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Experiential Education in the Lecture Hall

*Jessica Erickson**

I. Introduction

Legal education today is composed of two separate worlds. The first world includes clinical faculty, law skills faculty, and other related faculty. These faculty members have long embraced experiential education, and they organize and attend conferences like the “Experience the Future” symposium, hosted by Northeastern University School of Law and the Alliance for Experiential Learning in Law. The other world includes people like me—doctrinal faculty members who are still largely teaching the way we always have. As we see it, our role is to teach doctrine and legal analysis, leaving skills training and other experiential teaching to others. Experiential education is simply not a part of our professional conversation.

It is only a slight exaggeration to say that these two worlds never meet. They speak in the hallways and they sit in the same faculty meetings, but they rarely meet as educators to discuss their collective ideas on how to teach their students. As a result, while different models of experiential education have been debated, studied, and critiqued by one group of legal educators, it is largely ignored by the other.

This divide matters when it comes to educating our students. Doctrinal faculty members still comprise a majority of the full-time faculty at most law schools.¹ Most observers of legal education would probably agree that doctrinal faculty still teach a majority of the credit hours at most law schools. And, through sheer numbers if nothing

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1 See ASS'N OF AM. LAW SCH., THE AALS DIRECTORY OF LAW TEACHERS 2011-2012 (2011).

else, they likely still control the curriculum at most law schools.² The move to reform legal education cannot happen without engaging doctrinal faculty. This Symposium Article sets out my own views on the limitations of the current approach to teaching in legal education, as well as possible opportunities for improvements.

In my view, experiential education has not made more headway among doctrinal faculty for at least two reasons. First, many doctrinal faculty members see their role as teaching doctrine, not teaching a broader array of skills. Professors already cannot cover all of the important doctrinal rules in their courses, so they are loathe to sacrifice doctrine to promote other learning goals. Second, many doctrinal faculty believe that there is no need to use experiential methods to teach doctrine. The case method is the norm, and we are rarely pressed to think about other teaching methods.

Curricular innovation requires dismantling both of these beliefs. Experiential learning is not just appropriate for the relatively few skills courses in law schools. It is the best way to teach all material in law schools, including doctrine. To have a deep understanding of the law, students must be able to use the law to craft legal arguments, draft legal documents, and shape legal strategy. A student who has memorized the rules but who cannot apply them in these ways does not know the law in any satisfactory way. Students do not acquire this deep understanding of the law through passive methods of instruction. Students learn by experiencing,³ and doctrine is no exception.

Framing experiential education as good teaching can help increase its appeal for many doctrinal professors. Doctrinal professors may have a hard time understanding why they should bother with experiential learning methods. Without the proper context, these methods can feel gimmicky, raising a concern that professors are sacrificing intellectual rigor for classroom amusement. Encouraging

2 The point here is not that doctrinal faculty *should* control the law school curriculum. That is simply the reality today at most law schools, and the movement for more experiential education must address that reality. See, e.g., Deborah Merritt, *Core Faculty*, LAW SCHOOL CAFE (Mar. 24, 2013, 8:58 PM), <http://www.lawschoolcafe.org/thread/core-faculty/> (noting that “tenured and tenure-track professors form the core of a law school faculty” and that, although clinical faculty may often vote on curricular issues, “their lack of tenure and lower status, however, make them more cautious about their votes and the opinions they voice”).

3 See *infra* Part I.B.

professors to think instead about good teaching may break down some of the mental barriers to experiential methods.

This Essay argues that the push for experiential education in law schools is really a push for better teaching. Part I explains the relationship between experiential education and student learning. Part II explores different ways to use experiential education in traditional doctrinal courses. Part III examines ways to foster a culture of experiential education among doctrinal faculty.

II. Experiential Education as Good Teaching

In my experience, doctrinal professors remain skeptical of experiential learning methods because they have accepted a well-rehearsed narrative. According to this narrative, experiential learning methods are designed to teach skills, not doctrine. We all know that classroom time is precious, so if we teach skills, we sacrifice opportunities to teach doctrine. This trade-off hurts our students because they can learn skills on the job, but law school is their only chance to learn doctrine. As a result, doctrinal professors should focus on teaching doctrine and leave experiential methods to the educational fringes of the curriculum.

This Part dismantles this narrative through three related points. First, the debate about experiential education is really a debate about student learning. Second, even if the goal in the classroom is just to teach doctrine, students learn doctrine better when professors use experiential teaching methods. Third, to the extent that doctrinal professors want their students to leave law school with other higher-order proficiencies, students can best acquire these proficiencies through experiential learning methods.

A. Focusing on Student Learning

The current model in legal education is teacher-oriented.⁴ Doctrinal professors focus primarily on course content. The more content we cover, and the more rigorous our content is, the better we can assume our classes to be. This focus is not surprising. After all, law

4 See, e.g., SpearIt, *Priorities of Pedagogy: Classroom Justice in the Law School Setting*, 48 CAL. W. L. REV. 467, 471–72 (2012) (“[L]aw schools still largely abide by a teacher-oriented pedagogy. A teacher-centered pedagogy impedes student success since its main flaw is that ‘it focuses on how teachers teach without taking into account how students learn.’”).

professors are experts in the content—all of our training and research has focused on it. In contrast, many law professors know little or nothing about teaching and learning. Perhaps we have gone to a few workshops on pedagogy, but our knowledge in this area still pales in comparison to our knowledge of content. As a result, when we think about our teaching, we generally think about content.

This focus misses the real goal of education. At the end of the day, professors do not want simply to cover the material. Instead they want to ensure that students are learning the material. If they evaluate themselves honestly, most professors would probably admit that their students are not learning as much as the professors had hoped. Professors often talk with disappointment about their students' exam answers or contributions in class. Yet, they may not be sure how to improve this situation, so they just vow to teach the doctrine more thoroughly the next time around. This strategy never answers the crucial question—if we are quite sure that we taught the material, why do the students not seem to be learning it?

To really improve legal education, professors must focus more directly on student learning. What do we really want students to learn in law school? And, just as importantly, how can we ensure that they are actually learning what we want them to learn? In other words, if the goal of teaching is to facilitate learning, we have to spend as much time (or more) thinking about *how* we teach as we do thinking about *what* we teach.

B. Teaching Doctrine

Even if the only goal of doctrinal courses is to teach doctrine, how can we best accomplish this goal? There are few empirical studies of the effectiveness of different teaching methods in legal education.⁵ Research from other disciplines, however, sheds considerable light on this question.

5 For examples of some of the existing studies, see Andrea A. Curcio et al., *Does Practice Make Perfect? An Empirical Examination of the Impact of Practice Exams on Essay Exam Performance*, 35 FLA. ST. U. L. REV. 271 (2008); Eric A. DeGroff, *Training Tomorrow's Lawyers: What Empirical Research Can Tell Us About the Effect of Law School Pedagogy on Law Student Learning Styles*, 36 S. ILL. U. L.J. 251 (2012); Neil Hamilton & Verna Monson, *Legal Education's Ethical Challenge: Empirical Research on How Most Effectively to Foster Each Student's Professional Development*, 9 U. ST. THOMAS L.J. 325 (2011).

Cognitive scientists have collected data showing that students learn best when they are actively engaged in the material.⁶ The human brain cannot store everything—we simply see and experience too many things in our everyday lives to store everything that we encounter in our long-term memory.⁷ Given this limitation, our brains assume that, if something is important, we will spend time thinking about it. As a result, information gets into our long-term memory only if we spend time thinking about and processing the information.⁸ In other words, memory is not a product of what students want to remember or even what they try to remember. Instead, students remember what they think about.

This observation explains a common frustration of professors. We often wonder why our students fail to remember material that we *know* we covered in class. The answer may be that the information never made it into our students' long-term memory.⁹ The students did not have to think deeply about the information so, as a result, their brains did not think the information was important enough to store in long-term memory.

This research explains why active learning methods are so successful. When we ask students to apply course material in a problem or case study, we are really asking them to think about the material. This process of intellectual engagement is more likely to get the information into students' long-term memory. Accordingly, even if our only goal is to have students remember doctrinal rules, active learn-

6 See, e.g., SUSAN A. AMBROSE ET AL., *HOW LEARNING WORKS: SEVEN RESEARCH-BASED PRINCIPLES FOR SMART TEACHING* (2010); DAVID A. SOUSA, *HOW THE BRAIN LEARNS* 266 (4th ed. 2011); DANIEL T. WILLINGHAM, *WHY DON'T STUDENTS LIKE SCHOOL: A COGNITIVE SCIENTIST ANSWERS QUESTIONS ABOUT HOW THE MIND WORKS AND WHAT IT MEANS FOR THE CLASSROOM* (2009); JUDY WILLIS, *RESEARCH-BASED STRATEGIES TO IGNITE STUDENT LEARNING: INSIGHTS FROM A NEUROLOGIST AND CLASSROOM TEACHER* (2006).

7 See WILLINGHAM, *supra* note 6, at 42–44.

8 See *id.*

9 See Michelene T.H. Chi et al., *Self-Explanations: How Students Study and Use Examples in Learning to Solve Problems*, 13 *COGNITIVE SCI.* 145, 175 (1989); Fergus I.M. Craik & Robert S. Lockhart, *Levels of Processing: A Framework for Memory Research*, 11 *J. OF VERBAL LEARNING & VERBAL BEHAV.* 671, 678 (1972) (stating that research supports the “general conclusion that memory performance is a positive function of the level of processing required by the orienting task[.]”); Jan C. Rabinowitz & Fergus I. M. Craik, *Specific Enhancement Effects Associated with Word Generation*, 25 *J. MEMORY & LANGUAGE* 226 (1986).

ing methods are preferable to a traditional lecture format because they force the brain to engage with the material.

The research backs up this conclusion. Academics in other disciplines have repeatedly shown the benefits of active learning methods. In 2011, for example, Nobel scientist Carl Wieman and two other researchers studied two sections of an introductory physics class geared to engineering students.¹⁰ These sections, which each included more than 250 students, were originally taught using a traditional lecture format. During one week of the course, however, the researchers arranged for one section to learn through a method of “deliberate practice,” in which they asked students to apply their learning and puzzle out problems during class. The study found that student engagement in the experimental section nearly doubled and attendance increased by twenty percent. Even more importantly, the students in the experimental section did more than twice as well on the test compared to those in the control section. The results prompted one of the researchers to note that “learning only happens when you have this intense engagement . . . It seems to be a property of the human brain.”¹¹

Researchers have reached similar conclusions through research on educational assessments. The traditional view is that students learn by studying, and that the role of testing is simply to measure this learning. Yet, a wealth of studies demonstrates that testing itself enhances student learning.¹² The process of retrieving information that occurs during assessments often produces greater learning and long-term retention than studying alone. In other words, testing and other forms of active learning force the brain to engage with the material on a deeper level than relying on students’ out-of-class studying, helping to ensure learning.

10 Louis Deslauriers et al., *Improved Learning in a Large-Enrollment Physics Class*, 332 *SCI.* 862 (2011).

11 Jeffrey Mervis, *A Better Way to Teach?*, *SCI. NOW* (May 12, 2011, 2:01 PM), available at <http://news.sciencemag.org/sciencenow/2011/05/a-better-way-to-teach.html>.

12 Jeffrey R. Karpicke & Janell R. Blunt, *Retrieval Practice Produces More Learning than Elaborative Studying with Concept Mapping*, 331 *SCI.* 772, 772 (2011); Henry L. Roediger III & Andrew C. Butler, *The Critical Role of Retrieval Practice in Long-Term Retention*, 15 *TRENDS COGNITIVE SCI.* 20, 20 (2011); Henry L. Roediger III & Megan A. Smith, *The “Pure-Study” Learning Curve: The Learning Curve Without Cumulative Testing*, 40 *MEMORY & COGNITION* 889, 889 (2012).

In its ideal form, the Socratic method is itself an active-learning method.¹³ The Socratic method is designed to prompt students to assess the strength of legal arguments through a series of back-and-forth exchanges between the students and the professor. Even students who are not directly in the hot seat must participate in case they are the next target of the professor's questioning. When done well, the Socratic method may well be an effective means of teaching complex legal reasoning to a large class of students.¹⁴

Yet this ideal may bear little resemblance to the methods used in most doctrinal courses today. The Socratic classroom has turned into a "soft Socratic" space. Professor Stephen Bainbridge of the UCLA Law School describes this style in commenting on the teaching of one of his colleagues:

He started today's session by picking up the thread of a discussion from yesterday. After reviewing the material by lecture, he started the new material. As before, he relied on volunteers. He got some participation, but it wasn't particularly interactive. Students made a comment, he made a comment, and went on.¹⁵

This approach, which is likely familiar to many professors, demands far less of the students than the traditional Socratic approach.

Moreover, professors may have a romanticized notion of what is going on in their students' heads during a typical class. From professors' perspectives, the class can feel engaging; they are asking

13 See, e.g., Lon L. Fuller, *On Teaching Law*, 3 STAN. L. REV. 35, 41 (1950) ("If the instructor has laid the foundation for this kind of question, and if his students believe that he genuinely wants their help in solving these problems, the whole atmosphere of the discussion changes. It is as if an electric current had passed through the classroom."); Gary Shaw, *A Heretical View of Teaching: A Contrarian Looks at Teaching, the Carnegie Report, and Best Practices*, 28 Touro L. REV. 1239 (2012).

14 See, e.g., ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION 82 (2007) (stating that, when the Socratic dialogue and case method is "properly used, it is a good tool for developing some skills and understanding in law students"). The Socratic method may still have other costs. For example, Professors Lani Guinier, Michelle Fine, and Jane Balin have argued that the Socratic method is partially responsible for the relative underperformance of female law students. See, e.g., Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1, 46, 94 (1994).

15 Stephen Bainbridge, *Reflections on Twenty Years of Law Teaching 2* (Apr. 16, 2008) (unpublished manuscript), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1122577.

questions, students are responding, and, for professors, the whole process is a great deal of fun. Professors may therefore assume that their students are actively engaged in the material, answering the professor's questions in their heads even if they are not the focus of the professor's attention. The reality may not match this idealized hope. In many classes, students can passively listen to the exchange, waiting for the professor to repeat the correct answer or summarize the most salient points. In-between these moments of typing, students can let their attention drift. If the professor asks them a question, most students can stumble through a passable response without provoking the professor's ire.

The Socratic method may also move too quickly to produce meaningful learning.¹⁶ The rapid-fire questions and answers make it difficult for students to absorb the information in any meaningful way. Students may be so busy trying to follow the dialogue and type the key points into their notes that they do not have time for the mental processing that true learning requires.¹⁷

In short, even if our only goal is to teach doctrine, we need to think about ways to force our students to engage with the doctrine so that it gets into their long-term memory. The Socratic method may lead to this engagement, but it is also relatively easy for students to become passive participants in a Socratic class, especially if the class is the soft-Socratic style more common today. Even if professors only want their students to remember and understand the doctrine, experiential learning methods can help achieve this goal.

C. Teaching Higher-Order Skills and Understanding

Most doctrinal professors would probably say that they do not aim to produce students who can simply recite the rules. Instead, they want their students to be able to *use* the doctrine in the same ways that lawyers and policymakers use the doctrine—to solve problems,

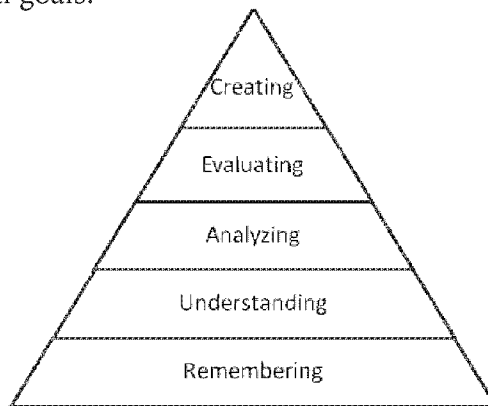
16 As learning experts have noted, the opportunity for reflection is a key part of the learning process. See, e.g., REFLECTION: TURNING EXPERIENCE INTO LEARNING (David J. Boud et al. eds., 1985).

17 Professor Gerald Hess suggests that professors can ameliorate this problem by incorporating opportunities for student reflection into the Socratic dialogue. For example, the professor may “ask the entire class to silently formulate a response in thirty seconds, or to write a brief response in one minute, or to turn to the next person and discuss the question for two minutes.” Gerald F. Hess, *Principle 3: Good Practice Encourages Active Learning*, 49 J. LEGAL EDUC. 401, 407 (1999).

make decisions, and critically evaluate the world. As Dean Edward Rubin of the Vanderbilt Law School has stated:

[E]ducational theory has come to the realization that skills are not only central to the process, but it's how you understand theoretical material You don't have that sort of on-the-ground understanding [without putting the theory into action].¹⁸

Even within doctrinal learning, there are different levels of knowledge. A student who can use the doctrine in a sophisticated way has a higher level of understanding than a student who can simply recite the doctrine. These levels of knowledge are reflected in Bloom's Taxonomy,¹⁹ which provides a framework for understanding educational goals:



As this diagram demonstrates, students encounter and work with knowledge using a range of cognitive processes, ranging from the relatively easy task of remembering information to the much more complex task of being able to create new information.

Most doctrinal professors want their students to be at the higher end of Bloom's Taxonomy, but this higher-level knowledge does not come easily. The challenge of learning to recite legal rules is significantly different than the challenge of learning to solve a problem

18 *Workshop on the Future of the Legal Course Book*, 33 SEATTLE U. L. REV. 292, 302 (2010).

19 The original Bloom's Taxonomy was developed by Benjamin S. Bloom and others in the 1950s. See *TAXONOMY OF EDUCATIONAL OBJECTIVES: THE CLASSIFICATION OF EDUCATIONAL GOALS* (Benjamin S. Bloom et al. eds., 1956); *A TAXONOMY FOR LEARNING, TEACHING, AND ASSESSING: A REVISION OF BLOOM'S TAXONOMY OF EDUCATIONAL OBJECTIVES* (Lorin W. Anderson et al. eds., 2001) (revising Bloom's Taxonomy).

with those rules. The former involves shallow learning of the doctrine, while the latter involves a much deeper form of learning.

So how can professors ensure that their students leave with this higher-level knowledge? Again, cognitive science emphasizes the importance of active or experiential learning.²⁰ If we want students to demonstrate higher-order thinking, we have to shape our classes around activities that require this type of thinking. In other words, if we want our students to have a deep understanding of the material, we cannot teach in a way that emphasizes a more shallow understanding of the rules. Instead, as scientist Daniel Willingham has stated, “experience helps students to see deep structure,” even in doctrinal material.²¹

This research has direct implications for doctrinal professors, forcing professors to think more deeply about the goals for their courses. If we do not want students simply to be able to parrot back the law, we have to think about what we *do* want them to be able to do. How do we expect them to be able to use their knowledge? The answer should then shape our course design. If I want my students to be able to use agency law to advise clients on how to structure their businesses, then I need to ensure that my students practice applying the law in this context. This is not experiential learning for its own sake. Instead, it is experiential learning for the sake of accomplishing the specific learning objectives for the course.

This understanding of learning also challenges the traditional divide between doctrinal teaching and skills teaching. Doctrine is not more important than skills or vice versa. Instead, if we want students to acquire a higher-order understanding of legal doctrine, we must give them plenty of opportunities to practice using the doctrine in these higher-order ways. If we want students to have a deep understanding of the pleading rules applicable in federal court, we should have them draft a complaint that complies with these rules. If we want them to have a deep understanding of the profit sharing rules in partnerships, we should have them draft provisions of a partner-

20 See, e.g., Joel Michael, *Where's the Evidence that Active Learning Works?*, 30 *ADVANCES PHYSIOLOGICAL EDUC.* 159, 160 (2006); Michael Prince, *Does Active Learning Work? A Review of the Research*, 93 *J. ENGINEERING EDUC.* 223 (2004); SOUSA, *supra* note 6 (“Our students would make a quantum leap to higher-order thinking if every teacher in every classroom correctly and regularly used a model such as Bloom’s revised taxonomy.”).

21 WILLINGHAM, *supra* note 6, at 78.

ship agreement that relate to these rules. In other words, skills and doctrine are not a zero-sum game. They reinforce each other, together leading to deeper learning for students.

III. Bringing Experiential Education into the Lecture Hall

It is one thing to say that doctrinal professors should promote deeper learning in their courses by incorporating experiential learning methods. It is quite another thing to incorporate these methods effectively. If we want doctrinal professors to adopt these methods, we must teach them how to do so in a way that is consistent with their broader teaching objectives. This Part presents experiential learning methods as part of a larger discussion about course design. Rather than incorporating experiential opportunities into their courses on an ad hoc basis, professors should think carefully about what they want their students to learn and what teaching methods will best lead to this learning.

A. Determining Learning Objectives

Experiential education is not an end unto itself. Nor do active learning exercises ensure that students will become good lawyers. The key is to link experiential education with the professor's learning objectives for the course. The first step in course design therefore is to identify these learning objectives.

Many professors may never have thought explicitly about their learning objectives. As a result, they may default to the doctrinal subjects in their course books. These course books typically use the case method, even in courses where the subject area could lend itself to a different approach.²² As a result, if professors do not make a conscious decision to determine their learning objectives, they will likely find themselves spending most of their class time marching through doctrinal material.

Yet, as discussed above, professors may have broader learning goals for their students. They may want their students to improve their critical thinking skills and learn how to dissect statutes. They want students to be able to translate their learning into actual law-

22 For example, as a business law professor, I am always surprised that Business Associations course books are typically based around cases, rather than contracts, transactions, and management decisions.

yerly tasks like drafting contracts, writing motions, and making evidentiary objections. They also may want their students to think about the social, economic, or political impact of the law. Most professors, if pressed, have grand hopes for their students and for their teaching.

These broader goals relate back to Bloom's Taxonomy, described above. Using this taxonomy, professors can start to identify what they want students to get out of their courses. In some areas of their courses, professors may be happy with shallow knowledge ("remembering" or "understanding" within Bloom's Taxonomy). In other areas, professors may want to devote the time necessary to produce a higher level of knowledge ("analyzing," "evaluating," or "creating").

Professors should also think about whether their goals extend beyond ensuring that students learn the relevant doctrine. In his book, *Creating Significant Learning Experiences*, Dee Fink, an expert on student-centered learning, explains how any course can support multiple kinds of learning objectives.²³ He breaks down possible learning objectives into the following categories:

Foundational Knowledge: knowledge about the phenomena associated with the subject and the conceptual ideas associated with those phenomena

Application: an ability to use and think about the new knowledge in multiple ways, as well as the opportunity to develop important skills

Integration: the ability to connect one body of knowledge with other ideas and bodies of knowledge

Human Dimension: discovering how to interact more effectively with oneself and with others

Caring: the development of new interests, feelings, and values

Learning How to Learn: developing the knowledge, skills, and strategies for continuing one's learning after the course is over²⁴

23 L. DEE FINK, *CREATING SIGNIFICANT LEARNING EXPERIENCES: AN INTEGRATED APPROACH TO DESIGNING COLLEGE COURSES* 74 (2003).

24 *See id.*

These categories are similar to Bloom's Taxonomy, but they support a broader set of learning objectives. And while doctrinal professors may be hesitant to incorporate the teaching of interpersonal and related skills into their courses, it is clear that employers value these skills.²⁵

In determining their learning objectives, professors should resist the urge to simply copy the doctrinal topics traditionally covered in the course.²⁶ Instead they should ask themselves, "a year (or more) after this course is over, what do I want my students to still remember, think, and/or be able to do?" In other words, what will separate a student who has taken this course from a student who has not?

These learning objectives can then provide a foundation for incorporating active learning methods into doctrinal courses. Doctrinal professors may be skeptical about experiential education because they think it will result in a scattershot approach to teaching in which experiential exercises are sprinkled throughout the course without a clear benefit to the students. If experiential methods are matched to the professor's learning objectives, however, this skepticism may be ameliorated.

B. Developing Assessments

The next step is to figure out how to measure whether students are meeting the learning objectives. This step may require many doctrinal professors to rethink their approach to assessments. We typically think of assessments as *summative*—a way to evaluate and sort our students. We use final exams, for example, to determine what our students know so that we can assign them a grade. With learning-oriented teaching, however, the purpose of assessments is first and foremost to aid student learning. In other words, assessments should be *formative*, helping students to assess their own progress in meeting the learning objectives of the course.

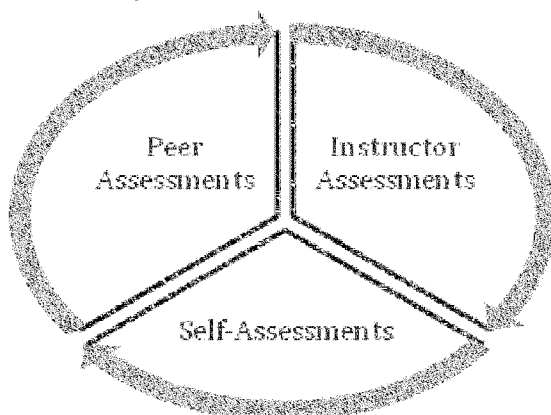
25 See, e.g., Joshua D. Rosenburg, *Interpersonal Dynamics: Helping Lawyers Learn the Skills, and the Importance of Human Relationships in the Practice of Law*, 58 U. MIAMI L. REV. 1225 (2004); see also Marjorie M. Shultz & Sheldon Zedeck, *Identification, Development, and Validation of Predictors for Successful Lawyering* (2008), available at <http://www.law.berkeley.edu/files/LSACREPORTfinal-12.pdf>.

26 This is harder than it sounds. The first time I sat down to figure out the course objectives for my Business Associations course, it took me considerable time to think of any learning objectives beyond "Understand Partnership Law" and "Understand Fiduciary Duties."

Formative assessments have a natural connection to experiential education. If the course has broad and ambitious learning objectives, the assessments themselves must be broad and ambitious, often with an experiential component. For example, one of the learning objectives in my Business Associations course is for the students to learn how to evaluate and draft contractual provisions and other business-related documents. Students cannot measure their progress on this objective unless they are frequently evaluating and drafting contractual provisions and related documents. If I really want my students to meet this goal, I have to devote class time to drafting exercises, giving my students feedback on these exercises.

The prospect of adding assessments may scare doctrinal faculty. In classes with large enrollments, faculty members are simply limited in how much individualized feedback they can give their students. As a result, many faculty members may not give much thought to assessment techniques, relying on a single end-of-semester exam. Yet assessments can take many forms, not all of which must involve individualized feedback by the professor. As long as the purpose is to aid student learning, rather than simply to assign a grade, professors have more flexibility in designing their assessments.

Assessments come in at least three types: instructor assessments, self-assessments, and peer assessments.²⁷



27 See, e.g., MARYELLEN WEIMER, LEARNER-CENTERED TEACHING: FIVE KEY CHANGES TO PRACTICE 119 (2002).

In deciding between these three types of assessments, professors should think about which types will best achieve the learning objectives for their courses.²⁸

Instructor Assessments: As noted above, doctrinal professors are often limited in the amount of individualized feedback they can give their students. A professor teaching ninety students cannot offer weekly writing assignments. This fact, however, does not mean that professors are necessarily limited to a single final exam—there are a range of options between weekly writing assignments and a single exam. Professors can offer one or two graded assignments during the semester. They also can spot-check assignments or provide global feedback to the class.

Self-Assessment: Professors can also encourage students to assess their own learning. Professors can distribute a rubric to allow students to assess their own work. They can also give students a short amount of time to complete an assignment in class and then review it as a class or distribute model answers, encouraging students to compare their answers to the model.

Peer Assessment: Professors can also use peer assessment techniques. Students can work in teams in class to solve a challenging problem. They can also work on assignments individually outside of class and then compare their answers with their classmates in class.

Professors can also use a combination of these methods. I am experimenting with requiring the ninety students in my Business Associations course to keep Google Docs. These web-based documents are accessible to me and the individual students, so I can view and make comments on all ninety Google Docs. Approximately once a week, my students have to complete a short written assignment in their Google Doc. For example, when we study corporate indemnification, my students have to read the corporate charter and bylaws of a public company, find the indemnification provision, compare it to the relevant Delaware statute, and determine if the provision goes to the full extent of the law. At other points during the semester, the

28 In their book *Teaching Law by Design: Engaging Students from the Syllabus to the Final Exam*, Professors Michael Hunter Schwartz, Sophie Sparrow, and Gerald Hess provide a number of different assessment techniques. MICHAEL HUNTER SCHWARTZ ET AL., *TEACHING LAW BY DESIGN: ENGAGING FROM THE SYLLABUS TO THE FINAL EXAM* 135–64 (2009). There are also a multitude of websites from other disciplines that discuss classroom assessment techniques. See, e.g., *Classroom Assessment Tech.*, VAND. UNIV. CTR. FOR TEACHING, <http://cft.vanderbilt.edu/teaching-guides/assessment/cats/> (last visited July 9, 2013).

students draft contractual provisions, write client e-mails, and create flow charts to dissect complicated statutes.

Despite the frequency of these assignments, I spend relatively little time providing individualized feedback. These assignments are not graded, although students will lose points if they do not complete the assignments and I do check to make sure that the students completed the assignments. I also spend approximately an hour prior to class making short comments in a random selection of the Google Docs. Then, in class, I have the students work in pairs to compare their analyses. Where they disagree, I tell them to use the case or statute to resolve the disagreement. I then provide my own analysis of the assignment. This format gives students regular instructor assessment, peer assessment, and self-assessment despite the large size of the class.

The key point is that these assessments must be tied to the learning objectives for the course. We cannot say that we want our students to have a deep applied understanding of the law and then create assessments that only require a shallow understanding. Formative assessments should be an opportunity for students to practice the higher-order proficiencies described in Part I.

C. Creating Learning Activities

The final step in the course design process is to determine the learning activities for the course. These learning activities should again be closely tied to the learning objectives and assessments outlined above. Indeed, the three steps—defining objectives, developing assessments, and creating learning activities—should all be tightly intertwined, such that each class period has students actively engaged in activities that will allow them to assess their progress in meeting the learning activities.

In my experience, doctrinal professors have little training in active learning methods. We may devote class time to problem sets or occasionally ask our students to work in groups, but we may not have a full repertoire of different teaching methods. Some additional active learning methods include the following:

Think-Pair-Share: This exercise asks students to think about a problem for a short amount of time on their own. They then discuss the problem and compare their answer with the student sitting next to them. Finally, the class discusses the problem as a whole.

Concept Mapping: This exercise asks students to create visual maps of doctrine, allowing them to see the relationships between different types of legal rules.

Collaborative Learning Groups: Professors break the class into groups of four to six students to complete tasks. These groups can work on one task in a single class period or they can be assigned to work together throughout the semester on long-term projects.²⁹

Case Studies: This approach is based on the business school method of teaching with case studies. These case studies give students a detailed factual summary about a given problem. The students then work in teams or as a class to think about how to work through the problem.

There is a wealth of resources available to professors who are interested in learning about additional active learning methods.³⁰

Doctrinal professors should look for opportunities to have students use their learning in realistic ways. A Civil Procedure class that is learning about personal jurisdiction can work in teams to interview a mock witness in a personal injury case. A Business Associations class that is learning about fiduciary duties can draft memos to fictitious clients advising them on how to structure a business decision to comply with their fiduciary obligations. The varied ways that the law is applied in practice gives law professors a wealth of options in developing experiential learning exercises.

Professors can also involve real clients in their learning activities. One of my colleagues teaches a Non-Profit Organizations course that works with local non-profits on governance issues. A Public Policy

29 For a helpful discussion of the use of teams in the classroom, see LARRY K. MICHAELSEN ET AL., *TEAM BASED-LEARNING: A TRANSFORMATIVE USE OF SMALL GROUPS IN COLLEGE TEACHING* (2004).

30 See, e.g., LINDA B. NILSON, *TEACHING AT ITS BEST: A RESEARCH-BASED RESOURCE FOR COLLEGE INSTRUCTORS* (3d ed. 2010); Donald R. Paulson & Jennifer L. Faust, *Active Learning for the College Classroom*, CAL. STATE UNIV., L.A., <http://www.calstatela.edu/dept/chem/chem2/Active/> (last visited July 9, 2013); MARILLA SVINICKI & WILBERT J. MCKEACHIE, *MCKEACHIE'S TEACHING TIPS: STRATEGIES FOR COLLEGE AND UNIVERSITY TEACHERS* 190–234 (13th ed. 2011).

Research & Drafting course at my law school pairs teams of students with local government agencies to draft white papers on legal issues of concern to the agencies. At the University of Oregon School of Law, students can choose add-on lab courses that allow them to work with real clients in a given area of the law.

These opportunities again highlight the connection between good teaching and experiential education. Higher-level knowledge does not occur through passive instructional methods. Instead, we must get students actively engaged in their learning—thinking, analyzing, evaluating, and doing—so that what they learn becomes part of their long-term memory. In other words, the focus in all of these efforts is to use experiential education in ways that improve student learning. Professors should not incorporate experiential education into their courses because it is a popular trend in legal education. Instead, they should think deeply about their learning objectives and use experiential learning methods to help their students to meet these objectives.

IV. Encouraging Doctrinal Faculty to Incorporate Experiential Learning Methods

If we want professors to reshape their pedagogy, we have to give them the tools to do so. This Part explores several different options including: (i) training teachers in experiential learning methods, (ii) fostering a community of teachers, (iii) creating experiential course materials, (iv) reducing class sizes, and (v) reducing scholarship loads in limited circumstances to allow the redesign of courses.

A. Teacher Training

Professors may want to improve their teaching, but may not know how to do so. The good news is that there are far more resources on law teaching than there used to be. The bad news is that, in my experience, most teachers still get no training whatsoever in how to teach.

The legal academy should make teacher training a top priority. The New Law Teachers' Conference sponsored by the American Association of Law Schools (AALS) is a good start,³¹ but professors

31 The AALS is a "non-profit educational association of 176 law schools representing over 10,000 law faculty in the United States." *What is the AALS?*, ASS'N OF

need continued training in teaching throughout their careers. There are a few organizations that offer such training now,³² but the opportunities remain limited.

The AALS should serve as a leader in this area, making teacher training one of its core missions. For example, it could sponsor an annual conference where professors spend two or three days engaged in focused training on a broad instructional topic. Examples might include course design, assessments, or active learning methods. These conferences could bring together pedagogy experts with professors from a variety of legal areas to discuss how to improve law school teaching.

Law schools should also offer their own training. Many universities have centers devoted to teaching,³³ but these centers rarely seem to make inroads at the law school. Law schools should take greater advantage of these resources. Deans should arrange for intensive workshops in pedagogy and course design for their faculty. These workshops could be aimed at junior faculty members specifically, creating an opportunity for new faculty members to develop and improve their teaching skills, or they could be geared to the law faculty as a whole. Schools should also develop greater opportunities for evaluation and feedback, perhaps by organizing small groups of professors to sit in on each other's classes and offer feedback. Law schools could even offer reading groups on new instructional texts to spark discussions about pedagogy.

As part of this effort, law schools should consider devoting extra attention to teaching course design principles to their new facul-

AM. LAW SCH., <http://www.aals.org/about.php> (last visited July 7, 2013). The New Law Teachers' Conference is an annual conference sponsored by the AALS that "is designed to offer law faculty an introduction to the teaching of legal writing, research, and analysis." *Workshop for Beginning Legal Writing Teachers*, ASS'N OF AM. LAW SCH., <http://www.aals.org/> (follow "Events" hyperlink; then follow "New Law School Teachers Workshops" hyperlink; then follow hyperlink under "Upcoming Workshop") (last visited July 7, 2013).

32 For example, the Institute for Law Teaching and Learning offers an annual conference. Recent topics have included the use of technology in teaching, student assessment, and teaching law practice skills. See INST. FOR LAW TEACHING & LEARNING, <http://lawteaching.org/conferences/index.php> (last visited July 7, 2013).

33 See, e.g., *Center for Teaching and Learning*, STAN. UNIV., <https://teachingcommons.stanford.edu/ctl> (last visited July 14, 2013); *Derek Bok Ctr. for Teaching & Learning*, HARV. UNIV., <http://bokcenter.harvard.edu/icb/icb.do?> (last visited July 14, 2013); VAND. UNIV. CTR. FOR TEACHING, *supra* note 28.

ty members. Many faculty members may not know how to design a new course other than to peruse the bestselling case books and then choose the doctrinal subjects they want to cover. Given this starting point, it is not surprising that so many law school courses focus almost exclusively on doctrine.

The irony of this approach is that there is a wealth of information available on course design. There are books addressing course design as a whole and books written about specific steps in the course design process.³⁴ There is even a book written about course design in law schools specifically.³⁵ There are also universities that hold intensive trainings on this subject and speakers who can come to law schools to conduct this training.³⁶ If law schools want their professors to think more deeply about their course design, there are plenty of resources these schools can use.

B. Fostering a Community of Teachers

Law schools should also work to foster communities of teachers in the same way that they foster communities of scholars. Most law schools have robust programs to encourage faculty scholarship—travel stipends to allow faculty to attend conferences, outside speaker series, half-baked workshops to allow faculty to present early paper ideas, and financial support to hire student research assistants, among others. Many schools also encourage professors to work together to critique scholarly arguments and edit drafts. These efforts can create a community of scholars at law schools who are used to working together in a collaborative way.

In contrast, at least in my experience, any sharing of ideas about teaching often tends to be ad hoc and haphazard. Teaching in many law schools is a fairly isolated enterprise. Professors do not sit in on each other's classes unless they are reviewing a colleague's teaching for promotion purposes. Professors seldom meet in groups to listen to outside speakers on teaching or to discuss their own teaching. In

34 See K. PATRICIA CROSS, *CLASSROOM ASSESSMENT TECHNIQUES: A HANDBOOK FOR COLLEGE TEACHERS* (1993); FINK, *supra* note 23, at 74.

35 See SCHWARTZ ET AL., *supra* note 28.

36 For example, Dee Fink & Associates offer workshops and online courses for professors in higher education. These courses focus on designing courses for greater student learning and engagement. See DEE FINK & ASSOC., <http://www.deefinkandassociates.com/> (last visited July 14, 2013).

short, there are rarely opportunities for professors to work together on teaching in the same way that they work together on scholarship.

Law schools should devote attention and resources to creating a community of teachers.³⁷ For example, law schools can create Faculty Learning Communities that regularly meet in small groups to discuss a discrete teaching topic. Schools can also bring in outside speakers to work with the faculty on various teaching-related subjects. In addition, they should encourage professors to observe each other's classes and offer feedback. These efforts would encourage professors to collaborate on their teaching and explore different teaching methods.

C. Experiential Course Materials

Doctrinal faculty also need course materials that include more opportunities for active learning. Publishers are starting to respond to this need,³⁸ but, for the most part, these materials are separate from the course books themselves. As a result, if I want to use experiential materials in my Business Associations course, my students must buy the traditional case book and statute book, plus the experiential add-on—an expensive set of requirements for students. It also means that I have to assign the traditional cases, plus the experiential exercises, if I want students to understand the doctrine before trying the exercises. Limited class time makes it difficult to give sufficient attention to either. A more integrated set of course materials would provide a better balance for students' wallets and schedules.

There are a few course books that offer this integration,³⁹ but the offerings are still few and far between. Professors who are interested in basing their courses around experiential learning opportunities should encourage publishers to offer course books based on this approach to learning. There are many doctrinal areas, especially in the upper-level curriculum, where the learning does not have to revolve around the case method.⁴⁰ Instead the primary materials in these

37 See Melissa J. Marlow, *Law Faculties: Moving Beyond Operating as Independent Contractors to Form Communities of Teachers*, 38 OHIO N.U. L. REV. 243 (2011).

38 For example, LexisNexis now offers the Skills & Values series in a number of legal areas. See *Skills & Values Series*, LEXISNEXIS, <http://www.lexisnexis.com/store/catalog/catalog.jsp?id=cat80154> (last visited July 7, 2013).

39 See, e.g., THERESE H. MAYNARD & DANA M. WARREN, *BUSINESS PLANNING: FINANCING THE START-UP BUSINESS AND VENTURE CAPITAL FINANCING* (2010).

40 My own area of business law is one example. A coursebook in this area could teach business law principles by referencing statutes, rules, and other sourc-

areas could include fewer cases and more opportunities for experiential learning.

D. Re-examining Class Sizes

Law schools should also consider reducing class sizes to promote more intensive teaching methods. Large class sizes do not make it impossible to incorporate experiential learning, but they do make it more difficult. In a semester of smaller classes, I can assign more frequent writing assignments and give detailed feedback. I can have the students work in teams on case studies, and I can monitor each team's progress. I can also monitor the learning of individual students, working one-on-one with students who are falling behind.

In semesters in which I am teaching more students, it is much more difficult to use more intensive teaching methods. I still use active learning exercises where I can, but I cannot give nearly as much individual feedback. Nor can I monitor students' learning as closely. As a result, if individual students are floundering, I may not know it. The exercises also feel more chaotic. When a class of fifty students breaks into teams to work on a challenging project, the classroom comes alive with the energy of student learning. When a class of ninety works in teams on the same project, the noise level can overwhelm the room.

If law schools are committed to innovative education, they need to re-examine the class sizes of large doctrinal courses.⁴¹ Not all classes can be limited to twenty students, but large classes in stadium-style classrooms pose real barriers to experiential learning. Schools could experiment with a quid pro quo arrangement: The school will reduce the class size of the largest doctrinal courses to a more manageable number (say forty or fewer students) if the professor agrees in exchange to incorporate more active learning methods into the teaching of the course. This proposal requires supervision

es of law and then giving students opportunities to apply this law, rather than including lengthy cases.

41 I recognize that this proposal raises real financial costs. Reducing the number of students in traditionally large doctrinal courses may require hiring additional faculty members. At a time when legal education is already under strain, many law schools will simply be unable or unwilling to take this route. It is worth examining, however, whether law schools can re-allocate their existing resources. It may be worth trimming some upper-level seminars in favor of smaller foundational courses with hands-on learning opportunities.

by the law school administration, but it gives professors the classroom space to try new teaching methods.

E. Reduced Scholarship Loads

Schools should also consider offering doctrinal faculty members reduced scholarship loads to overhaul their courses. Experiential courses put a much greater demand on professors' time than more traditional courses. If professors stick to a traditional approach, they can use a standard casebook and find plenty of model syllabi. Redesigning an experiential course, however, is much more time-consuming, especially given the lack of available materials in many areas. Given all of the other things on a professor's plate, it may be easy to forego an experiential redesign, sticking instead to the tried and true, but perhaps inadequate, teaching methods.

A professor's scholarly obligations add to this temptation. In my experience, many law schools expect their faculty to publish roughly one article per year, and they give faculty members summer stipends and other financial benefits to support these scholarly efforts. A professor who does not meet the school's publishing efforts will likely find themselves penalized in some way, often through a lower salary. To the extent that a professor must choose how to allocate his or her time, there are many financial and other incentives encouraging professors to write another article rather than redesign one of their courses.

Law schools can support professors who want to redesign their courses by temporarily reducing their scholarship obligations. Schools could, for example, allow professors to spend one summer every four or five years redesigning a course, rather than writing another article. Such policies would reflect the fact that professors will only feel free to spend the necessary time redesigning their courses if they will not be penalized, either through their salary or otherwise, for failing to spend this time working on their scholarship.

Schools will have to police these efforts. A professor should not be able to take advantage of a reduced scholarship load simply because he or she is teaching a new doctrinal course or switching to a new casebook. Instead, the reduced load should be contingent on a course redesign that goes above and beyond a professor's normal teaching obligations, recognizing that we teach new courses or switch casebooks as part of our normal job responsibilities. The school should

tie these reduced loads to innovative and time-intensive efforts in the classroom that are designed to enhance student learning.

V. Conclusion

Reform in legal education must include doctrinal professors. As long as these professors view experiential teaching as something that other people do, there will not be true reform. This Article argues that the push for experiential education in law schools is really a push for better teaching. Once we re-frame the debate to focus on teaching, we can start to promote real innovation in legal education.