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INTRODUCTION

The thesis of this article can be simply stated: American law schools have traditionally failed to teach law students the techniques of case synthesis — the integration of precedents for the purpose of identifying the underlying principles or approach that enables the lawyer to predict how the court will decide a new case.[1]

At first consideration, this position might appear absurd. Law school classes in substantive areas seem almost obsessed with discovering the *rule of law* hidden in a case. Moreover, case synthesis as a concept is frequently an explicit topic in many first-year legal writing and legal methods courses. Nonetheless, the instruction in both the substantive law and first-year legal analysis courses has little to do with the kind of case synthesis typically used by the

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1. The idea of case synthesis is clearly related to the traditional concept of *ratio decidendi*. However, because of the ambiguities associated with that term, I have avoided using it in this article.

practicing lawyer.

Part One of this article will describe in detail an example of case synthesis. Part Two will describe the typical approach to legal analysis that is used in traditional, core law school courses.[2] This approach will be criticized for its failure to adequately address the skill of case synthesis. Finally, Part Three will offer some concrete suggestions for modifying the law school curriculum to give more prominence to the teaching of this skill.

PART ONE: CASE SYNTHESIS — AN EXAMPLE

The process of case synthesis can most easily be explained by example. Assume that a New York lawyer is representing Elaine Smith, an agent for a foreign government. Smith learned that a United States government official would be transporting top-secret documents in a chauffeur-driven limousine from Albany along a specific route in up-state New York on the evening of March 9. Smith determined that the car would be traveling along a particular stretch of somewhat desolate state highway between 10:00 P.M. and midnight. Since she had not been able to obtain the documents covertly, she decided to take them by force.

On March 8, she parked a recreational vehicle in the woods along the highway. The vehicle was fifteen feet from the road and could not be seen from cars passing on the highway. During the early morning hours of March 9, she and her accomplices tunneled under the road and laid enough explosives to disable the car without destroying anything inside. A confederate in Albany planned to radio Smith in the recreational vehicle when the official car left. Smith would then contact a lookout positioned one mile up the road. When the car passed the lookout's position, he would signal Smith; Smith would set off the explosives as the car drove by. Three other confederates hidden in the woods by the road would then overcome the riders and take the documents.

Everything was in place; Smith and the others had taken up their positions by 6:00 A.M. on the morning of March 9. The car was expected to leave Albany by 6:00 P.M. The state police raided the operation at 9:00 A.M. on the basis of an informer's tip. The government official subsequently left Albany at precisely 6:00 P.M.

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2. Words like *traditional* and *typical* will appear frequently in this article. I should concede at the outset that my notions of what is *typical* in American legal education are just that: my notions. They are based on my direct observations as a student and teacher, as well as on the synthesized hearsay of numerous colleagues.

and at 10:20 P.M. passed by the point where the recreational vehicle had been parked.

Among the charges against Smith and the others was attempted robbery under New York law. By statute, "[a] person is guilty of an attempt to commit a crime when, with intent to commit a crime, he engages in conduct which tends to effect the commission of such crime."[3]

One of the legal issues facing the defendant's attorney is whether, even assuming that defendant intended to commit the crime of robbery, her acts had progressed far enough to constitute an attempt to commit that crime. More specifically, the issue is whether defendant's activities constituted acts which "*tend* to effect"[4] commission of the crime of robbery.

The lawyer's precise task at this point is to determine just how the New York courts define acts *tending* to effect commission of the crime. A review of relevant New York cases reveals that no simple answer to that question has been clearly articulated. Rather, in typical common law fashion, the courts have addressed a variety of factual situations in which defendant was accused of attempted robbery and in which the issue was whether defendant's acts tended to effect commission of that crime. Thus, the attorney must examine those cases and explore how the court in each case analyzed and resolved the issue. Finally, the attorney must abstract from that group of cases the underlying, and hopefully consistent, approach that the courts have used when confronting the issue.

Assume that the attorney's research reveals the following five New York cases in which the precise issue before the court was whether defendant's acts *tended* to effectuate the crime of robbery, as that term is used in the attempt statute —

People v. Du Veau[5] — Defendant hired an accomplice to assist in robbing a businessman as he emerged from his office. The *accomplice* informed the local district attorney of the plan. On the day of the planned robbery, defendant provided the *accomplice* with a weapon and instructed him to enter the building where the intended victim worked and to lie in wait just outside the office door. The intended victim was inside his office, and the *accomplice* stationed himself outside the door, as instructed. At that

3. N.Y. PENAL LAW § 110.00 (McKinney 1975).
4. *Id.* (Emphasis added.)
5. 105 A.D. 381, 94 N.Y.S. 225 (1905).

point, the police arrested defendant, who had been waiting outside the building. The Appellate Division of the New York Supreme Court held that defendant's actions *tended* to effectuate the crime of robbery and affirmed his conviction for attempted robbery.[6]

People v. Rizzo[7] — Defendants intended to rob a payroll clerk as he transported the payroll from a bank to his employer. After arming themselves, defendants drove around in an automobile looking for the intended victim, but were unable to locate him. While they were engaged in this search, they were arrested and charged with attempted robbery. The New York Court of Appeals held that defendants' acts did not *tend* to effectuate the crime of robbery, and accordingly reversed their convictions for attempted robbery.[8]

People v. Gormley[9] — Defendants planned to rob a company paymaster as he emerged from a bank with the payroll. Armed, defendants went to the bank and lay in wait for the paymaster. Just before the arrival of the paymaster, defendants were arrested. The Appellate Division of the New York Supreme Court held that defendants' acts *tended* to effectuate the crime of robbery and affirmed their convictions for attempted robbery.[10]

People v. Volpe[11] — Defendants planned to rob a jeweler. Unarmed, defendants went to the home of the intended victim and waited outside for him. Defendants left before the jeweler arrived. They subsequently learned that their phones were being tapped by the police and abandoned their plan. They were later arrested. The trial court held that defendants' acts did not *tend* to effectuate the crime of robbery and dismissed that part of the indictment charging them with attempted robbery.[12]

People v. Mirenda[13] — Defendants planned to rob company employees of the payroll, which was located inside a trailer. Armed, defendants arrived at the trailer; but before they could enter, a shotgun carried by one of the defendants accidentally discharged, killing an employee. Defendants fled and were subsequently arrested. The New York Court of Appeals held that defendants' acts *tended* to effectuate the crime of robbery.[14]

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6. *Id.* at 383-86, 94 N.Y.S. at 227-28.
7. 246 N.Y. 334, 158 N.E. 888 (1927).
8. *Id.* at 336, 158 N.E. at 888-90.
9. 222 A.D. 256, 225 N.Y.S. 653 (1927).
10. *Id.* at 257-60, 225 N.Y.S. at 653-57.
11. 122 N.Y.S.2d 342 (Kings County Ct. 1953).
12. *Id.* at 345-48.
13. 23 N.Y.2d 439, 245 N.E.2d 194, 297 N.Y.S.2d 532 (1969).
14. *Id.* at 444-46, 245 N.E.2d at 196-97, 297 N.Y.S.2d at 535-36.

A synthesis of these cases involves searching for the thread that runs through them — the consistent approach used by the New York courts in deciding whether acts *tend* to effectuate commission of the crime of robbery. This search involves identifying the key facts (the facts of each case that actually played a role in the court's decision),[15] factual patterns among the cases (*e.g.*, what facts are consistently present when the accused's acts are held to *tend* to effectuate commission of robbery), and the reasoning that the court in each case ostensibly uses to reach the legal conclusion based on the key facts of the case.[16] Typically, each precedent involves different key facts, and to that extent a somewhat different issue.[17] The challenge of case synthesis is to identify the conceptual framework that the court applies in each case; the court must decide not only that individual case, but must decide in a manner that is consistent with all other related cases.

Frequently, reasonable people will disagree as to the appropriate way to synthesize a group of related cases. Possible syntheses range, on the one hand from the plausible to the implausible, and on the other hand from the helpful to the unhelpful. Thus, one problem involves distinguishing between those syntheses that make sense and those that do not (plausible/implausible). As a consequence, it can be said that while there may be no single synthesis that all lawyers would agree is correct, there will be many syntheses that are clearly wrong. Secondly, the attorney must distinguish those syntheses which, when applied to the client's case, will serve his or her goals from those that will not (helpful/unhelpful).[18]

Hence, having collected these five cases, Smith's attorney must actually address two distinct questions, each requiring synthesis of the opinions. First, the lawyer must objectively determine which approach the courts probably applied in deciding the cases, *i.e.*, the most plausible synthesis. Then the lawyer can advise the client and help her judge just what she faces and what strategy will be most successful. Second, anticipating that this case will reach some adversary stage, *e.g.*, plea bargaining or trial, the lawyer must select an explanation of the cases that is both plausible and at the

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15. *See generally* W. STATSKY & R.J. WERNET, JR., CASE ANALYSIS AND FUNDAMENTALS OF LEGAL WRITING 121-57 (2d ed. 1984).

16. For a general discussion of the process of extracting the court's approach from a series of precedents, see, *e.g.*, K. LLEWELLYN, THE BRAMBLE BUSH 41-55 (1973).

17. *See generally* W. STATSKY & R.J. WERNET, *supra* note 15, 159-73.

18. For an example of an implausible/helpful synthesis see note 19 *infra*.

same time helpful to the client. Needless to say, the synthesis which is arguably most plausible will not necessarily be the most helpful and vice versa.

In our hypothetical case, one synthesis of the four precedents that is both plausible and helpful is the following: New York cases addressing when acts *tend* to effectuate the crime of robbery seem to focus on two considerations: first, whether the defendant completed the preparations for the robbery so that the encounter with the intended victim will inevitably take place unless stopped by some intervening force (*e.g.*, the police); second, whether the encounter was imminent. When the courts find aggravating circumstances, such as the use of weapons, they are less strict about these requirements, but nothing indicates that there is relief from meeting both. Thus, the encounter with the intended victim must still be imminent although the degree of imminence required might be reduced in the presence of aggravating circumstances. In Smith's case, the preparations for the robbery were complete. However, the encounter with the intended victim was hardly imminent when Smith and her confederates were arrested more than eleven hours before the crime would have taken place, nine hours before the agent even left Albany. While there were arguably aggravating circumstances (the use of explosives, the expectation of violence), nothing in the case law suggests that an eleven-hour gap satisfies the imminence requirement even under a relaxed standard. Since imminence is absent, defendant's acts do not *tend* to effectuate commission of the crime of robbery, as that statutory requirement has been interpreted by the courts.[19]

From the prosecutor's perspective, one plausible and helpful

19. A more fully developed analysis of this problem might include analogizing its facts to the facts of specific precedents. This process of analogization is frequently given central importance in discussions of legal reasoning. *See, e.g.*, W. STATSKY & R.J. WERNET, *supra* note 15, *passim*. In reality, analogization can only be carried out in the context of case synthesis. That is, the significance of factual similarities and differences cannot be evaluated unless one has first determined the overall approach that the courts have taken in such cases.

The hypothetical in the text suggests other syntheses. For example, a helpful, but fairly implausible synthesis arises from the observation that in each case in which defendant was guilty of attempted robbery, he was waiting for his victim to emerge from inside a building or other structure (*Du Veau*, *Gormley*, and *Mirenda*). On the other hand, in each case in which defendant was not guilty, he intended to intercept his victim while the latter was traveling on the streets (*Rizzo* and *Volpe*). This synthesis is obviously helpful for Elaine Smith since she was planning to intercept her victim on the road. The synthesis is implausible since it can be shown to focus on a fortuitous pattern among the cases that has no significance in light of the reasoning of the courts.

synthesis of the case would define *attempt* as the completion of all steps preparatory to the commission of the offense. From this perspective, the crime of attempted robbery is completed when only external intervention will prevent the perpetrator from carrying out the robbery. Under this view of the law, Smith is guilty because there was nothing left for her and her accomplices to do prior to committing the robbery when the intended victim arrived. Of course, from defendant's perspective, the foregoing would be categorized as a plausible/unhelpful synthesis. Both of these syntheses are sensible interpretations of the case law. The outcome of Smith's case may well turn on which synthesis of the law is accepted by the court.

In summary, case synthesis is a skill that is central to the basic work of a legal advocate. It is the chief tool for determining how the courts of a particular jurisdiction may decide the specific legal issues in the case. The presentation of positions on legal issues in an adversary context is, in the end, often a battle of competing syntheses of the applicable case law.

PART TWO: TEACHING CASE SYNTHESIS — THE CURRENT APPROACH

There are many ways of categorizing the typical, core curriculum in a law school. For the purposes of this article, the following distinction will be used: substantive law courses and first-year legal analysis courses.

Case synthesis serves a different purpose in each of these categories. In substantive law courses, case synthesis can be a powerful tool for abstracting important substantive doctrines from a series of cases. In first-year analysis courses, case synthesis is often the explicit subject matter of a portion of the course;[20] moreover, it is a skill that is practiced in the various legal writing assignments.[21]

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20. *See, e.g.*, R. COVINGTON, E. STASON, J. WADE, E. CHEATHAM, & T. SMEDLEY, CASES AND MATERIALS FOR A COURSE ON LEGAL METHODS 94-205 (1969); H. JONES, J. KERNOCHAN, & A. MURPHY, LEGAL METHOD: CASES AND TEXT MATERIALS 37-219 (1980); E.W. THODE, L. LEBOWITZ, & L. MAZOR, CASES AND MATERIALS FOR USE IN INTRODUCTION TO THE STUDY OF LAW 60-140 (1970).

21. These assignments generally involve a written analysis of a hypothetical legal problem in memorandum or brief form and are either closed, the student is given the authority applicable to the problem, or open, the student must research the applicable law.

A. Case Synthesis in Substantive Law Courses

Logically, case synthesis should be a critical concern in the teaching of substantive law courses. We identify the basic legal principles applicable to a case by examining precedents that involve closely related issues and abstracting from those precedents the underlying approach which courts utilize in rendering opinions.[22] Courses in substantive law offer a natural opportunity to practice the skill of case synthesis for the purpose of learning a comprehensive body of law. That this is often not the reality can be demonstrated by examining how the attempted robbery concept involved in the hypothetical in Part One might typically be addressed in a course in criminal law.

One long-established criminal law casebook[23] includes two principal cases[24] regarding the question of how far defendant's acts must progress toward the commission of a crime before defendant is guilty of an attempt to commit that crime. The first case, *People v. Paluch*, is a 1966 decision of the Appellate Court of Illinois.[25] Defendant was charged with attempting to practice barbering without the required certificate of registration. Illinois statutorily defines attempt as requiring "a substantial step toward the commission of [the] offense."[26] The focus of the court's opinion is the distinction between the *substantial step* needed for an attempt and *mere preparation* which the court held to be insufficient to constitute an attempt. The second case, *People v. Rizzo*,[27] is the New York attempted robbery case discussed in Part One. New York defines acts constituting an attempt as those *tending* to effectuate commission of the crime.

These two cases are supplemented by eleven note cases,[28] including two cases from California (attempted robbery and attempted murder), one each from Massachusetts (attempted murder), Ne-

22. It should be clear that this process is not limited to common law subjects. As the illustration in Part One indicates, synthesis is an important tool for statutory construction. Similarly, synthesis is required to comprehend the current interpretation of constitutional principles. In short, since the meaning of law, regardless of its original form, is usually determined by the courts, the ability to synthesize their opinions is essential to understanding that meaning.

23. R. PERKINS & R. BOYCE, CASES AND MATERIALS ON CRIMINAL LAW AND PROCEDURE (6th ed. 1984).

24. *Id.* at 312-18.

25. 78 Ill. App. 2d 356, 222 N.E.2d 508 (1966).

26. *Id.* at 358, 222 N.E.2d at 509 (citing ILL. REV. STAT. ch. 38 § 8-4(a) (1965)).

27. 246 N.Y. 334, 158 N.E. 888 (1927).

28. R. PERKINS & R. BOYCE, *supra* note 23, at 314 n.1, 318 n.1.

braska (attempted burglary), Mississippi (assault with intent to ravish), Georgia (attempted robbery), Pennsylvania (attempted larceny by trick), Idaho (solicitation), Indiana (attempted abortion), Nevada (attempted murder) and a second New York case (attempted robbery). The notes set out the facts and results in each case, but do not indicate the reasoning used by each court or how these various states define *attempt* (except, by implication, in the second New York case).

A student reading the two principal cases and the eleven note cases might reach various conclusions, none of which are valid. For example, the student might conclude: that *attempt* is a uniform concept throughout the United States; that each of these cases is an example of how the concept is applied in a particular factual setting; that variations in the language used are insignificant; and that apparent inconsistencies in the outcomes can be attributed to differences in the various courts' abilities to grasp this single concept.

While it is certainly true that the definitions of attempt in the various states have a family resemblance, there are, nonetheless, fundamental differences among these definitions. For example, acts that would reach the minimum level necessary for an attempt in Illinois would not necessarily suffice to satisfy the requirements for attempt in New York. That students might fail to perceive this crucial distinction cannot simply be attributed to careless reading. In fact, the distinction cannot be clearly determined simply by reading the two principal cases in the book. There is nothing in the language of the two statutes,[29] *substantial step* versus *tending*, that precisely indicates the difference, nor is that difference apparent from the reasoning of the courts in the two cases or from the facts. A comparison of the facts is not particularly helpful since each of the cases deals with an alleged attempt to commit a different crime.

Even if the student does perceive some fundamental differences in the meanings given *attempt* in the two cases, the student cannot know whether they indicate different concepts or imperfect applications of the same concept. The student cannot know this without being able to trace the emergence of these differences through the prior case law. A much more effective strategy for understanding the Illinois and New York concepts of *attempt* is to compare a

29. N.Y. PENAL LAW § 110.00 (McKinney 1975); ILL. REV. STAT. ch. 38 § 8-4(a) (1965).

series of Illinois cases dealing with attempt to commit a particular crime with a series of New York cases dealing with the same offense.

The student might reach another set of erroneous conclusions: the law consists of general, self-defining principles; these are passed along from judicial opinion to judicial opinion; a case is simply the application of these principles to a specific set of facts. This is the *black letter law* fallacy.

This conclusion is encouraged by the deductive structure of the typical appellate opinion: general principles are announced and then applied to the instant facts.[30] However, as indicated above, lawyers (and judges) determine the applicable legal principles inductively by synthesizing precedents. The principles that emerge from this process might or might not be thoroughly and accurately articulated in the instant opinion. In any event, case books seldom present the student with various precedents which require synthesis in order to decide the instant case. Thus, the student does not see this critical step in the reasoning process.

To some extent, these problems can be addressed by class discussion. Through careful questioning and use of hypotheticals, the teacher can help students see that *attempt* is a variable concept, signifying different things to different courts. Ultimately, the fundamental distinctions between the New York and Illinois approaches can be identified. However, the process will typically stop with this identification of two or more different approaches to the definition of an *attempt*; the casebook limitations almost demand this endpoint. What the student will not see is that the substantive law of attempt is not encompassed by this collection of different approaches. In fact, a jurisdiction which follows the New York approach, rather than the Illinois approach, might nonetheless reach a different result in a particular case from that which a New York court would reach. The reality is that while two jurisdictions might share a common terminology and generally a common understanding of what *attempt* means, critical differences in the nuances of the doctrine will emerge when comparable cases in each jurisdiction are synthesized.[31]

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30. While courts commonly do cite and even discuss cases from which the principles emerge, the discussions are frequently perfunctory. *See, e.g.*, People v. Rizzo, 246 N.Y. 334, 158 N.E. 888 (1927).

31. Of course, uniform laws do exist in two senses. First, federal law constitutes the law of a single jurisdiction with nationwide application. Second, uniform legislation, most notably the Uniform Commercial Code, tends to be consistently interpreted

All this tends to be lost on the student who is given representative cases showing various approaches to attempt, but who is not required to synthesize the cases of a particular jurisdiction. Consequently, the student does not learn how to define the particular characteristics of that jurisdiction's approach. In the end, the student may well fail to perceive that the process of determining what is the substantive law of attempt in a given jurisdiction is not simply a matter of identifying the *school* or *approach* to which the courts subscribe. Rather, what is required is a synthesis of the relevant precedents. Only in this way can the lawyer hope to accurately predict the outcome or to sensibly construct arguments that will lead the court to reach the desired outcome in a particular case.

The traditional law school examination question perpetuates the problem. Typically the question presents a hypothetical situation. With regard to this hypothetical, the student is expected to identify the relevant issues and address them by applying the appropriate principles of substantive law.

To the lawyer, case synthesis is central to the process of issue analysis, for it is through case synthesis that the attorney derives the legal principles to be applied. However, the typical law school examination question ignores case synthesis by its exclusive focus on applying principles previously derived from the readings and class discussions, principles not themselves derived from the synthesis of cases. It also subverts the whole notion of case synthesis by being set in a hypothetical jurisdiction or even in no jurisdiction. This setting reinforces the notion that substantive law has an existence apart from the specific law of each jurisdiction — a false notion that arises out of the failure to see how the *law* that is learned in the course actually developed.

B. Case Synthesis in First-Year Legal Analysis Courses

First-year legal analysis courses frequently include an explicit emphasis on case synthesis. Many of the books used in this area devote substantial space to this concern.[32] However, their treatments of case synthesis tend to concentrate on interesting, but largely atypical synthesis problems.

A common example from the textbooks involves cases taken

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among the courts of the adopting states. Even in the latter situation, though, the lawyer must be familiar with special interpretive nuances in a particular jurisdiction.

32. *See, e.g., supra* note 20.

from the series of New York products liability decisions.[33] The group typically begins with the English case of *Winterbottom v. Wright*.[34] This case applies a general principle of the manufacturer's nonliability for injuries caused by a defect in the manufacturer's product when the injured party did not purchase the product from the manufacturer. The remaining cases are New York decisions, beginning, for example, with *Thomas v. Winchester*,[35] which develops one exception to the *Winterbottom* rule. Subsequent New York cases first narrow and then expand the exceptions to the rule. The series might culminate in *MacPherson v. Buick Motor Co.*,[36] which holds that a manufacturer is liable for an injury to anyone resulting from a defective product when such a defect makes the product foreseeably dangerous.

In these cases the student sees the historical evolution of a principle by following its application in successive controversies until it develops into something fundamentally different. Such an evolution is, of course, of great academic interest. It is also of great practical interest while the evolution is in progress;[37] the practicing lawyer must be able reliably to predict where the law is heading and to construct arguments that will encourage a court to move the law in the direction desired by the client. This can be done by examining the relevant cases in chronological order. Thus, synthesis of a kind is involved here since the important trend emerges from an examination of the entire series of cases.

However, for the practicing lawyer, this evolutionary kind of synthesis problem — as important as it may be when it arises — is, in reality, a rare occurrence. Involvement with a legal problem in an area that is undergoing radical change is relatively infrequent. Most legal problems concern concepts and principles that remain consistent through time, but which acquire subtleties and nuances through application to different controversies.

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33. *See, e.g.*, E. LEVI, AN INTRODUCTION TO LEGAL REASONING (1963); R. COVINGTON, E. STASON, J. WADE, E. CHEATHAM, & T. SMEDLEY, *supra* note 20; H. JONES, J. KERNOCHAN, & A. MURPHY, *supra* note 20.

34. 152 Eng. Rep. 402 (Ex. Ch. 1842).

35. 6 N.Y. 396 (1852).

36. 217 N.Y. 382, 111 N.E. 1050 (1916).

37. Examples abound: the transformation of the common law of landlord-tenant relations in the District of Columbia, culminating in Javins v. First Nat'l Realty Corp., 428 F.2d 1071 (D.C. Cir. 1970); the reorientation of commerce clause jurisprudence in United States v. Darby, 312 U.S. 100 (1941).

This type of synthesis has other important teaching uses. For example, it is an excellent tool for demonstrating the difference between holding and dicta. It is also valuable for exploring some dramatic examples of manipulating precedent.

Said another way, most legal concepts and principles are like circles with fuzzy circumferences.[38] The area close to the center of such a circle is clearly defined; the area far outside the circumference is similarly easy to identify. At the area near the circumference it is unclear whether a particular point is inside or outside of the circle. A difficult legal question arises when the client's case lies at the circumference of the applicable legal principle. The attorney uses case synthesis to try to bring the circumference into sharper focus by determining how the basically stable principle has been applied to different factual situations also lying near the circumference.

The hypothetical discussed in Part One is an example of this. Unlike the fundamentally changing principle in the *Winterbottom-MacPherson* line of cases, the basic definition of attempted robbery is essentially the same in the five cases summarized. But the contours, the outer limits, the circumference of the definition of attempted robbery, can be more clearly perceived by examining how the statutory definition has been applied to five factual situations that lie in the vicinity of that circumference.

The usual approach taken by these published materials does avoid the two problems created by substantive law casebooks. Legal principles are developed by examining a group of cases involving closely related issues; thus, the student can see how these principles evolve out of a series of specific controversies. Moreover, these cases are generally decisions of the courts of a single jurisdiction. Yet the available legal analysis books generally limit the student's exposure to case synthesis of a fairly exotic type. The kinds of case synthesis problems that are more commonly encountered by the practicing attorney remain ignored.

The most obvious response to this failure on the part of the available published materials to address the common type of case synthesis is for the teacher to develop his or her own materials. This can be effective within the confines of the legal analysis course, but case synthesis is a skill; like any skill, it requires frequent repetition to perfect. Only so many synthesis exercises can be assigned within the limitations of a first-year legal analysis

38. I believe that I first heard this metaphor used in a lecture given in the Fall of 1970 as part of my Legal Methods course at Vanderbilt University, School of Law. The course was taught by Robert N. Covington and other members of the law school's faculty. I have not been able to further trace the source of this useful way of describing legal concepts and language.

course.[39] The failure of substantive law courses to provide the student with opportunities to apply case synthesis greatly constricts the benefit of the limited exposure to case synthesis possible in legal analysis courses. Indeed, the impression created in those courses is that case synthesis is not an essential skill in legal problem solving.

PART THREE: CASE SYNTHESIS — SOME PROPOSALS

The problem is focus.

Substantive courses tend to focus on doctrine; cases are used as examples of the application of doctrine to facts. But doctrine varies from jurisdiction to jurisdiction and from time to time. What is ultimately important is the process of determining what the particular doctrine is in a given jurisdiction at a given time; one of the principal tools for doing this is case synthesis. Put a different way, while developing substantive, conceptual frameworks is of great importance, it is equally important that students learn how to address specific substantive problems the way the practicing lawyer addresses specific substantive problems — by extracting the applicable principles from the available case law in the jurisdiction and applying those principles to the facts of the particular case.

First-year legal analysis courses also have a focus problem. Insofar as these courses expose students to case synthesis problems, those problems tend to be of the evolutionary kind. While this type of case synthesis is intrinsically important, it is not the type most commonly encountered by the practicing lawyer.

The following proposals begin with the first-year legal analysis course as the foundation for the law student's development of synthesis skills. The substantive components of the curriculum reinforce and build upon this foundation by offering opportunities for the student to develop and practice those skills.

With regard to the legal analysis course, I do not propose that the evolutionary type of synthesis problem be ignored. Rather, it should be joined with, and subordinated to, the more basic variety. The manner of addressing this type of problem is fairly straightforward. Students should analyze in oral and in written assignments hypothetical problems to which a group of *actual* cases in an *actual* jurisdiction[40] apply as precedents. Since case synthesis is

39. As it is, students perceive first-year analysis courses as requiring too much work for the amount of credit received. But that is a topic for a separate discussion.

40. The common approach of setting problems (*e.g.*, moot court exercises) in hypo-

a skill and since proficiency at any skill requires practice, it follows that a variety of problems, as well as rewrites of assignments, should be required.

In the early stages, the student needs to focus total attention on the problem of synthesizing the precedents. This goal is readily achieved by the use of the *closed memo*, in which the student is given the applicable group of cases. Later, the synthesis skill can be combined with research skills in memo and appellate brief assignments that require the student to find the authority applicable to the problem, synthesize it, and apply it to the case.

It is not enough, however, to teach case synthesis in the first-year legal analysis classes. The student will master the techniques of synthesis only if this instruction is reinforced throughout the curriculum. Since substantive law courses continue to dominate the law school curriculum, it is in these courses that a fundamental reorientation must take place.[41]

Such reinforcement is essential for two reasons. First, as suggested above, case synthesis is a skill, and skills must be practiced.

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thetical jurisdictions is puzzling if the goal of legal education is to prepare the student for the practice of law. Even issues of first impression are not decided in a vacuum, but in the rich context of existing decisions, statutes, etc. Setting a problem in a hypothetical jurisdiction deprives the student of that essential context.

41. In concentrating upon legal analysis and substantive law courses, this article has ignored clinical offerings. Clinical courses divide generally into two groups: those involving student participation in a simulated case, see Harbaugh, *Simulation and Gaming: A Teaching/Learning Strategy for Clinical Legal Education* in CLINICAL LEGAL EDUCATION: REPORT OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS — AMERICAN BAR ASSOCIATION COMMITTEE ON GUIDELINES FOR CLINICAL LEGAL EDUCATION 191 (1980), and those involving representation of actual clients (whether in a law office run by the law school or one in the external community, see generally CLINICAL LEGAL EDUCATION, *supra*. Both types logically should offer excellent opportunities for the use of case synthesis since participation in a case, whether simulated or real, should require exploration of specific legal issues within a single jurisdiction.

Simulation courses tend to focus on lawyering skills other than case synthesis, *e.g.*, interviewing, negotiation, counseling, discovery. *See generally* G. BELLOW & B. MOULTON, THE LAWYERING PROCESS: MATERIALS FOR CLINICAL INSTRUCTION IN ADVOCACY (1978). Whatever time is spent by the students in researching legal issues and applying that research to the case represents at best a relatively small percentage of the time devoted to the course. When the course involves the representation of real clients, the amount of time that a student will spend in case synthesis will vary in accordance with two factors: (1) whether the student is working on the entire case or one aspect of it, and (2) whether the student is working on *routine* cases (*e.g.*, uncontested divorces), for which the applicable law is already known and available to the student, or on cases with difficult, obscure, or novel legal issues.

In sum, clinical courses, since they aim to present to the student the actual world of the lawyer, offer one of the most serious opportunities for the student to practice the skill of case synthesis. On the other hand, the amount of time dedicated to that skill will vary greatly from course to course, and in some instances may be negligible.

The inherent limitations of first-year legal analysis courses prohibit sufficient repetition of the techniques to develop even a minimally acceptable level of competence. Opportunities for practice in substantive courses would meet this need. Second, it is understandably difficult to convince a student that the case synthesis techniques addressed in a legal analysis course are really basic to legal reasoning. This is especially true when the instruction in the various subtantive courses seems to proceed very well without reference to those techniques; indeed, success on examinations seemingly comes without their utilization.

The most obvious way to accomplish this reinforcement of case synthesis in substantive courses is to build the teaching of a particular topic around clusters of cases from representative jurisdictions. Different jurisdictions could still be invoked as they traditionally are to exemplify fundamentally different *schools of thought* regarding the concept in question. But instead of using one or two cases from a jurisdiction to illustrate a particular approach, the students would extract that approach by synthesizing a group of cases from the jurisdiction. Thus, in addition to learning the various ways of conceptualizing, for example, the law of attempt, the students would learn a particular approach in a particular jurisdiction. They would learn that the approach emerges from the successive resolution of individual controversies; it does not emerge through the intellectual choice of perfectly formed, textbook concepts which are then applied deductively to the facts of various cases.[42]

This emphasis on deriving substantive law through synthesis obviously suggests the need for different kinds of casebooks. Moreover, it has implications for classroom instruction, out-of-class assignments and examinations. Problem solving would be the logical focus for class discussion; students would be expected to apply a cluster of precedents to a hypothetical set in the same jurisdiction. Students could be assigned such problems as part of their preparation for class, and these assignments could include the drafting of documents, *e.g.*, in contracts, wills, and procedure courses, the preparation of a formal opinion for a client, the drafting of a bench

42. It is likely that teaching substantive law through the process of synthesis will take longer, which means that not as much substance will be taught. The substance changes, and, in any event, the student will have to learn the substance in the particular jurisdiction in which he or she practices. What is perhaps most valuable to the student in school, then, is learning how to extract and comprehend the substantive — *i.e.*, learning how to learn.

memo, an intrastudent negotiation on behalf of clients, and the arguing of a substantive motion.[43] In short, the focus on the law of a single jurisdiction provides opportunities not only for the practice of case synthesis, but, more generally, for integrating the study of substantive law with the legal skills through which that law is actually applied — for learning law as a coherent process, rather than as a collection of abstract, substantive fragments.

Similarly, examination questions could include a series of cases for the student to synthesize and apply to the hypothetical facts. Such questions would test the *substantive* aspects of the course in an important way, since the student's ability to understand the cases and put them together in a plausible way would reflect his or her understanding of the substantive concepts involved.

Conclusion

Synthesis is not a skill peculiar to the practice of law. We identify the style of a particular artist by abstracting that style from individual examples of the artist's work. The traditional scientific method is similarly inductive in its construction of overarching theories from the observation of related, individual phenomena.

If the techniques of synthesis are not unique to the law, they nevertheless lie at the core of the Anglo-American legal system. When we talk of our common law heritage, we talk of a process by which the generalities of the law emerge from the resolution of individual disputes.

The conclusion of this article is a simple one: it makes no sense to erect a structure for legal education that ignores or de-emphasizes one of the most basic of legal skills. The substance of the law changes; the techniques by which we grasp and apply the law do not. The proposals outlined above are designed to place these techniques where they belong — at the center of the law school curriculum.

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43. Since it is impossible sensibly to extract law from an amalgam of cases from different jurisdictions, the approach taken in most casebooks does not lend itself to such assignments.