

by Gregory M. Huckabee



Law vs. Science: Out With the Old, In With the New?

Military academies are not called universities, as they are

expected to do more than just educate their pupils. They are missioned to “train, educate, and inspire,” distinguishing them from civilian schools of higher learning. Though different in many aspects, most notably the requirement for public service upon graduation, their core curriculum is subject to the same requirements as civilian accrediting agencies. While the academies have greater total credit requirements for graduation than most civilian schools, they face the same “core war” battles when it comes to change in core curriculum. Unable to endlessly increase the ceiling graduation credit requirement, change necessitates a zero sum game. For something new to be added to the core curriculum, something old must be traded in. While every academic department claims its core subjects are indispensable to the overall educated person, a reality check may beg to differ.

Science, technology, engineering, and mathematics (STEM) courses are on the march for inclusion in greater numbers in academy core curriculums. For new STEM courses to join the academic heart of academy learning, predecessor courses must be reviewed for relevancy, significance, and materiality. One core course in common at all three military academies is law. Should law as a core curriculum subject be eliminated at the U.S. Armed Services’ academies in favor of more relevant STEM courses?

Curriculum Change—Out With the Old, in With the New Knowledge

The four-year program at each academy far exceeds that of an \$180,000 Reserve Officers’ Training Corps education.¹ How much is too much for an academy graduate? Especially in view of congressional sequestration, the U.S. Department of Defense has undertaken painful budget reduction analysis affecting the academies.² The 2011 U.S. Military Academy (USMA) Board of Visitors (BOV) report claimed that “funding constraints jeopardize science education at West Point. The likelihood of further cost pressures, unless mitigated, will exacerbate resource constraints that already jeopardize the Academy’s academic mission.”³

While every core subject, such as English, history, modern languages, and even law, will have zealous advocates arguing these subjects are indispensable to an educated officer, reality dictates that for any new subject to be added, a predecessor must be abandoned.

“...[F]or education the lesson is clear: its prime objective must be to increase the individual’s ‘copeability’—the speed and economy with which he can adapt to continual change. And the faster the rate of change, the more attention must be devoted to discern the pattern of future events.”⁴ Cyberwarfare, and the knowledge skill set needed to engage in it, readily qualifies for “copeability” consideration as a core curriculum subject.

The Navy and its academy have seized upon the subject of cyberwarfare with a futuristic tenacity, seeking to imbed this program in its core curriculum.

The Department of Defense has substantially increased its emphasis on the military’s ability to operate in a cyber/information war environment. ... Concurrently, the need for cyber security within the naval services requires the Academy to adapt its educational offerings to reflect emerging requirements that Academy graduates be prepared to take a leadership role in the Navy’s fight for cyber security. As a result, the Academy is undertaking several efforts to ensure that future graduates are invested with the skills and knowledge necessary to operate effectively and immediately in the cyber warfare environment. ... In order to infuse cyber warfare topics into the academic curriculum available to the entire student body, the Academy is pilot testing a new *Fundamentals of Cyber Security* course intended for students in any academic major. ...⁵

With the support of Navy leadership, the Naval Academy modified its core academic program to include not only one but two courses in cybersecurity.⁶

The U.S. Air Force Academy (USAFA) was not immune to the same concern. “The United States Air Force is a service born of technology, and throughout its history, technology has remained central to its identity and power. From the start, visionary leaders realized the importance of technologically focused education to advancing airpower.”⁷ Looking to the future, the Air Force is fixed on its rapidly changing environment.

As advances in technology have led the Air Force into the new domains and challenges of space and cyberspace, the role of

Gregory M. Huckabee is an associate professor at the University of South Dakota Beacom School of Business and a retired 27-year Army judge advocate. This is an excerpt of a larger journal article titled “Law vs. Science: Should Law as a Core Subject Be Eliminated at the U.S. Armed Services Academies in Favor Of More Relevant Stem Courses?” © 2015 Gregory M. Huckabee. All rights reserved.

delivering defense oriented technical education has become even more critical. In this process, leveraging our network of science and technology partners to produce technically educated and operationally focused Airmen has proved as significant as the advances themselves. Because demand for these graduates continues to increase, deliberate investment in science, technology, engineering, and mathematics (STEM) education must also increase.⁸

Prophetically prescient, “[u]nlike air and space domains, the cost of entry to exploit cyberspace is low, yet the potential damage to the national security and economy is enormous. The complex cyberspace

“Cadets noted that studying law developed the capacity to think logically, stimulated intellectual curiosity, imparted a sense of values, and taught the application of knowledge to practical problems.” ... “It is also important to understand that an officer, especially one who is likely to be deployed to a combat setting, must have carefully honed critical thinking skills to allow for rapid decision making.”

domain evolves at an astonishing pace.”⁹ If agreement can be had that these things matter in war, then a deeper review is warranted to determine the depth of the STEM need. The Air Force argues that “[t]echnology is part of Airmen’s DNA.”¹⁰ There are no proponents yet identified who claim law is part of anyone’s DNA.

The Core Wars

To make room for STEM knowledge conveyed through an academy’s core curriculum, something must exit. If it is all about war, then STEM subjects must bring to the officer education table new scientific warfare knowledge that is relevant, significant, material, and adds copeability in a highly dynamic global environment. In an early core war battle on this subject,

Future President William Henry Harrison argued in a debate on the floor of the U.S. Senate, “Whatever the experience of other Generals may have been ... I can say for myself that, had it not been for the science and skill obtained at a Military Academy, I should probably never have enjoyed the honor of addressing this body. I feel proud to say that the defense of Fort Meigs, at which I commanded, chiefly depended upon the scientific exertions of a man to whom it is due that his worth should be here attested by me.”¹¹

The need for change mandates new thinking. “As was the case with ... development of the ICBM [intercontinental ballistic missile] force, these advances can occur efficiently and effectively only with the guidance and vision of leaders who have a solid grounding in science and technology that includes technologically focused education.”¹²

The Thinking Officer: What Produces Such a Person?

The debate between STEM versus liberal education courses, including law, is circular and endless. Perhaps another analytical approach is needed in developing a thinking officer through core curriculum. What values do we seek in military officers, and what core curriculum courses might be better suited to produce those values?

The value and nature of STEM courses are obviously transient, while law is at the other end of the spectrum. Because core curriculum change and STEM advocates recognize core change as a zero sum game, why cannot law be taught elsewhere? All service officers are required to attend a professional and/or specialty training course upon graduation from an academy. In addition, annual training requirements involve sexual harassment, equal opportunity, Geneva Convention, and a litany of other subjects that might be a better forum liberating at least one three-credit core course at each academy. No longer ensconced in an academic citadel divorced from the pressing experiences of actual military service life, new officers could learn military law in a more practical setting (on-the-job training) outside the sterile confines of classroom life. Such core-course transition can readily provide the academic space necessary for STEM growth in cybersecurity, improvised explosive device detection, drone surveillance, and anti-terrorism related subjects, to name only a few.

What Value Does Law Instruction Hold in an Increasingly Technology-Driven Global Environment?

Unlike their college and university counterparts, cadets and midshipmen take an oath that serves as a prelude to their commitment to public service in defense of their nation. “The Constitution requires commissioned officers to swear an oath to support and defend its principles. Those officers must understand the meaning of that oath, their essential role in protecting the liberty of all citizens, and their duty to uphold and enforce the law in a society and country based on the rule of law.”¹³ Additionally, it is important to note as a matter of federal law that officers in the military wield extraordinary legal power. They must understand not only the nature and limitations of this authority, but they must respect the concept of civilian rule of the military and recognize their oath to defend the Constitution of the United States.¹⁴ When should such law instruction occur: on the job or at the beginning of their officer education journey?

So, what do cadets think of the relevance, significance, materiality, and copeability of their academy law instruction? “Cadets noted that studying law developed the capacity to think logically, stimulated intellectual curiosity, imparted a sense of values, and taught the application of knowledge to practical problems.”¹⁵ Bearing in mind that cadets and midshipmen are anything but oblivious of going in harm’s way upon graduation, “[i]t is also important to understand that an officer, especially one who is likely to be deployed to a combat setting, must have carefully honed critical thinking skills to allow for rapid decision making.”¹⁶ What role does law play?

While somewhat biased, even World War II veteran Maj. Gen. Charles Decker, a 1931 U.S. Military Academy graduate serving as

Judge Advocate General of the U.S. Army, was unequivocal in his support for a strong academy law curriculum:

I am convinced that the study of law at West Point *does* contribute to the graduate's overall education and cultural background and *does* materially assist him in solving the military and administrative problems he encounters throughout his military service. If a poll were taken of any group of West Point graduates[,] I believe there would be few dissenting voices. ... While I believe the [law] course at West Point is essential for other reasons, its inclusion in the curriculum can be justified for its scholarly and intellectual values alone.¹⁷

Academy officers are being trained to be warriors on land, in air, and at sea. Hence, the rules of warfare should take on an elevated space in core curriculum education. President Herbert Hoover argued that “[e]ducation has for its object the formation of character.”¹⁸ In war, character matters. Reasonable minds may disagree, but on this subject, consensus should be attainable that law affects decisions in warfare, and its teaching and inculcation are important. A single three-credit core law course cannot begin to address all the legal issues, such as detainee treatment, that an officer will contend with on the battlefield or high seas. Yet it is a start that provides cadets and midshipmen a place to begin rationally “thinking” about such important topics involving war.

Conclusion of Core War Debates in Favor of Producing “Thinking” Officers in a Dynamic 21st Century

STEM versus law as core curriculum: Which promises greater relevance, significance, materiality, and copeability in a fast-changing global environment? STEM courses are by definition transient in nature. What is current today in science, technology, engineering, and mathematics is constantly superseded by new knowledge. While the academy should be a college of knowledge of such subjects that produce the “thinking” officer, law is not transient. There are certainly developments in all legal fields, but as a subject it is not given to the transient change experienced by STEM courses. There are immutable legal principles that speak to generations of military leaders past and yet to come. The evidence from the battlefield and high seas presented by generals and newly minted junior officers reminds us that the law of war is not transient, subject to rapid redefinition. Law as distinguished from STEM curriculum speaks to those far-off places in a voice that regulates behavior in the most salient of purpose and activity.

Looking forward, one naval officer historically observed that “[e]xperience in today's wars has proved the value of the human component in war. We have learned, often painfully, that war is not a science project.”¹⁹ Looking back on the precipice of World War II—the most barbaric war civilization has endured—a prescient military academy group of department heads summed up the STEM vs. law contest well:

The Academic Board has come to realize that the study of Law has special training values particularly useful to military men—the development of powers of analysis and a sense of relative values. These developed faculties furnish an officer a sound basis for his ‘Estimate of the situation,’ so important in a successful military career.²⁰

Endnotes

¹David Ausiello, *Fleming or the Supe: Whose Numbers Add Up?*, Jun. 25, 2010. See <http://navy.scout.com/story/979984-fleming-or-the-supe-whose-numbers-add-up>. See also Bruce Fleming, *The Academies March Toward Mediocrity*, (op-ed) N.Y. TIMES, May 20, 2010, available at www.nytimes.com/2010/05/21/opinion/21fleming.html?pagewanted=1&r=0.

²The 2012 U.S. Military Academy Annual Report of the Board of Visitors, at 4.

³2011 Annual Report United States Military Academy Board of Visitors, at 3.

⁴Alvin Toffler, *Future Shock*, at 357.

⁵The 2009 Naval Academy Board of Visitors Report to the President, at 6.

⁶The 2013 Naval Academy Board of Visitors Report to the President, at 3.

⁷Maj Gen Walter D. Givhan, Maj Eric D. Trias, and Maj William H. Allen, *The Criticality of Defense-Focused Technical Education*, AIR & SPACE J., at 12 (Summer 2011).

⁸*Id.* at 23.

⁹*Id.* at 13.

¹⁰*Id.* 15-16. “Technology is part of Airmen's DNA. Our first leaders realized that fact even when the technology of flight was in its infancy. They also understood the importance of defense-focused technical education to carrying out our mission and to sustaining the Air Force our nation needs to attain its strategic goals. Advances in science and technology that have led us into new domains confirm the wisdom of that vision and the necessity of doing even more in this regard to preserve our edge and competitiveness.”

¹¹*Gradual Improvement of the Navy*, at 512, quoted in John Freeman Hussey III, *Naval Ethos: Constructing Character in the Naval Academy Debate*, the Catholic University of America, Dissertation, UMI Microform 3310026 (2008), at 89.

¹²Givran, *surpa* note 7 at 15.

¹³Colonel Patrick Finnegan, *The Study of Law as a Foundation of Leadership and Command: The History of Law Instruction at the United States Military Academy at West Point*, 181 MIL. L. REV. 112 (2004), at 114, quoting Charles W. West, *Department of Law*, USMA, Assembly XII (Apr. 1953): 3. See also *The Army Lawyer: A History of the Judge Advocate General's Corps, 1775-1975* (Washington, DC: U.S. Government Printing Office), (1976), at 131.

¹⁴Robert J. Goldstein, *OVER THERE: TEACHING INTERNATIONAL AND COMPARATIVE LAW AT WEST POINT*, ILSA JOURNAL OF INTERNATIONAL AND COMPARATIVE LAW, Vol. 20:2, at 266 (2014).

¹⁵Finnegan, *surpa* note 13 at 120. See also *The Howitzer*, Class of 1941, at 53.

¹⁶Goldstein, *surpa* note 14 at 274.

¹⁷Finnegan, *surpa* note 13 at 123.

¹⁸Toffler, *surpa* note 4, at 369, quoting President Herbert Hoover.

¹⁹Lt. Edward Wright, *Striking the Right Balance*, U.S. Naval Institute Proceedings, Vol. 140, 7, 54-59 (Jul. 2014), at 59.

²⁰*The Howitzer*, Class of 1941 (1941), at 53.

Were they wrong then, or are they outdated now? ©