 374 U.S. 203, 238 n.7 (1963).

96. *See generally* Michael J. Broyde, *Child Custody in Jewish Law: A Conceptual Analysis*, 36 J. HALACHA & CONTEMP. SOC’Y 21 (1999).

97. Rabbi Joseph Caro, SHULHAN ARUKH, Yoreh De’ah 245:5 [hereinafter SHULHAN ARUKH] (“From when does a man begin to teach his son? From the time the boy begins to speak, the father begins to teach him [the verse] ‘Moses commanded us the Torah,’ and the first verse of the Shema. Afterwards he teaches him slowly until he is six or seven and then takes him to a teacher of young children.”).

proclivity for questioning how one ought to act or live one's life in acknowledgment of the gift—the law—God bestowed upon the Jewish people through Moses.

In still another case, one can look at the general directive that every community has to have a school that teaches not only pre-career vocation but also a basic respect for Jewish Law as a system.⁹⁸ Through this, one plainly sees how central the act of learning law is to Jewish communal continuity. The community interest here is not just merely in assuring law obedience but in the idea that a child acquiring a systemic understanding of the meaning and purpose of the law is important in and of itself. This is no child's play; anyone connected to the traditional Jewish community sees that the regular study of many different aspects of Jewish Law—including those parts that have no practical application to modern life—are directly part of what is studied in a seminary (yeshiva). Chaim Saiman, in his preface to *Halakha: The Rabbinic Idea of Law*, offers a relevant perspective on this out of his own yeshiva experience:

[When I was in tenth grade, we were] studying the first chapter of tractate *Kiddushin*, which deals with the legal mechanics of how a man betroths a woman. The talmudic discussion here has little practical relevance for today's teenagers or really to anyone outside of a few specialists in the field. Nor is the text in question an obvious choice for a yeshiva striving—with more success than generally assumed—to keep its students oriented toward an austere set of religious pursuits rather than the usual fare [(‘television, movies, music, and other forms of pop culture, all inevitably suffused with the imagery of romance and sexual attraction’)] of American high schoolers.

[But then,] the [] following discussion emerges (Kiddushin 10a): They asked: Does the beginning of the sexual act effect betrothal / Or is it the conclusion of the act that effects betrothal? / What is the practical difference between them? / Where the male has only

98. *Id.* at 245:1-3.

initiated the sexual act, / but the woman has stretched out her hand in the meantime / and accepted betrothal money from another . . . / What is the law? . . .

To this day, I recall my utter incapacity to absorb what was expected of me. I was a diligent student And yet, surely, I was not to actually think deeply about the issue before us. Was I to envision what the [sexual] scene might look like, or why the Talmud presents it this way? . . .

But here's the crux. Though the specific content of this passage has ensured that it remains fixed in my memory, from the yeshiva's perspective there was nothing unusual about it. Far from being conceptualized as sexual or graphic, it was simply one more among the Talmud's endless investigations into how various legal relations are created and/or disbanded These matters, like so many others, were and are approached as pure questions of law—assessed from a clinical distance Indeed, to focus on [the sexual] is taken as a hallmark of the novice More advanced students are quickly acculturated to the view that these lofty matters, which exist solely in the zone of analysis, are divorced from time, space, or lived reality.⁹⁹

Saiman's experience, like those of so many yeshiva students, captures both the process of learning Jewish Law—namely, to question and think deeply about texts and principles—and the desired learning outcomes, not necessarily learning for a practical purpose or even law compliance, but to become “acculturated” to thinking loftily about the system, about legal relations, and about how the law innovates and builds over time through Jewish actors.¹⁰⁰

Furthermore, this idea—that importance is placed on the process of

99. CHAIM SAIMAN, *HALAKHA: THE RABBINIC IDEA OF LAW* ix–xi (2018).

100. MICHAEL J. BROYDE, *INNOVATION IN JEWISH LAW: A CASE STUDY OF CHIDDUSH IN HAVINEINU* (2010).

studying Jewish Law for its own sake as much as the resulting law obedience—is central to the idea of a yeshiva education.¹⁰¹ For this reason, one can still see today yeshiva students examining portions of Jewish Law that have no application at all to the modern world, from the rules of Temple Law to the vast ordinance pertaining to a Jewish lifelong past.¹⁰² They are studied because the process of legal study— independent of the implications for practice—is itself a value. While, to be sure, some of this is found American in law schools, where occasionally one might find courses on distant and abstract legal concepts that seem to have no application to the reality, we sense that it is a much smaller part of the study of American law than it is of Jewish Law.¹⁰³

At the fore of the policy behind the Jewish duty to educate is the importance of learning law for its own sake, for the critical thinking skills the practice endows, and out of an emphasis placed on the need for Jewish individuals to comprehend how their system operates. Now, this Jewish duty is categorically different from the right to an education in modern international law,¹⁰⁴ and even from those featured in various

101. See SAIMAN, *supra* note 99.

102. *Id.*

103. Verifying a claim like this is itself complex because vast institutions of Jewish study have little or no internet presence with no courses listed. See BETH MEDRASH GOVOHA, <https://www.bmg.edu/> (last visited Jan. 17, 2023) (showing the web page of the largest yeshiva in America, Beth Medrash Govoha of Lakewood, New Jersey, which offers no course listings at all, and the same is true of many other such institutions).

104. For example, article twenty-eight of the United Nations Convention on the Rights of the Child declares:

States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education; . . .

Convention on the Rights of the Child art. 28, Nov. 20, 1989, 1577 U.N.T.S 27531; see generally Roger Levesque, *International Human Rights Grow Up: Implications for America Jurisprudence and Domestic Policy*, CAL. W. INT'L L.J. 193 (1994) (discussing this document's integration into American Law). And so too does article twenty-nine of this same convention tell us the purpose of this right to an education: "States Parties agree that the education of the child shall be directed to: (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential; . . ." United Nations Convention on the Rights of the Child art. 29, Nov. 20, 1989, 1577 U.N.T.S 27531.

U.S. state constitutions.¹⁰⁵ The right to education in international law, just as is framed in American state and federal case law regarding education rights, centers only on teaching children and the right of children to an education.¹⁰⁶ Importantly, international law imposes neither a duty on an educated child when he becomes an adult to continue that education nor is there any duty imposed on society to foster the education of adults.¹⁰⁷ And the same result is reached by modern American common law.¹⁰⁸ When the requirement of parents or society to educate children ceases, the obligations of education cease, as the young adult is under no obligation to self-educate.

Contrastingly, Jewish Law emphasizes both the right of adults and the rights of children to an education. In the Jewish tradition, the two corresponding duties—to educate the child and to educate the adult—are essentially independent of each other and have different policies behind them.¹⁰⁹ Jewish Law imposes a duty to educate children so that

105. Scott Dallman & Anusha Nath, *Education Clauses in State Constitutions Across the United States*, FED. RSRV. SYS. MINNEAPOLIS (Jan. 8, 2020), <https://www.minneapolisfed.org/~media/assets/articles/2020/education-clauses-in-state-constitutions-across-the-united-states/education-clauses-in-state-constitutions-across-the-united-states.pdf?la=en>.

106. See, e.g., *Universal Declaration of Human Rights*, UNITED NATIONS, <https://www.ohchr.org/en/special-procedures/sr-education/international-standards>. (“States Parties recognize the of the child to education”) (emphasis added). For an example of a typical state constitutional right to education, see, e.g., Mass. Pub. Ed. L. Ch. 766 M.G.L. c. 71B, §§ 1–16 (guaranteeing a “free and appropriate education” to all school-aged children).

107. Indeed, others have noted that the United Nations Declaration on the Rights of the Child sometimes grants children more rights than they have as adults. See Donna Gomien, *Whose Right (and Whose Duty) Is It? An Analysis of the Substance and Implementation of the Convention on the Rights of the Child*, 7 N.Y.L. SCH. J. HUM. RTS. 161, 162–65 (1989).

108. While there has been a vast expansion of the rights of a child to an education in the last decade in America, this has been nearly exclusively limited to the redefining of the state’s or parent’s duty towards children. Derek R. Black, *The Fundamental Right to Education*, 94 NOTRE DAME L. REV. 1059, 1059–114 (2019). There is, however, one clear exception: some states have created adult educational programs as a remedy to the victims of racial discrimination who are now adults but who were deprived of education as children. See, e.g., *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978) (upholding affirmative action programs that contemplated weighing race in admissions as a means of rectifying past injustice due to racial discrimination). But, even when American society does mandate adult education programs—such that one might consider it a “right” and a “duty” to educate adults—it is only as compensation for one who was illegally deprived of a right to an education as a child. *Id.*

109. The *Shulhan Arukh* states, for one, that “there is an obligation on a person to educate his children,” and, as well, “if one’s father does not teach one, one must teach oneself.” SHULHAN ARUKH, *supra* note 97, at 245:1.

they, upon becoming adults, will be equipped with the skills and knowledge to fulfill their own duty to be educated and to participate as good citizens of the Jewish community.¹¹⁰ Adults, likewise, are also obligated to educate themselves according to the Jewish tradition so that they too can be good citizens.¹¹¹ For the reason that all members of the community are not just encouraged, but required to keep learning Judaism, and therefore be in touch with the lived tradition through legal study, Jewish Law offers a theoretical and practical model for a new American civics and citizenship education paradigm: one that prides itself on educating its citizens to have the skills to continue learning and participate actively in the building of the law.¹¹²

In these next sections, we will explore the more expansive definition of education in Jewish Law and how the Jewish community ideal of learning law is a multi-faceted project that at once helps develop religiously observant, empowered citizens and endows them with tools to be successful community members at once innovative and in touch with tradition.

i. The Duty to Educate Children: Learning Law as A Multi-Faceted Religious Education

Jewish Law, like Canon Law and Islamic Law, avers that there *is* an affirmative duty to provide for a religious education. The classical code of Jewish Law, the *Shulhan Arukh* (The Code), written by Rabbi Joseph Caro in 1563, codified the rule by stating that “there is an obligation upon each person to teach his child Jewish Law; if the father does not teach him, the child is obligated to teach himself One is obligated to hire a teacher to teach one’s children”¹¹³

Indeed, it is quite impossible to imagine a faith group not imposing an obligation upon its adherents to seek out a religious education. Two contemporary scholars expressed similar notions when explaining the

110. *Id.*

111. *Id.* at 245:2-23

112. *See, e.g.*, Igrot Moshe, Yoreh De’ah 2:110 (Rabbi Moshe Feinstein’s idea is that every adult should seek to know as much law as they can).

113. SHULHAN ARUKH, *supra* note 97, at 245:1. In the Jewish tradition, a number of authorities note that even when, for one technical reason or another, the formal verse-based obligation to educate one’s children is inapplicable, there is an intuitive obligation to propagate the faith by teaching religious tenets to adherents. 16 ENCYCLOPEDIA TALMUDICA 161–201 (1978) [hereinafter ENCYCLOPEDIA TALMUDICA].

duty to educate in Canon and Islamic law. For example, Father James Conn stated:

The relevant legislation on the issue of [the] right to be educated is found in the most recent Code of Canon Law, based on the teaching of the popes and of the Second Vatican Council. Specifically, there are sixteen canons that enumerate the obligations and rights of the Christian faithful. For example, Canon 217 assures all members of the Church “the right to a Christian education by which they will be properly instructed so as to develop the maturity of a human person and at the same time come to know and live the mystery of salvation.”¹¹⁴

Professor Azizah Y. al-Hibri summarized the Islamic position by stating:

Many Islamic jurists viewed education as either completely or practically compulsory based on an *ayah* (*Qur’anic* verse) that states: “[T]hose who conceal [from people] the clear Signs and Guidance which we revealed, after we have made them clear to people in the Book [the *Qur’an*], shall be cursed by God and others who [are entitled to] curse.”¹¹⁵

But there is more to a religious education in the Jewish tradition. To be sure, a Jewish religious education focuses on the idea of being a good adult when one grows up. This means that, aside from rudimentary reading or text skills necessary for religious practice, the Jewish Law

114. James Conn, *Duty to Educate—Fact Pattern, Roman Catholic Response*, in *Symposium on Religious Law: Roman Catholic, Islamic, and Jewish Treatment of Familial Issues, Including Education, Abortion, In Vitro Fertilization, Prenuptial Agreements, Contraception, and Marital Fraud*, 16 LOY. L.A. INT’L & COMP. L. REV. 12, 13 (1994) (footnote omitted).

115. Azizah Y. al-Hibri, *Duty to Educate—Fact Pattern, Islamic Response*, in *Symposium on Religious Law: Roman Catholic, Islamic, and Jewish Treatment of Familial Issues, Including Education, Abortion, In Vitro Fertilization, Prenuptial Agreements, Contraception, and Marital Fraud*, 16 LOY. L.A. INT’L & COMP. L. REV. 22, 23 (alterations in original) (quoting Qur’an II:159 (A. Yusuf Ali trans., 1983)).

obligation to “teach” extends to training children in philosophy, theology, and law:

When does one begin to teach a child? When he begins to speak one teaches him that God commanded Moses on the Mount with the Law (Torah) and the principle of the unity of God. Afterwards one teaches him a little bit until he is six or seven at which point one sends him to elementary school.¹¹⁶

The Code also mandates that a Jewish school system be established in every community, stating that “[e]very community is obligated to have an elementary school, and every community that does not have an elementary school should be shunned [until one is established] . . . since the world only exists out of the merit of the discourse found when small children study.”¹¹⁷

The broad mandate that communities establish schools and that schools teach the law is only the start of the story.¹¹⁸ To us, the more interesting idea is that Jewish Law does not merely mandate teaching what the law is; instead, it mandates as well learning how law functions. In other words, one teaches little children not what they should be doing but the undergirded theology of the law (“God gave the Torah to Moses”). Were we to analogize this practice to the American context, it would be like teaching children the opening lines of the Declaration of Independence in kindergarten—preparing students to understand why we have law and society, or even the goals and purposes of that civil operation.

So great is the need, urgency, and priority of education that, unlike in other areas of Jewish Law, *halakhic* authorities impose no administrative limitations on competitiveness:

One landowner in a courtyard who wants to establish a school in his residence cannot be stopped [through

116. SHULHAN ARUKH, *supra* note 97, at 245:1-2.

117. *Id.* at 245:5.

118. The Code also addresses the details of classroom management. For example, it commands “[t]wenty-five children to a teacher,” and continues “[i]f there are more than twenty-five students and less than forty, one must provide a teacher’s aide; when there are more than forty students, a second teacher must be provided.” SHULHAN ARUKH, *supra* note 97, at 245:15.

zoning ordinances] from doing so. So too, when one teacher opens a school next to another school, so as to encourage the students to go to this institution [and not the first one], one cannot stop this conduct.¹¹⁹

And the codes explain why: educational opportunities need to be especially diverse, unrestricted, and competitive.¹²⁰ Without competitiveness to bolster quality, the educational project—and the mandate to prepare children to be good citizens—could be threatened. The same logic further applies to the rule that when that duty to educate cannot or will not be fulfilled by the child’s parents, the community becomes obliged to provide for the education of a child.¹²¹

Again, the Jewish duty to educate is more than just some abstract commitment to aid in the acquisition of knowledge. Rather, as the classical restatement of Jewish Law—the *Encyclopedia Talmudica*—notes:

Jewish Law imposed a duty to educate a child in those duties [and laws] that he will be obligated in as an adult, in order that he should be prepared and familiar with the commandments. . . . Even though a minor is not

119. SHULHAN ARUKH, *supra* note 97, at 245:22. This stands in contrast to the general rule of Jewish Law, which would allow competition in the same general geographical locale but would prohibit competition “on the same block.” *Id.* For an examination of anticompetitive conduct in Jewish Law in general, see NEIL WEINSTOCK NETANEL, FROM MAIMONIDES TO MICROSOFT: THE JEWISH LAW OF COPYRIGHT SINCE THE BIRTH OF PRINT (2016).

120. See SHULHAN ARUKH, *supra* note 97, at 245:22.

121. BABYLONIAN TALMUD, Bava Batra 21b, and commentaries at 21b. There is an interesting dispute within the Jewish tradition as to exactly how this societal duty should be fulfilled. Most authorities maintain that the duty to educate, when not fulfilled by the parents, is then directly imposed on the court system (in Hebrew, “beit din”). This was part of the court’s duty to “orphans.” See Tosafot, commenting on BABYLONIAN TALMUD, Nazir 28b s.v. beno; Rabbi Abraham Gumbiner, MAGEN AVRAHAM, 640:3; Rabbi Isaac Bruna, commenting on TERUMAT HA-DESHEH 94; Rabbi Abraham Danzig, HAYYAI ADAM, 66:3. The other approach argued that the court’s duty was limited to appointing guardians to provide for the child’s education. The courts did not supervise the educational process for these children. The obligation was, in essence, “privatized.” See Maimonides, LAWS OF INHERITANCE, 11:1 (Arnold Bloch & Hyman Klein trans., 1950); Rabbi Jacob Reisher, HOK YA’AKOV, Orah Hayyim, 434:15; see also SHULHAN ARUKH, *supra* note 97, at Hoshen Mishpat 290:15. While the theoretical differences between these two approaches are small, as in the end, all authority resides in the court system; the practical differences are quite significant in terms of how these children are educated.

obligated to observe the law, he should do so as a form of preparation for adulthood. . . . The same is true for the study of religious texts. The early authorities note that the biblical verse “and you should teach your children to speak about [Jewish Law]” requires that one familiarize one’s children with the study of Jewish Law.¹²²

Given this educational framework and Judaism’s focus on childhood in preparation for adulthood, it is unsurprising that the parental duty to educate has a significant impact on other parental rights and privileges. Indeed, as found in the classic commentary on child custody by Rabbi Asher ben Yehiel—one of the premier medieval commentators on Jewish Law—the very right of parents to custody of their children appears to be a manifestation of the duty to educate them.¹²³ Indeed, Rabbi Asher states that since the Talmud ruled that one must educate children, it is intuitive and obvious that this “duty” to educate gives rise to a “right” of custody, which is necessary to fulfill the duty to educate.¹²⁴ Furthermore, one should use this obligation to educate as a tool in determining which parent should receive custody post-divorce. Whichever parent bears the primary duty to educate has the right of custody. At the age of legal adulthood, the concept of custody, simultaneously with the duty to educate, ends.¹²⁵ Yet, even so, the now

122. ENCYCLOPEDIA TALMUDICA, *supra* note 113, at 161–62 (quoting Deuteronomy 11:19). Indeed, the Hebrew term used to discuss children’s education reflects this notion. The term used (“hinukh”) means “beginning” or “preparation,” as the focus of Jewish Law’s educational policies is to prepare children for their roles as adults. For more on this, see Maimonides, commenting on the MISHNAH, Menahot 4:5.

123. Rabbi Asher ben Yehiel, Responsa of R. Asher (ROSH) 17:7; *see also* Rabbi Judah ben Samuel Rosanes, commenting on MISHNEH LEMELEKH, Ishut 21:17.

124. *See* Asher ben Yehiel, *supra* note 123, at 82:2. Support for this approach can be found in other early authorities. *See* Rabbi Joseph Gaon, Ginzey Kedem 3:62; Rabbi Jeroham ben Meshullam, Toldot Adam Ve-Havah, 197a (“in the name of the geonim”); Rabbi Isaac de Molena, Kiryat Sefer 44:557 (“in the name of the geonim”). Of course, all of these authorities would agree that in circumstances where the parents are factually incapable, and thus legally unfit, to raise the children, they would not be the custodial parents. However, Asher appears to adopt the theory that parents are custodial parents of their children based on the obligations to educate, subject to the limitation that even a natural parent cannot have custody of children if unfit to raise them.

125. For reasons that relate to the presence of a “tender years” doctrine, the mother also has custody rights in small children. The details of this are beyond the scope of this Article. For more on this, *see generally* Michael Broyde, *Child Custody: A Pure Law Analysis*, in JEWISH L. ASS’N STUD.: THE PARIS CONF. VII, 1–20 (1994); *see also* Rabbi Ezekiel Landau, RESPONSA

ingrained and fostered urge to learn, grow, and live with Jewish Law remains with the child.¹²⁶

ii. Learning Jewish Law: The Practical Dimension

Rabbenu Manoah, a noted medieval legal authority, adds an ethical dimension to the Jewish obligation to educate one's children. Integral to the perpetuation of a connected Jewish people is raising one's children "on the straight and narrow path," to live a morally proper life, and conveying to one's children the imperatives of moral people and a just society.¹²⁷ To wit, a child's moral education is a central parental responsibility and is considered an essential component to cultivating a cohesive and long-lasting community of "good" future adults. As Rabbi Joseph Kapach, writing for the Rabbinical Court of Appeals in Israel, states:

NODA BE-YEHUDAH, Even Ha-Ezer 2:89; Rabbi Isaac Weiss, Responsa Minhat Yitzhak 7:113. Here, the decisors explicitly state that in a case where the mother is assigned custodial rights, but the father is granted the right to educate—an unusual arrangement—and his right then becomes incompatible with her custody claim, the father's rights and obligations to educate supersede, and the mother's custody will be terminated.

126. Interestingly, Jewish Law represents a system that instructs "good people" on how to live, what to value, and what the community values. The case of child-custody demonstrates this; only the spouse more capable of educating the child in line with Jewish Law merits custody. As an observation, therefore, it is hardly surprising that a legal system that focuses on only regulating "bad men:—as is the case in the American system—has a much more stunted legal culture." Consider for example, the case of Judge Miles Lord, who rebuked the makers of the Daikon Shield for legal, but (in his view) immoral conduct. The Court of Appeals rebuked the judge, since this is not his job, or even the job of the law, to tell litigants that their conduct is immoral. *Gardiner v. A.H. Robins Co.*, 747 F.2d 1180 (8th Cir. 1984). This distinctly contrasts with Jewish Law where rabbinical courts can and do tell litigants that there is an ethical duty beyond the letter of the law. See AARON KIRSCHENBAUM, *EQUITY IN JEWISH LAW* 10 (1991); Michael J. Broyde & Michael Hecht, *The Return of Lost Property According to Jewish and Common Law: A Comparison*, 12 J. L. & RELIGION 225 (1995–1996).

127. Rabbenu Manoah, *Shevitat He-Assor*, 2:10; see also Rabbi Hayyim Or Zarua, *Or Zarua*, 2:48; Rabbi Meir Simha of Dvinsk, *MESHEKH HOKHMAH*, Genesis 18:19. The correctness of Rabbenu Manoah's observation is quite significant, as it affects the practical obligations toward children in many cases. For example, Rabbi Meir Schlesinger ponders the educational policy one should adopt when the secondary duty to teach technical religious law conflicts with the primary duty to teach moral behavior. See Rabbi Meir Schlesinger, *The Duty to Educate*, 1 *Sha'alei Da'At*. Such a case arises when too much pressure is exerted upon a child to conform to the details of the religion, thus causing him to abandon the faith completely. Based on an insight of the late Rabbi S.Z. Auerbach, Rabbi Schlesinger asserts that one must ensure that the primary obligation is not abandoned in the process of teaching the secondary requirements—that is, technical religious law. *Id.*

Even if neither parent will educate the children in the study of Jewish Law . . . still a parent owes his children—and children should receive from their parents—a close and robust relationship through which a child can develop into an adult with adult characteristics and an adult demeanor.¹²⁸

This is important; even where parents cannot educate themselves and their children in religious law, religious observances, ethical principles, good character, or proper theology, Jewish tradition maintains that, at base, the parent must educate their children in their occupation, even if this is just by having children observe them. This basic idea is fundamentally one of civics—a Jew *must* be educated as a child to be a good adult and, by extension, a good Jewish citizen of the Jewish people. This—being a good Jewish citizen—necessarily means that a child is both aware of the structure, development, and growth of Jewish Law—even if they are not experts—and is comfortable with participating in the community as a citizen.

On a more secular and practical level, beyond the obligation to educate children religiously or morally, the Talmud, written nearly 1,700 years ago, is quite explicit that, in preparing children for adulthood, there is a duty to teach one's children a way to earn a living.¹²⁹ The Talmud recounts in the name of Rabbi Judah, “[A]nyone who does not teach his children a profession, it is as if he has taught them robbery.”¹³⁰ Even more specifically, the practical dimension of Jewish Law's obligation to educate children is more than just simply a commission to provide a child some method to earn a living, but a “profession.”¹³¹ As noted by Rabbi Joshua Boaz, a parent does not fulfill this obligation by providing a child with an ongoing source of income, such as a trust fund, or even with an income-producing business that the

128. 9 Piskei Din Rabbaniyim 251, 259 (Isr. Rabbinic Ct. 1974).

129. Indeed, parents are under a more general obligation to teach children “survival skills” for life. Thus, the Babylonian Talmud recounts that parents are obligated to teach children to swim because they would otherwise be lacking a basic skill necessary to survive. BABYLONIAN TALMUD, Kiddushin 29b. Other authorities have understood the talmudic phrase “to swim” as an idiom directing a parent to teach children all things needed for survival. See 1 ENCYCLOPEDIA TALMUDICA 16–18 (1948).

130. BABYLONIAN TALMUD, Kiddushin 29a, 30b.

131. *Id.* at 29a, 30a.

child cannot run himself.¹³² Rabbi Shlomo Yitzhaki (Rashi), in his commentary on the Talmud, elaborates on the obligation to provide a trade or a skill—rather than just a source of income—to one’s child to occupy the child rather than turn to mischievousness—or even crime—out of boredom. Thus, according to this idea, a parent must provide a child with the skills that groom the child towards becoming a fine, upstanding adult—work being a part of that process.¹³³

Learning law is part of the professionalization process as well, acquiring a skill that ensures that children grow into high-functioning Jewish adults capable of acting in consort with tradition and helping to build the community. Indeed, to the observant Jewish community, law is just one other course subject in primary and secondary schools meant to provide children with the tools necessary to be productive adults in the real world.

As lay-people, we can understand how students gain academic knowledge and analytic skills by studying science, math, literature, and history; we see how they develop social skills by participating in sports teams and clubs. Similarly, learning law promises unique skillsets. Like many complex subjects, legal reasoning is rarely black or white; children learn not only how to apply a general rule to a situation but also how to think about the ways in which laws are applied. For example, a student might be asked to consider whether a general rule, like “no work on Shabbat,” applies to one who avails themselves of, say, a self-driving car or hitching a ride with a friend who is driving. While many students could offer quick answers, yeshiva children will learn the reasoning, rhetoric, and explanations behind the prohibition and arrive at

132. Rabbi Joshua Boaz, Sheltaï Gibborim, commenting on al-Fasi’s *Sefer Ha-Halakhot*, Kiddushin 12a(1).

133. Rabbi Shlomo Yitzhaki, commenting on the BABYLONIAN TALMUD, Kiddushin 30b; *see also* Rabbi Abraham Gumbiner, *supra* note 121, at 156. This obligation, however, is not so narrow that it forces a parent to pick a particular profession. Thus, providing a child with the skills needed to be a farmer, rather than just giving him an income-producing farm, would certainly fulfill this obligation. *ENCYCLOPEDIA TALMUDICA*, *supra* note 113, at 162. It is worth noting that the rule requiring that one teach his child a trade is not cited explicitly in either Maimonides’ code or *Shulhan Arukh*. As demonstrated by Rabbi Jacob Emden, this does not mean, however, that these authorities do not accept that there is such an obligation. *See* Rabbi Jacob Emden, *Responsa She’elat Ya’avetz* 2:68; *see also* Rabbi Ovadia Yosef, *Responsa Yehaveh Da’at* 3:75.

conclusions, and importantly, recognize the complexity and nuance needed to engage in public life within the Jewish community.

Part of these lessons, and a major advantage afforded students by learning Jewish Law young, is that it helps children learn to reason by more than one method. More than just by logic, Jewish Law reasons by analogy and analysis, and it recognizes both the value of adhering to precedent and innovation or how the needs of the time serve a role in developing Jewish Law.¹³⁴ Certainly, both are critical components of Jewish legal study. As to the first, Jewish Law has a particularly complex and contested relationship to precedent; one understands that while a system can have precedent, it importantly, must still be able to change.¹³⁵ The student of Jewish Law therefore must be able to question what to do when there is an established rule that may no longer be correct or needs change. And, as to the role of innovation—*chiddush*, or re-analysis of the source so as to find a novel solution to a problem—this too is equally central to Jewish tradition.¹³⁶ Students of Jewish Law seek out novel and innovative truth to ancient problems, and the community is often witness to the process by which a new idea becomes normative. To study Jewish Law, therefore, is to explore how a legal system decides when an innovative idea is correct and ought to supplant the old ideas.¹³⁷

To be sure, reasoning by analysis is deeply important to the Jewish tradition *writ large* as well—there are binding core texts, from the Bible to the Mishna and the Talmud, as well as countless important medieval and post-medieval texts that need to be understood and analyzed. A student that learns to read and understand texts and codes—how to harmonize seemingly incompatible texts (when possible) and when to apply which tool of harmonization depending on which types of contradictions a text presents—is one accustomed to a model of thinking that is nuanced and complex. Indeed, reasoning by analogy empowers the student to understand that each situation one encounters may share similarities with others but is nevertheless unique. While this is certainly

134. See generally MICHAEL J. BROYDE & IRA BEDZOW, *THE CODIFICATION OF JEWISH LAW AND AN INTRODUCTION TO THE JURISPRUDENCE OF THE MISHNA BERURA* 6–17 (2014).

135. See generally MICHAEL J. BROYDE & SHLOMO C. PILL, *SETTING THE TABLE: AN INTRODUCTION TO THE JURISPRUDENCE OF RABBI YECHIEL MIKHEL EPSTEIN'S ARUKH HASHULHAN* (2021).

136. BROYDE, *supra* note 100.

137. See generally *id.*

essential to understanding how Jewish Law prohibitions are innovated and re-thought to accommodate emergent technologies, the skill is also helpful in life generally. Consider, for instance, the parent who makes different decisions for each of their children because they understand that what might work for one child might not work for another. A mother might allow her first daughter permission to pierce her ears at the age of fourteen, but maybe not the second daughter. Is that unfair? What about the fourteen-year-old son? The child who learns to reason by analogy is more predisposed to understanding why cases are treated differently though they are of equal merit; they might be less likely to scream, “but it’s not fair!” These lessons, engrained at a young age in Jewish children, ostensibly lead to more understanding adults.

Beyond this, the act of learning Jewish Law engenders in students a capacity for agreement on matters of policy and civil discussion towards a mutually agreeable outcome when they might disagree. By way of example, consider two students who are faced with a question of whether and under what circumstances Jewish Law would sanction divulging a secret with which you have been entrusted. The debates could be endless on the reasoning and citations for one answer or another, but perhaps, students could arrive at a unified conclusion that the secrets of others are, per *halacha*, best kept absent extenuating circumstances in the interest of cultivating a policy of trust and loyalty. These lessons—reconciling policy matters, building arguments, finding common ground—are matters that, for the rest of society, preoccupy only the specialized graduate student in law. Indeed, Professor Cass Sunstein makes special note of how law students are trained to find “incompletely theorized agreements” or, more simply, coalition or community building.¹³⁸ But, as the Jewish community serves to exemplify, perhaps these skills are not best kept only for the specialized few and perhaps have greater benefits when made available broadly.

Along these lines, one final item to mention is that the act of learning Jewish Law helps students learn the “rules of the game” while playing. In other words, they come to understand the bounds of their community and society, the values and principles. Analogical reasoning skills,

138. See Michael Brody & Ira Bedzow, *Learning Law Young: What Happens When Schools Teach (Jewish) Law*, HAYIDION: RAVSAK J. 56 (2012) (also found on video at <https://www.youtube.com/watch?v=l-BbOHBDDZZA>).

furthermore, help a person identify the rules of the game through comparing situations as they experience them.¹³⁹ As an additional benefit, legal reasoning teaches students to consider others' perspectives and thereby learn to appreciate that there may be more than just one side to a question. The starting point to much legal reasoning is an excellent understanding of the "other side" to any problem. By being exposed to other perspectives, people develop a sense of intellectual humility and honesty and become more open to other points of view and more abreast with the larger values at work in the community in which they navigate.

On a grand level, Jewish Law, in requiring that one teach his progeny a profession, along with moral and religious learning, cultivates a culture of community-orientation, producing children that make good citizens with common-mindsets and shared analytical abilities. They think differently and evaluate problems uniquely. Beyond teaching students to be good people in a good society, Jewish Law is intentionally directed in the goal of producing capable and high-achieving community members. Thus, part of the aim of learning Jewish Law—broadly construed—is to be taught essential skills in formal classrooms, educated morally by parents practicing the faith, and raised in connection with a strong community. And indeed, we see the results manifest in examining how Jewish adults approach education, continued and ongoing learning, and connecting with community. To be sure, civic mindedness, as empowered through learning Jewish Law, is not just for children.

B. Learning Jewish Law: A Lifelong Pursuit and Model for Secular Society

As we have mentioned above, unlike modern common law, Jewish Law neither confines the duty to receive an education to children nor allows one to desist from learning.¹⁴⁰ Indeed, the *Shulhan Arukh* states that "every Jew is obligated to study Judaism whether he be rich or poor, healthy or sick, single[,] or married . . . All are obligated to set aside a time for study every day and night."¹⁴¹ Adults, like children, have the right to receive an education and a duty to spend time educating

139. For more on this, see BROYDE & PILL, *supra* note 135, at 2–44.

140. *See supra* Section III.A.

141. SHULHAN ARUKH, *supra* note 97, at 246:1.

themselves. For example, the *Shulhan Arukh* states:

A person [adult] must trifurcate his study and spend a third of his time on the study of the twenty-four books of the Hebrew Bible; a third of his time on Mishnah, which is the oral law . . . and a third of his time on [Talmud], which involves investigating and comprehending matters from beginning to end and being able to analogize from one matter to another . . . until one understands the essence of the law.¹⁴²

There is something insightful about this portioning of time; even as the Bible is the revealed word of the One True God, the Jewish tradition asks the student not to spend all their time studying it. This is because the sources of law are more complex and diverse than just the words of the Bible. By extension, Jewish Law becomes a platform for thinking, investigating, examining, and placing all intellectual sources in their proper place and context. Law, in other words, is not “speed-limits” and only “bright line rules,” but nuance and complexity that cannot be well determined without investigation and comprehension.

Thus, Jewish society emphasizes adult education as essential to unfolding the complexities of our tradition as much as children’s education.¹⁴³ It is even an open issue in Jewish Law as to exactly how parents are supposed to balance their own needs to study with the needs of their children.¹⁴⁴ What is clear, however, is that the tradition demonstrates that one’s own (adult) duty to learn Jewish Law, to

142. *Id.* at 246:4.

143. Indeed, when the *Shulhan Arukh* discusses the laws of education, it touches upon the problems of educating adults, SHULHAN ARUKH, *supra* note 97, at 246:7-17, as well as the problems of educating children. *Id.* at 245:9-20.

144. If a person cannot afford for both them and their child to receive an education, they are supposed to assign a higher priority to their child’s education if they feel that the child will derive more benefit from it than they will. *See* SHULHAN ARUKH, *supra* note 97, at 245:2. It is worth noting that most authorities rule that there is no duty for a minor child to educate himself and that the duty rests solely on the parents. *See* Rabbi Shlomo Yitzhaki, commenting on the BABYLONIAN TALMUD, Berakhot 48a, s.v. ‘ad; Rabbi Yom Tov Ishbili, Responsa of Ritva 97; *see also* ENCYCLOPEDIA TALMUDICA, *supra* note 113, at 162. We also note that while some adults might grant the priority to the child, given that they might stand to benefit more from the work, even in a case where the parent’s choice is to educate themselves, the obligation to provide a moral and religious education for the children still applies.

educate one's children, and to have the skills to be a good citizen—all necessarily interwoven—are of equal importance and are made possible regardless of how resources are given out. And, indeed, a policy mandating as much makes sense considering the affirmatively positive outcomes—Jewish Law remains the oldest, continuous legal system built on centuries of carefully cultivated community cohesion—that result from learning and engaging with (Jewish) law young.

Even further, the fact that Jewish Law holds that the obligation to educate is universal—it applies to the adult and the minor—and is cast on the individual adolescent even after a parental duty to educate might elapse is reflective of a deeper value: the Jewish tradition views education as a form of civics, training people to be good citizens, thinkers, contributing policy-makers, and members of society—that this is not just a subject for children, but vitally important for all organized society. The same reasoning can be applied in the American civics context; the need to be educated in *how* to be a citizen is something universal, for adults and children alike. While there has been a vast expansion of a child's right to an education in America during the last decades, this has been almost exclusively limited to redefining the state's or parent's duty to children.¹⁴⁵ There is no mention of the duty of adults to receive an education.¹⁴⁶ The fact that Jewish Law places a value

145. "Almost" is used because there is one clear exception. States have created adult educational programs as a remedy for the victims of racial discrimination when they were children. *See, e.g., Grutter v. Bollinger*, 539 U.S. 306 (2003) (reaffirming Bakke's use of race in admissions decisions in order to achieve a diverse student body); *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 272–76 (1978). Even when American society dictates that adults have a "right" to participate in educational programs, it does so only to provide compensation for those who were illegally deprived of an education when they were children. *See Bakke*, 438 U.S. at 272–76 (framing affirmative action as a rectification of past injustice). In the Jewish tradition, these two duties are essentially independent of each other. Immediately after the classical Code states that "there is an obligation on a person to educate his children," it states, "if one's father does not teach one, one must teach oneself." *See SHULHAN ARUKH, supra* note 97, at 245:1.

146. When the requirement of parents or society to educate a child ceases, the obligations of education cease, as the young adult is under no obligation to self-educate. Indeed, American common law has repeatedly recognized this as an issue and has struggled with it. The most common area of difficulty is in the area of college education. Unlike the duty to attend elementary and (early) high school, there is no obligation for one to receive any form of post-high school education. Logic would also suggest that when a young adult wishes to receive a higher education, they must negotiate with their parents over cost issues and that their parents are fully within their rights to decline to pay for their college education. Indeed, this is the law. However, this line has been increasingly expanded in the context of divorced parents, with many courts imposing a duty on parents to assist in the college education of their children, even though

on the child's and parent's education speaks to a more comprehensive view of civics: cultivating better citizens is a two-pronged project focused on both children and parents learning Jewish Law. The reason is obvious: civics can be built by helping others be good citizens, and one fulfills the duty to be a good citizen by helping others be good citizens. And imputing this value on the American-civics paradigm is tremendously important in today's divisive and fractured political landscape.

But, beyond simply extending the civics education obligation to adults, Jewish Law also offers a model for a more robust and expanded civics learning. Law is virtually never taught in America other than to aspiring lawyers; law is seen as a discipline in which either you are an expert because you went to law school or completely ignorant because you did not. Of course, children and young adults learn what rules they have to obey, and civic participation has increased among teens and young adults.¹⁴⁷ Yet, this is not the type of legal education that will create engaged citizens. Students should learn how the legal process works and the skills of legal reasoning, just as they learn other comprehension and reasoning skills in school.¹⁴⁸

Giving students a legal education will teach them how our judges and legislators work within a system. Knowing how judges think on and decide cases and how legislators cooperate to create laws will equip students to participate productively in the political and legal process. More broadly, teaching law to young children will provide them with a set of reasoning skills important in many areas of their lives. Like in the Jewish context discussed in the previous section, “legal thinking”—which is more than just rule obedience—changes the way people approach difficult problems because it gives them tools to organize facts and values to arrive at a reasoned and actionable decision. As an additional benefit, people will be less inclined to fall for fake legal

these “children” are under no obligation to receive such an education. See Kathleen Conrey Horan, *Post-minority Support for College Education: A Legally Enforceable Obligation in Divorce Proceedings?*, 18 N.M. L. REV. 153, 154–58 (1988); see generally Richard C. Rusk, *Educational Obligations for Children of Dissolved Marriages*, 36 RES GESTEA 156 (1992).

147. *2022 Election: Young Voters Have High Midterm Turnout, Influence Critical Races*, CTR. INFO. & RSCH. CIVIC LEARNING & ENGAGEMENT, <https://circle.tufts.edu/2022-election-center> (last visited Mar. 28, 2023).

148. See Broyde & Bedzow, *supra* note 138.

reasoning. Just as the scientific community advocates for science education so that people can recognize which arguments are good and which are not when it comes to divisive topics such as vaccinations and climate change, we hope that giving students a good legal education will reduce the prevalence of bad legal arguments permeating social and political discourse.

To be sure, we have failed our young learners in America by leaving law to “law school.” Like math or science, English and history, law needs to be a discipline taught in elementary and high school so that students can become more productive adults. If we learn law young, we will have a less contentious and more democratic society. While Jewish Law is by no means a perfect system, it is a solid foundational model for building a nuanced and complex policy for civics that is designed to ensure that our values stably survive over time.

IV. CONCLUSION

Civics education today requires a total systemic overhaul. Reform efforts have tackled the issues piecemeal; students younger and younger clamor for an education that will allow them full access to participating in our important systems. This all begs us to consider not only *how* we should educate our students, but *why* we do civics altogether. If the objective is the cultivation of an engaged citizenry that is capable of contemplating complicated issues, then a correspondingly nuanced education system must exist. Learning law young offers that nuance. The jurisprudential slants discussed in this piece obviate the nuance that an individual teacher learning law can apply to the study of standard cases, the skills that the law student can uniquely cultivate by considering ideas in a certain light, and the positive results that arise from doing so. The idea of introducing such a powerful tool for learning—capable of endowing such skills and respect for the multi-faceted nature of our system—could and should transform the landscape of civics education and empower students with knowledge, skills, and values in a way previously siloed to the budding lawyer.

Furthermore, the Jewish tradition offers a strong model for implementing a policy of learning law young. To be sure, legal systems do not last forever unless they invest in the next generation, at every generation. Jewish Law, prizing dual duties to educate, emphasizing the acculturation of students at the youngest ages to contemplating,

questioning, and building relationships with the lived tradition, shows us just how to create a sustainable “civics” policy. And, especially against a societal backdrop of increasing political fragmentation, problematic ideologies, and growing youth activism, building off of the theoretical Jewish model might help us envision a path forward in the American context.

Indeed, empowering students with the skills from a legal education is more prudent than ever. While this Article endeavors to begin the conversation concerning the inclusion of law learning in the civics paradigm, there are of course other frontiers that should be addressed—from issues of educational access to governmental reforms and more. Nevertheless, only once the substance is settled, and our objectives are set firmly and achieved theoretically, can we address these next important issues. Empowered with the skills from learning law young, our next generation can better treat the many problems facing our democracy with care and cultivate a national community brought together by an understanding and more nuanced respect for our system. In sum, we would recommend that law be taught to students as early as elementary school, much like math, science, geography, or spelling. If offered as a core subject-matter to children in an accessible way, the act and process of learning law will change adults for the better.