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Experiential Learning and Assessment in the Era of Donald Trump

Jamie Abrams

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ABSTRACT

Law teaching is turning a critical corner with the implementation of new ABA accreditation standards requiring greater skills development, experiential learning, and student assessment. Years of debate and discourse preceded the adoption of these ABA Standards, followed by a surge in programming, conferencing, and listserv activity to prepare to implement these standards effectively. Missing from the dialogue about effective implementation of standards has been thoughtful consideration of how implementing these requirements will intersect with the challenges, realities, opportunities, and complexities of political divisiveness and polarization so prevalent in society and university campuses today.

Law schools are notably implementing these pedagogical reforms in a time of great political division. From the divisive presidential election, to police-community relations, to a worldwide refugee crisis, political discourse is contentious, polarized, and fraught with both risk and opportunity. University campuses have particularly been the sites of difficult discussions about race, politics, gender, and the very role of academic communities in these conversations. Students and faculty alike seem less capable than ever to manage these complex dynamics, yet true experiential learning and assessment requires us to move into the "eye of the storm" for courses with politically grounded content like legislation, among many others in the law school curriculum. The stakes are high. Faculty must engage students in more active learning with real-time feedback designed around realistic and timely simulations. Yet, they must do this in a

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time of great divisiveness in law, society, and politics. In this modern reality, both faculty and students alike may not be comfortable, prepared, or equipped to navigate these challenges without savvy techniques and methods.

This article discusses how law faculty might successfully implement experiential learning and assessment techniques with these modern dynamics in mind. It highlights a critical opportunity to transform our students into thoughtful problem-solvers and savvy lawyers. It identifies three critical components to a modern experiential learning course addressing topics of political relevance: (1) student-driven content, instead of faculty-driven content; (2) consistent and holistic student engagement, instead of sporadic or sequential engagement; and (3) vertically and horizontally structured feedback.

I. INTRODUCTION

Legal education is at a crossroads implementing new American Bar Association (ABA) accreditation standards that require greater emphasis on and, accountability for, experiential learning, skills instruction, and formative assessment.[1] These pedagogical reforms push professors to simulate realistic lawyering in the field while assessing students throughout.[2] These reforms are launching in the context of some of the most polarized political dynamics in the nation's history.[3] They are being imposed on students and faculty who are perhaps less equipped than ever to manage division and debate in the classroom. Missing from the implementation of these pedagogical reforms is discussion of how these standards will be implemented in this modern context and how faculty can do so successfully.

In any course addressing pressing and divisive current political topics,[4] like legislation, experiential learning and assessment present notable considerations and challenges for the professor designing and implementing the course. Legislatures are arguably the epicenter of modern political divisiveness.[5] Legislatures are wading

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1. *See generally* ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2014–2015 (AM. BAR. ASS'N 2014) [hereinafter ABA STANDARDS] (setting forth new standards requiring law schools to establish learning outcomes, curricular standards, simulation experiences, and assessment standards).

2. *See id.* Standard 304(a) requires schools to establish substantial opportunities for students to have experiences "similar to the experience of a lawyer advising or representing a client." *Id.* at 17.

3. *Political Polarization in the American Public*, PEW RESEARCH CTR. (June 12, 2014), http://www.people-press.org/2014/06/12/political-polarization-in-the-american-public/ (noting that Democrats and Republicans are more divisive now than any point in the past twenty years); *see also* DIANA E. HESS & PAULA MCAVOY, THE POLITICAL CLASSROOM 21 (2015) (concluding that the political parties have "purified along ideological lines" in the last thirty-five years). Hess and McAvoy conclude that this polarization has occurred as a result of changing political strategies. *Id.* at 21. While political scientists debate *why* this polarization increased so dramatically rapidly, they agree that it is a "'dance' between economic factors and the behavior of politicians." Paula McAvoy & Diana Hess, *Classroom Deliberation in an Era of Political Polarization*, 53 CURRICULUM INQUIRY 14, 26 (2013).

4. DIANA E. HESS, CONTROVERSY IN THE CLASSROOM 5 (2009) (defining "controversial political issues" as "authentic questions about the kinds of public policies that should be adopted to address public problems").

5. *See* Neal Devins, *Presidential Unilateralism and Political Polarization: Why Today's Congress Lacks the Will and the Way to Stop Presidential Initiatives*, 45 WILLAMETTE L. REV. 395, 396–97 (2009) (explaining that Congress will struggle to "assert its institutional prerogatives" as long as Congress is dominated by "party polarization"); *Partisan polarization, in Congress and among public, is greater than ever*, PEW RESEARCH CTR. (July 17, 2013), http://www.pewresearch.org/fact-tank/2013/07/17/partisan-polarization-in-congress-and-among-public-is-greater-than-ever/ (noting that "Congress reflects an America that has been growing further and further apart ideologically for decades").

into difficult and polarizing political and social issues, such as efforts to defund Planned Parenthood,[6] ban refugees,[7] regulate transgender bathroom use,[8] reform criminal justice,[9] regulate labor,[10] raise the minimum wage,[11] address immigration,[12] and more. In this context, the stakes and risks of experiential learning and assessment can seem high and volatile for law faculty, particularly untenured faculty.[13] Diana Hess calls this the "challenges of teaching in the tip" whereby certain timely issues, such as same-sex marriage, are sitting on a tipping point teetering between becoming closed or remaining open as a matter of public policy debate.[14] This dynamic presents a dilemma: forge ahead with casebooks and historical or theoretical discussions about the field in the abstract or pivot toward simulations on current relevant issues that simulate modern lawyering in the field, but that raise pedagogical risks.

This article first considers the timing of pedagogy reforms implemented in a time of significant political shifts. It then considers how these reforms map on to a course like legislation with its own history of pedagogical reform. It then identifies three ways to approach experiential learning in courses handling potentially divisive political topics to walk the delicate tightrope between navigating more engaged and relevant classrooms with students and faculty who may not yet be equipped for thoughtful, balanced dialogue. This model includes: (1) student-driven content, instead of

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6. *See* Defund Planned Parenthood Act, H.R. 3134, 114th Cong. § 3(a) (2015) (attempt by United States House to prohibit funding to Planned Parenthood Federation of America, Inc. for one year unless it promises not to perform any abortion services).

7. *See* Refugee Program Integrity Restoration Act, H.R. 4731, 114th Cong. (2016) (attempt by United States House to sharply restrict the number of refugees admitted into the country).

8. *See* Public Facilities Privacy & Security Act, 2016–3 N.C Sess. Laws 1 (North Carolina act banning transgender people from using restrooms that do not match their sex assigned at birth).

9. *See* Sentencing Reform and Corrections Act, S. 2123, 114th Cong. § 1 (2016) (attempt by United States Senate to address over-incarceration concerns through reexamining sentences for low-level drug offenders and providing judges with greater discretion for sentencing low-level drug offenders while still targeting violent criminals).

10. *See* Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2016, H.R. 3020, 114th Cong. (2016) (attempt by United States House to modify funding of the Department of Labor and other departments).

11. *See* Raise the Wage Act, S. 1150, 114th Cong. § 2(a)(1) (2015) (attempt by United States Senate to increase the minimum wage to $12 an hour over the course of four years).

12. *See* Border Security Technology Accountability Act, S. 1873, 114th Cong. (2015) (attempt by United States Senate to strengthen accountability for border security technology).

13. *See, e.g.*, Elizabeth Garrett, *Teaching Law and Politics*, 7 N.Y.U. J. LEGIS. & PUB. POL'Y 11, 11 (2003) (noting that some professors are "nervous" about teaching courses like legislation).

14. HESS, *supra* note 4, at 124–25 (2009).

faculty-driven content; (2) consistent and holistic student engagement, instead of sporadic or sequential engagement; and (3) vertically and horizontally structured and assessed feedback.

II. COLLIDING COMPLEXITIES: A UNIQUE CLASH OF PEDAGOGY REFORMS AND POLITICAL SHIFTS

This section positions the new ABA accreditation standards in the context of legal education reforms generally. It then considers how implementation is grounded in unique political and social contexts. This political context is further layered on complex modern university dynamics. As we move toward providing more ongoing feedback to students and simulating the realities of law practice, particularly in a field like legislation, how will these reforms create unaddressed challenges, obstacles, and opportunities for law faculty?

A. New ABA Accreditation Standards

The new ABA accreditation standards reflect a "fundamental shift" in the delivery of legal education and curricular design,[15] a "renaissance" of sorts.[16] They communicate a "quantum shift" in educational delivery from an emphasis on teaching to an emphasis on learning and from an emphasis on inputs to an emphasis on outcomes.[17]

The ABA first published accreditation standards in 1921 to improve the competence of new lawyers entering the practice of law.[18] Since then, the dominant approach for law school accreditation has traditionally focused on the "input" and "output" of law schools, both the resources invested and the bar passage rates and job placement data achieved.[19] A handful of iconic publications in prior dec-

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15. Anthony Niedwiecki, *Prepared for Practice? Developing a Comprehensive Assessment Plan for a Law School Professional Skills Program*, 50 U.S.F. L. REV. 245, 247 (2016).

16. David I. C. Thomson, *Defining Experiential Legal Education,* 1 J. EXPERIENTIAL LEARNING 1 (2015) (explaining that this "renaissance has been building and growing for the last two decades, but in the last few years it has truly begun to flourish").

17. Cara Cunningham Warren, *Achieving the American Bar Association's Pedagogy Mandate: Empowerment in the Midst of a "Perfect Storm,"* 14 CONN. PUB. INT. L.J. 67, 68 (2014).

18. *Id.* at 70.

19. *See id.* For a general historical account of the regulation and licensing of lawyers, see A. Benjamin Spencer, *The Law School Critique in Historical Perspective*, 69 WASH. & LEE L. REV. 1949, 1961–2015 (2012) (explaining how legal education changed from private readings and office apprenticeships to stand-alone law schools to university law schools to the Langdell modern American law school founded in the Socratic tradition to the ABA's centralized regulation).

ades had considerably nudged law schools toward curricular reform, but they had not formally modified the correlating accreditation standards governing law schools.[20] In 2008, the ABA's Section of Legal Education and Admissions to the Bar began reviewing its accreditation standards, a process which lasted six years until final approval in 2014.[21]

These reforms were well overdue in legal education, following implementation across other schools of higher education in recent decades.[22] The historical model of teaching content and testing at the end is decisively outdated and ineffective.[23] No longer can schools measure their performance by looking at inputs; rather, schools must now establish and assess clear learning outcomes.[24] These reforms push law schools to modernize their curriculum toward preparing students for practice within a student-centered learning environment.[25] These reforms require a "fundamental change" to the delivery of legal education, including "a more comprehensive view

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20. *See generally* AM. BAR ASS'N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) (the "MacCrate Report"); WILLIAM M. SULLIVAN, ET. AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) (the "Carnegie Report"); ROY STUCKEY, ET. AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (2007) ("Best Practices"); Thomson, *supra* note 16, at 6–16 (providing background on each of these underlying documents).

21. *See* ABA STANDARDS, *supra* note 1, at v. The United States Department of Education recognizes the ABA's Section of Legal Education and Admissions to the Bar as the national accreditation body for law school J.D. programs. Warren, *supra* note 17, at 69–70. The review of the accreditation standards was preceded by the work of an Outcome Measures Committee that recommended the re-evaluation of accreditation standards to reduce reliance on income measures and shift toward greater reliance on measures that were outcome based, consistent with other educational reforms. *Id.* at 71.

22. Sarah Valentine, *Flourish or Founder: The New Regulatory Regime in Legal Education*, 44 J.L. & EDUC. 473, 475 (2015) (explaining how law schools historically distanced themselves from reforms occurring in other sectors of undergraduate and higher education). "Law schools now find themselves isolated: untethered from the profession, unmoored from higher education, and beset by unrelenting calls to reform." *Id.*; *see also* Niedwiecki, *supra* note 15, at 252–53 (noting that "[l]aw schools [are] one of the last educational institutions to focus on learning outcomes and assessment[s]"); Warren, *supra* note 17, at 77–78 (explaining that legal education is "arriving much [more than] fashionably late to the party"). *See generally* Janet W. Fisher, *Putting Students at the Center of Legal Education: How an Emphasis on Outcome Measures in the ABA Standards for Approval of Law Schools Might Transform the Educational Experience of Law Students*, 35 S. ILL. UNIV. L.J. 225, 227–28 (2011) (describing the history of assessment-based learning and legal education's move toward it); Thomson, *supra* note 16, at 4 (explaining that experiential learning became popular in the mid-twentieth century).

23. Niedwiecki, *supra* note 15, at 255–57.

24. *Id.* at 249–50 (For example, schools, must now have a learning outcome to achieve competency for students in the "knowledge and understanding of substantive and procedural law" and assess performance of that outcome.).

25. Valentine, *supra* note 22, at 484–93.

of its curriculum and a more deliberate process of assessing students."[26]

In broad strokes, law schools must now set goals for specific learning outcomes, gather information about how well students are achieving those designated learning outcomes, and work to keep improving student learning toward competency.[27] The shift is one from assessing the delivery of legal education to assessing what "students take away from their educational experience."[28]

This article focuses on the experiential learning and assessment requirements particularly. Standard 301 requires law schools to establish and publish learning outcomes to achieve objectives for the program of legal education.[29] Standard 302 requires that a law school's learning outcomes at a minimum include competency in:

> (a) Knowledge and understanding of substantive and procedural law; (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context; (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and (d) Other professional skills needed for competent and ethical participation as a member of the legal profession.[30]

Law schools must also require all students to complete at least six credit hours of experiential learning courses.[31] These experiential courses must be "primarily experiential in nature" and they must provide multiple opportunities for performance; provide opportunities for self-evaluation; develop the concepts underlying the skills being taught; integrate doctrine, theory, skills, and legal ethics; and engage student performance in the skills identified in 302.[32] David Thomson, in the inaugural issue of the *Journal of Experiential Learning*, expands upon this circular definition to explain that these courses should help students "form their professional identities as lawyers, through experience or role-playing with guided self-reflection, so that they can become skilled, ethical, and professional

26. Niedwiecki, *supra* note 15, at 279.
27. *See* Warren, *supra* note 17, at 71.
28. *Id.*
29. *Id.* at 15 (Standard 301).
30. ABA STANDARDS, *supra* note 1, at 15–16 (Standard 302(d) skills may include things like "interviewing, counseling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation.").
31. *Id.* at 16 (Standard 303(3)).
32. *Id. See generally* Thomson, *supra* note 16, at 16–26 (2014) (expounding upon the circular definition of "experiential learning" as "primarily experiential in nature" provided by the ABA).

life-long learners of the law."[33] This uniquely positions experiential learning courses with a "focus[] on the student experience not the faculty function," with students positioned "in the role of attorneys," helping students to develop an identity, and preparing students to "build their legal careers in the ever changing legal landscape of their future" as "life-long learners of the law."[34]

Many schools were previously offering some experiential learning opportunities, like externships, but they were often more segmented and unique to public interest and government lawyering, not systemic for all students or subject areas.[35] The challenge for law faculty in implementing these courses is finding a way to make these courses valuable for all students.[36] While public interest and government lawyers have historically seen a more direct connection between the tasks they perform in experiential settings and those as a practicing lawyer, traditionally the learning transfer for private lawyers has been "less direct or immediate" for existing experiential opportunities.[37]

Standard 304 defines what simulation courses should include.[38] Simulation courses are one format for offering a qualifying experiential learning course, in addition to externships and clinics. These

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33. Thomson, *supra* note 16, at 20.

34. *Id.* at 20–21. Professor Thomson offers the following questions to help faculty assess whether their courses meet the experiential learning requirement:

- "Other than the question-based format in a mostly lecture-based class, do you place students in the role of attorneys through problems or exercises where they act as attorneys—such as drafting documents or interacting with (for example) either assigned co-counsel or opposing counsel?"
- "If so, does your class design use this teaching technique regularly or primarily throughout the course?"
- "Do you include opportunities for student self-reflection (in writing) about the experience of being 'in role' so as to help them form their professional identities as lawyers?"
- "Is a substantial portion of the student's grade in the course based on your evaluation of these exercises or learning opportunities?"

Id. at 22–23.

35. *See* Margarey E. Reuter & Joanne Ingham, *The Practice Value of Experiential Legal Education: An Examination of Enrollment Patterns, Course Intensity, and Career Relevance*, 22 CLINICAL L. REV. 181, 183 (2015) (noting that most clinics and externships have historically been in public interest and government settings).

36. *See id.* at 207 (noting that public interest and government lawyers valued experiential learning more).

37. *See id.*

38. *See* AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, REPORT TO THE HOUSE OF DELEGATES: RESOLUTION 2 (This resolution adopted Standard 304: "(a) A simulation course provides substantial experience not involving an actual client, that (1) is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a set of facts and circumstances devised or adopted by a faculty member, and (2) includes the following: (i) direct supervision of the student's performance by the faculty member; (ii) opportunities for performance, feedback from a faculty member, and self-evaluation; and (iii) a classroom instructional component.").

courses do not involve a live client, but are "reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a set of facts and circumstances devised or adopted by a faculty member."[39] As a practical matter, this is likely to include law schools converting relic skills classes, advanced courses, and non-bar classes over to "simulation courses." These classes are logical fits for conversion. It is much less likely that doctrinal and bar courses will make this conversion because of the high enrollment and the high demands on faculty to cover substantial course material.[40]

Law schools must also use both formative and summative assessment in their curriculum to gauge student learning and to provide effective feedback to students.[41] No longer are schools to just deliver content, but rather schools should be developing learning outcomes and ensuring that students are competently meeting these identified outcomes.[42] Historically, law school was largely assessed through an overreliance on summative assessment, which can hinder student development.[43] Summative assignments focus on evaluating student work as a snapshot summing up what students have done to date, but with minimal opportunity to improve after the grade is given.[44]

The ABA's modern shift is toward greater formative assessment. Formative assessment serves a different function than summative assessment. Rather than a snapshot, it is intended to be an iterative process to help students improve over the semester.[45] Formative assessment also helps faculty gauge student progress and adapt accordingly based on what is working and what is not.[46]

Yet, in such a high-stakes culture and a culture in which studies show that forty percent of law school students are clinically depressed, formative assessment needs to be "mindful not to import

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39. *See id.*

40. *See, e.g.*, Thomson, *supra* note 16, at 25 (providing examples of courses that would be primarily experiential in nature, including a "legislative drafting course, where students are representing an agency and several interest groups in simulated hearings and recursive drafting exercises").

41. ABA STANDARDS, *supra* note 1, at 23 (Standard 314). *See generally* Niedwiecki, *supra* note 15, at 251–55 (describing the differences between summative and formative assessment and offering examples of effective forms of each).

42. *See generally* Valentine, *supra* note 22.

43. Olympia Duhart, *It's Not for a Grade: The Rewards and Risks of Low-Risk Assessment in the High-Stakes Law School Classroom*, 7 ELON L. REV. 491, 496 (2015); Niedwiecki, *supra* note 15, at 252–54, 272 (explaining that students need feedback along the way).

44. *See, e.g.*, Duhart, *supra* note 43, at 497 (noting that the course is often over by the time students receive this summative assessment); Niedwiecki, *supra* note 15, at 251–52.

45. Duhart, *supra* note 43, at 497.

46. *Id.* at 498.

the overemphasis on grades from the familiar world of summative assessment or final exams."[47] These opportunities may need to be lower stakes from the student perspective as compared to the typical final exam or midterm, positioning students to practice.[48] This is particularly so when students are engaging with politically relevant modern content. If students are engaged in hot topic projects like criminal justice reform, reproductive rights, immigration reform, and more, the prospect of the faculty providing critical formative feedback, as the project develops, requires that feedback be more thoughtful, careful, and savvy than ever. Yet, many faculty have spent their whole career providing only summative feedback that the students might never have read or engaged with at all.

The revised standards were not wholly embraced by the academe. They invoked a range of reactions from confusion to concern to skepticism, and hope.[49] Some protested that assessment mandates particularly are "threatening, insulting, intrusive, and wrongheaded."[50] Others raised academic freedom concerns.[51] Some worried that this shift might, in turn, trigger the revisiting of existing and longstanding tenure and promotion standards, which historically have focused much more squarely on scholarship.[52]

Perhaps most significant to this article, others have emphasized the general lack of training, knowledge, or experience of law faculty in these types of experiential learning and assessment techniques.[53] Legal educators are particularly unstudied in the incredible developments in the learning sciences that have taken place in recent years.[54] Most law school professors are not trained formally as ed-

47. *Id.* at 493.

48. *Id.* (noting that these could include quizzes, group assignments, out-of-class assignments, and self-graded work).

49. Warren, *supra* note 17, at 104.

50. *Id.* at 78 (citing Susan Hanley Duncan, *The New Accreditation Standards Are Coming to a Law School near You—What You Need to Know About Learning Outcomes & Assessment*, 16 J. LEGAL WRITING INST. 605, 609 (2010)). *See also* Lori A. Roberts, *Assessing Ourselves: Confirming Assumptions and Improving Student Learning by Efficiently and Fearlessly Assessing Student Learning Outcomes*, 3 DREXEL L. REV. 457, 467–68 (2011).

51. Warren, *supra* note 17, at 78.

52. *Id.* at 79.

53. *Id.* at 78.

54. Judith Welch Wegner, *Symposium 2009: A Legal Education Prospectus: Law Schools & Emerging Frontiers, Reframing Legal Education's 'Wicked Problems,'* 61 RUTGERS L. REV. 867, 885 (2009) (explaining that the Carnegie Report was "deeply informed by developments in the learning sciences").

ucators and any ongoing efforts at continuing education for law faculty are typically voluntary and minimal.[55] These reforms suggest that existing law faculty may not be optimally suited for delivering the new curriculum without development and training support.[56]

During the transition period leading up to implementation, various conferences, tools, and resources proliferated to help prepare teachers and law schools to implement the new standards.[57] The American Association of Law Schools, for example, devoted its 2015 mid-year meeting to assessment and learning outcomes.[58] Law journals are likewise focused on assessment and teaching pedagogy in new ways.[59]

Yet, the implementation is also occurring in the wake of tremendous economic upheaval in legal education generally. These revised standards notably occurred contemporaneously with a considerable decline in law school enrollment and a related critique of legal education more broadly.[60] Law schools are being forced to do more with less as resources are strained, enrollment drops, hiring stalls, and layoffs occur.[61] Formative assessment also may call for the expenditure of more resources, whether financial resources or human resources, which is a critical component of the critique and the conversation.[62]

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55. Warren, *supra* note 17, at 79. *See also* HESS & MCAVOY, *supra* note 3, at 213 (noting that teaching as a profession more broadly does not have "a well-articulated ethic"). Educational resources generally are rarely forced to confront the "ethics" of professional teaching, as compared to other professions, such as medicine. *Id.*

56. *See, e.g.*, Spencer, *supra* note 19, at 2051.

57. *See, e.g.*, Patricia E. Salkin, *Learning from Experience: An Introduction to the Journal of Experiential Learning*, 1 J. EXPERIENTIAL LEARNING vii, xv (2015) (introducing a new journal on experiential learning to "share ideas, critique experimental reforms and look towards the future as we navigate a course in unchartered waters"); *Third National Symposium on Experiential Learning in Law*, New York Law School, June 10–12, 2016 (focusing on "how to identify and effectively assess experiential learning outcomes in the legal education context").

58. *See Workshop on Measuring Learning Gains, Orlando, Fl.*, AM. ASS'N OF LAW SCHS. (June 22–24, 2015), https://www.aals.org/wp-content/uploads/2015/05/Midyear15_eBrochure.pdf (providing a link to the workshop description and summaries of the panels and presenters).

59. *See, e.g., Call for Papers — The Impact of Formative Assessment: Emphasizing Outcome Measures in Legal Education*, UNIV. OF GA. SCH. OF LAW (October 2016), http://www.law.uga.edu/calling-all-papers/node/473 (announcing a symposium to be held at the University of Detroit Mercy School of Law).

60. Spencer, *supra* note 19, at 1951–52 (explaining that legal education is "under attack," with critics questioning the declining job market, rising student debt, and lack of practice readiness); Warren, *supra* note 17, at 80–81 (explaining a "perfect storm" in legal education in which enrollment has hit a forty-year low).

61. Warren, *supra* note 17, at 81.

62. *See generally,* Louis N. Schulze, Jr., *Alternative Justifications for Academic Support II: How "Academic Support Across the Curriculum" Helps Meet the Goals of the Carnegie*

Various scholars and observers have described the state of legal education as something of a "perfect storm" of conditions.[63] If the existing economic and professional conditions have led to a "perfect storm," then the next section adds one more weather condition to that storm. The next section considers how the revised ABA Standards are being implemented in the context of great political divisiveness and unique university dynamics. These are both cause for worry, but also cause for opportunity, as discussed below.

B. Implementation in the Context of Political Divisiveness

Missing from the debate and preparedness for implementation is thoughtful consideration of the context in which these reforms are to be implemented. Implementing these reforms amidst political divisiveness and compromised civil discourse makes the context more challenging and unique.

Unrelentingly divisive politics seem to be the hallmark of modern times.[64] Meaningful civil discourse about political issues seems fleetingly rare, if not impossible, in professional and social circles alike. Some political scientists frame political discourse as less civil than ever. The political climate is dominated by confrontation, instead of cooperation.[65] Some studies have demonstrated increased party polarization and issue attitudes particularly for "wealthier and politically sophisticated voters."[66] "Polarization" describes the state of extremism by partisan and ideological lines, which creates an "institutional paralysis" and "representational imbalance" in governance.[67] It reflects a divisiveness that exceeds ordinary politics, causing "dysfunctional politics."[68]

Report and Best Practices, 40 CAP. U. L. REV. 1, 1 (2012) (noting that "[e]ven the most forward-thinking reformers" will "struggle with the details of how to implement many of the recommendations").

63. *See, e.g.*, R. Michael Cassidy, *Reforming the Law School Curriculum from the Top Down*, 64 J. LEGAL EDUC. 428, 429 (2014) (describing legal education in turmoil or crisis); Spencer, *supra* note 19, at 1952–53 ("Thus, we have what appears to be a perfect storm in legal education. . . .") (quoting DAVID I. C. THOMSON, LAW SCHOOL 2.0: LEGAL EDUCATION FOR A DIGITAL AGE 11 (2009)).

64. HESS & MCAVOY, *supra* note 3, at 8 ("Scholars have established that the United States is currently polarizing once more, causing a reevaluation of fundamental principles, especially with respect to the role of the government in individuals' lives.").

65. *See* Mahamat K. Dodo, *My Theory on the Trump's Phenomenon. Why Donald Trump? And Why Now?*, 7 J. ALTERNATIVE PERSP. SOC. SCI. 593, 609–10 (2016).

66. Delia Baldassarri & Andrew Gelman, *Partisans without Constraint: Political Polarization and Trends in American Public Opinion*, 114 AM. J. SOC. 408, 408 (2008).

67. POLARIZED POLITICS: THE IMPACT OF DIVISIVENESS IN THE US POLITICAL SYSTEM 1 (William Crotty ed., 2016).

68. *Id.*

The result of polarization is that the political system becomes stuck in a "continual loop in which the system over represents and responds most directly to the resources of those who have established themselves as the most economically powerful in the political culture," leaving the mass citizenry on the periphery.[69] These accounts, if true, threaten pluralistic political systems.[70]

We live in red states or blue states or on blue islands in red states or on red islands in blue states. Individuals sort themselves into spaces both online and geographically with people who agree with them. This might promote individual happiness, but it is ultimately compromising to political discourse.[71] This creates further obstacles in the context of interpersonal communications.

And the powerful role of social media is changing political discourse for both professors and students. Social media can compromise the diversity of exposure to differing perspectives that users experience online. While the exchange of differing views is generally good for discourse and society, modern technology can both foster this interaction and also divert away from it.[72] Social networking sites offer new spaces for political communication and with each recent presidential election this has been a more and more effectively utilized tool.[73] Yet, online patterns reveal that users cluster around other users who share their homogenous views so that social media serves to "reinforce in-group and out-group affiliations."[74] Faculty and students alike, thus, isolate themselves to "political bubbles" or "ideologically homogenous environments."[75] Facebook

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69. *Id.*

70. Baldassarri & Gelman, *supra* note 66, at 408.

71. *See, e.g.*, *Life in the Wrong Political Bubble*, SCI. FRIDAY (July 22, 2016), https://soundcloud.com/scifri/life-in-the-wrong-political-bubble (profiling University of Illinois–Chicago psychology professor Matt Motyl's research on this topic).

72. Itai Himelboim, Stephen McCreery & Marc Smith, *Birds of a Feather Tweet Together: Integrating Network and Content Analyses to Examine Cross-Ideology Exposure on Twitter*, 18 J. COMPUTER-MEDIATED COMM. 154, 156 (2013). Support for exposure to "cross-ideological opinions" has long been celebrated in political discourse from John Stuart Mill's famous quote: "[I]f the opinion is right, they [people] are deprived of the opportunity of exchanging error for truth; if wrong, they lose what is almost as great a benefit, the clearer perception and livelier impression of truth produced by its collision with error." *Id.*

73. *Id.* at 157 (documenting an increase in the use of social networking sites from 2006 to 2008, thus creating a new online political sphere).

74. *Id.* at 168. *See also id.* at 167 (explaining that "[p]olitically active voices, particularly younger voters, who use the Internet to express their opinions are moving away from neutral news sites in favor of those that match their own political views"). Moving in ideologically homogenous communities creates "aversion" to political conflict, which can reduce engagement overall. HESS, *supra* note 4, at 21.

75. HESS, *supra* note 4, at 20 (explaining that Americans have clustered in the past three decades in "communities of sameness, among people with similar ways of life, beliefs, and in the end, politics"). *See also id.* at 12 (noting that there is "mounting evidence that relatively few people in the United States currently engage in such political talk and the trend is clearly

news feeds, for example, position its users in an "echo chamber" as a combination of algorithms and human behavior that compromises engagement with differing views.[76] This "dampens the appetite for a wide range of political views," which is "undeniably dangerous for a democracy" because of the ways it hardens opinions and breeds intolerance.[77]

Donald Trump's emergence on the national political stage has both leveraged this divisive polarization and fanned it.[78] He has built his brand and appeal on this political polarization.[79] Some commentators attribute Donald Trump's emergence directly to "political gridlock" and "dysfunction."[80] He has "astutely tapped into those social, cultural, and economic anxieties that millions of Americans feel unease and are angry about."[81] At least in terms of rhetoric, some political scientists have described Donald Trump as deploying the most inflammatory, brazen, and polemical tactics of any candidate in modern times.[82] His rise on the political scene and the politics that he represents uniquely define the times that shape the implementation of real-world simulations in a course like legislation, but also the obstacles presented to achieve effective experiential learning and assessment in law school more broadly.

Others have responded by challenging this factual premise of polarization and suggesting that calls for more civil discourse are worrisome for other constitutional or political reasons.[83] These accounts argue that the request itself for more civil discourse is a form of discourse that is not neutral or apolitical, but a tactic deployed by mainstream, dominant voices.[84] Neither these factual assertions, nor the competing responses, are necessarily new to political

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moving in a non-deliberative direction"). *See generally* NOLAN MCCARTY, KEITH T. POOLE & HOWARD ROSENTHAL, POLITICAL BUBBLES (2015).

76. *See, e.g.*, John Bohannon, *Is Facebook keeping you in a political bubble*, AM. ASS'N FOR THE ADVANCEMENT OF SCI. (May 7, 2015, 2:00 PM), http://www.sciencemag.org/news/2015/05/facebook-keeping-you-political-bubble.

77. HESS, *supra* note 4, at 21.

78. *See* Dodo, *supra* note 65, at 609–10.

79. *Id.* at 609.

80. *Id.*

81. *Id.*

82. *See, e.g.*, Scottie Lee Myers, *Trump's Divisive Rhetoric Unparalleled in American Political History, Presidential Historian Says*, WIS. PUB. RADIO (Oct. 17, 2016, 1:00 PM) (explaining that the United States has seen plenty of periods of discord, but Trump's demeanor and rhetoric are different than any others).

83. *See generally* Toni M. Massaro & Robin Stryker, *Freedom of Speech, Liberal Democracy, and Emerging Evidence on Civility and Effective Democratic Engagement*, 54 ARIZ. L. REV. 375 (2012) (analyzing data about incivility).

84. *See generally* Bernard E. Harcourt, *The Politics of Incivility*, 4 (Chi. Pub. Law & Legal Theory Working Paper No. 377, 2012), http://ssrn.com/abstracts=2020679.

debate,[85] but they are at a heightened level of public scrutiny now, providing important context that is relevant to successful implementation of the revised ABA accreditation standards.[86]

Importantly, the complexities raised in this section are both challenges and opportunities. From the 2016 presidential election, came a renewed conversation about political engagement and discourse.[87] Renewed calls for greater listening, understanding, and learning have also been raised.[88]

C. Modern University Dynamics

Universities are not immune from the complexities of this modern divisiveness either.[89] From the ouster of the University of Missouri's President to divisive campus debates, universities struggle with modern debates about politics, diversity, and political agendas.[90] In 2016, one way in which this tension particularly manifested on university campuses throughout the country was in the

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85. *See* HESS & MCAVOY, *supra* note 3, at 22 (noting that other periods of great polarization occurred before the stock market crash of 1929 and after World War II).

86. *See generally* John P. Hoffman & Alan S. Miller, *Denominational Influences on Socially Divisive Issues: Polarization or Continuity?*, 37 J. FOR SCI. STUDY RELIGION 528 (1998) (positioning the debate about increased polarization starting in the mid-nineties).

87. One study of citizen behaviors in Britain and the United States, for example, revealed that thirty percent of Americans and fifty percent of British citizens are "silent citizens." HESS, *supra* note 4, at 19. There is stronger support for the ideal of engaging in political issues. *Id.*

88. *See, e.g.*, RGJ Editorial Board, *Our View: Get out of your political bubble*, RENO GAZETTE–J. (Nov. 14, 2016, 9:03 PM), http://www.rgj.com/story/opinion/editorials/2016/11/12/view-get-political-bubble/93604722/ (concluding that Americans are not so far apart on policy, but have come to reinforce biases against the other side).

89. *See, e.g.*, Sam Marcosson, *Defending UofL law school's compassion project*, COURIER–J. (Jan. 18, 2016, 3:02 PM), http://www.courier-journal.com/story/opinion/2016/01/15/defending-uofl-law-schools-compassion-project/78865704/; Luke Milligan, *UofL law school is no longer neutral*, COURIER–J. (Jan. 17, 2016, 4:11 PM), http://www.courier-journal.com/story/opinion/2016/01/13/commentary-uofl-law-school-no-longer-neutral/78655014/; Russell L. Weaver, *U of L law professor: 'Veered to partisan agenda,'* COURIER–J. (Jan. 19, 2016, 1:26 PM), http://www.courier-journal.com/story/opinion/2016/01/16/uofl-law-professor-veered-partisan-agenda/78903362/.

90. *See* Chris Kenning, *Ramsey sombrero photo sparks outcry, apology*, COURIER–J. (Oct. 30, 2015, 8:47 PM), http://www.courier-journal.com/story/news/local/2015/10/30/ramsey-sombrero-photo-sparks-criticism/74825480/ (former President of the University of Louisville, James Ramsey, dressed in a stereotypical sombrero and poncho while staffers shook maracas, female staffers wore mustaches and beards, and male staffers wore mantillas, sparking criticism); Susan Svrluga, *U. Missouri president, chancellor resign over handling of racial incidents*, WASH. POST (Nov. 9, 2015), https://www.washingtonpost.com/news/grade-point/wp/2015/11/09/missouris-student-government-calls-for-university-presidents-removal/ (former President of the University of Missouri, Tim Wolfe, resigned in response to student protests accusing Wolfe of mishandling racist and bigoted incidents).

frequency of campuses issuing "disinvitations" to speakers previously invited to address the campus community.[91] These cancellations were particularly informed by political divisiveness. California State Los Angeles, for example, cancelled Ben Shapiro's speaking engagement because Shapiro opposed trigger warnings, safe spaces, and the Black Lives Matter movement.[92] These cancellations were sparked particularly by student uprisings and protests.[93] In a letter the New York Times described as a "rebuke" to such protests on college campuses,[94] the University of Chicago issued a welcome letter to incoming students in 2016 informing them that "it is not the proper role of the university to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive."[95]

Immediately after Trump's election, campus tensions and hostilities escalated. From hateful graffiti, to targeted comments, and offensive social media posts, the post-election campus tensions along the lines of race, sexuality, gender, and immigration status

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91. *See* Abby Jackson, *'Disinvitations' for college speakers are on the rise—here's a list of people turned away this year*, BUS. INSIDER (Jul. 28, 2016, 1:09 PM), http://www.businessinsider.com/list-of-disinvited-speakers-at-colleges-2016-7 (citing Brown University, California State University at Los Angeles, University of California at Berkeley, University of Chicago, George Washington University, Trinity College, Hampshire College, University of Pennsylvania, Virginia Tech, and Williams College as examples); Susan Svrluga, *A conservative speaker was uninvited from campus. And then re-invited*, WASH. POST (Oct. 23, 2015), https://www.washingtonpost.com/news/grade-point/wp/2015/10/23/a-conservative-speaker-was-uninvited-from-campus-and-then-re-invited/ (explaining how Suzanne Venker was disinvited to speak about how feminism has failed after students complained, but was then eventually reinvited by the club "Uncomfortable Learning").

92. Josh Logue, *Another Speaker Blocked*, INSIDE HIGHER ED. (Feb. 24, 2016), https://www.insidehighered.com/news/2016/02/24/cal-state-los-angeles-cancels-conservative-speakers-appearance (noting that he could speak at a later time). *See also* Susan Svrluga, *Williams College cancels a speaker who was invited to bring in provocative opinions*, WASH. POST (Feb. 20, 2016), https://www.washingtonpost.com/news/grade-point/wp/2016/02/20/williams-college-cancels-a-speaker-invited-as-part-of-a-series-designed-to-bring-in-provocative-opinions/?utm_term=.b73615f916c5 (explaining that Williams College canceled a speaker due to hateful speech about race).

93. *See, e.g.*, Jennifer Kabbany, *Public university cancels conservative speaker after liberal students protest*, THE COLL. FIX (Feb. 23, 2016), http://www.thecollegefix.com/post/26350/.

94. Richard Perez-Pena, Mitch Smith & Stephanie Saul, *University of Chicago Strikes Back Against Campus Political Correctness*, N.Y. TIMES (Aug. 26, 2016), https://www.nytimes.com/2016/08/27/us/university-of-chicago-strikes-back-against-campus-political-correctness.html?_r=0 (The Student Body President countered that this letter was "based on the false narrative of coddled millennials.").

95. *Id.* (quoting the letter's declaration that "we do not support so-called trigger warnings, we do not cancel invited speakers because their topics might prove controversial, and we do not condone the creation of intellectual 'safe spaces' where individuals can retreat from ideas and perspectives at odds with their own").

were volatile and contentious.[96] Some universities offered supportive resources and gatherings for students to discuss these events.[97] These efforts then swiftly suffered their own wave of mockery and criticism.[98] College campuses thus find themselves in modern times under the microscope, struggling to manage a volatile combination of free speech, student safety, diversity, and inclusion.[99]

The potential for polarizing conflict entering the law classroom thus presents a risky environment for law faculty simulating real-world lawyering that is worthy of further discussion and strategizing. Faculty overall are reluctant to actively resolve classroom disputes, even when they perceive these disputes to be disruptive.[100] Some faculty might fear negative course evaluations for engaging students on difficult issues. Or worse, some faculty might fear adverse employment consequences.[101] At a minimum, faculty members are ill-equipped to handle this type of conflict and have had little to no training in doing so.[102]

Students, in turn, are not universally equipped with the language, savvy, or strategies to engage with each other on relevant, pressing, divisive topics. Some students have suffered adverse academic consequences, such as expulsion, for inappropriate conduct

96. *See, e.g.*, Caitilin Dickerson & Stephanie Saul, *Campuses Confront Hostile Acts Against Minorities After Donald Trump's Election*, N.Y. TIMES (Nov. 10, 2016), https://www.nytimes.com/2016/11/11/us/police-investigate-attacks-on-muslim-students-at-universities.html (chronicling events occurring on college campuses after the election).

97. Karen Sloan, *For Law Students Upset About Trump Win, Schools Lend Support*, NAT'L L.J. (Nov. 10, 2016), http://www.nationallawjournal.com/id=1202772114898/For-Law-Students-Upset-About-Trump-Win-Schools-Lend-Support?slreturn=20170215134649.

98. Dickerson & Saul, *supra* note 96.

99. *See, e.g.*, *id.*

100. Steven A. Meyers, *Strategies to Prevent and Reduce Conflict in College Classrooms*, 51 COLLEGE TEACHING 94, 94 (2003).

101. *See, e.g.*, Conor Friedersdorf, *Stripping a Professor of Tenure Over a Blog Post*, THE ATLANTIC (Feb. 9, 2015), http://www.theatlantic.com/education/archive/2015/02/stripping-a-professor-of-tenure-over-a-blog-post/385280/; Scott Jaschik, *Banned From Campus*, INSIDE HIGHER ED. (Sept. 6, 2016, 3:00 AM), https://www.insidehighered.com/news/2016/09/06/northwestern-bans-professor-campus-and-faculty-members-split-whether-move-justified (describing conflicting views regarding the termination of a Northwestern Professor whom some say was fired due to safety concerns and fears, while she argues that it was for her activism against deportations and private prisons).

102. Allie Grassman, *Preparing Professors to Teach*, INSIDE HIGHER ED. (Oct. 15, 2010), https://www.insidehighered.com/news/2010/10/15/mit (highlighting how many doctoral students anticipating a teaching future are now also looking for teaching programs and certifications).

and comments.[103] Other students have been targeted, harassed, and marginalized on campus for their identities or beliefs.[104]

Of course, the complexities of divisiveness are not new,[105] but its intersection with evolving pedagogical techniques in law is contemporaneously unique. It is in this distinct political context that law schools are phasing in experiential learning requirements, assessment standards, and greater skills development. Successful implementation will accordingly require that more thoughtful and conscious consideration be given to the techniques that will implement these standards most effectively given modern political realities.

And existing law school pedagogy actually reinforces this distance and remoteness, marking an even starker transition. Existing law school pedagogy in the case-based tradition has been long criticized for tearing "the law from its social context" and for "extract[ing] from the living human beings whose struggles for advantage and for justice were what the law was really about."[106] Simulation courses re-align law school experiences in a more engaging way that is responsive to this "remoteness" critique, but require adjustments and paradigm shifts for students and faculty alike.

Given these modern realities, converting a course that is politically grounded, like legislation, to a simulation course may reveal perils, challenges, and opportunities not previously considered. Avoiding political or divisive topics, as many professors have done historically in their course content selection, risks distorting the

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103. *See, e.g.*, *Orange Coast College Student Threatened with Expulsion After Recording Professor's Anti-Trump Tirade*, CBS LOCAL L.A. (Dec. 8, 2016, 11:47 PM), http://losangeles.cbslocal.com/2016/12/08/orange-coast-college-student-threatened-with-expulsion-after-recording-professors-anti-trump-tirade/; Justin Sayers, *U of L cheerleaders suspended for election posts*, COURIER–J. (Nov. 10, 2016, 3:02 PM), http://www.courier-journal.com/story/news/local/2016/11/10/u-l-cheerleaders-suspended-election-posts/93582374/ (describing the suspension of University of Louisville cheerleaders following tweets on election night).

104. *See, e.g.*, Hatewatch Staff, *Over 200 Incidents of Hateful Harassment and Intimidation Since Election Day*, S. POVERTY LAW CTR. (Nov. 11, 2016), https://www.splcenter.org/hatewatch/2016/11/11/over-200-incidents-hateful-harassment-and-intimidation-election-day (calculating from news reports, social media, and direct reports and spanning anti-Black, anti-woman, and anti-LGBT incidents). Many of these incidents occurred in educational settings. *Id.*

105. *See, e.g.*, Steven C. Bahls, *Political Correctness and the American Law School*, 69 WASH. U. L. REV. 1041, 1041 (1991) (describing a "'rising hegemony' of the Politically Correct within the academy") (quoting Richard Berstein, *Academia's Fashionable Orthodoxy: The Rising Hegemony of the Politically-Correct*, N.Y. TIMES, Oct. 28, 1990, § 4, at 1); POLARIZED POLITICS, *supra* note 67 (noting that "conditions of polarization in [American] politics have been present for over a generation, increasing in emotion and intensity and in effectiveness in shaping issue outcomes as the years pass").

106. David R. Barnhizer, *Redesigning the American Law School* 9 (Cleveland–Marshall Legal Studies, Working Paper No. 09–182, 2009), http://ssrn.com/abstract=1516468 (quoting Max Lerner).

goals of experiential learning and compromising our students' abilities to problem solve and engage in the real world to which they will graduate.[107] Yet, on the other hand, for faculty to compel a captive audience classroom to engage in simulations uniquely designed around the professors' interests is also worrisome and risks "reify[ing] the behaviors and values of polarization [in] structuring courses."[108] A class like legislation is an effective one to consider because of the pedagogical history of the course and the imperative of political relevance that this course carries.

III. THE LANDSCAPE OF LEGISLATION PEDAGOGY

A. Curricular Reform as "Ground Hog Day"

While this section looks particularly at the history of legislation pedagogy, it suggests that the quest to redesign any course offering to meet the ABA Standards builds on a legacy of course development in that field that may be worthy of further examination. For a legislation course, but not uniquely a legislation course, experiential learning and assessment pose difficult questions about how law faculty should best expose students to simulations and experiences that prepare them for practicing in such divisive conditions. For simulations to take head-on the challenges of lawmaking in a world heavily dominated by religion, ideology, identity, partisanship, etc. is to enter into thorny territory for law professors and students alike.

Using Legislation as a course example to consider how and why this contextual conversation might matter, this section explores the unique background of pedagogy development in a field like legislation to consider how to implement a simulation course. In perhaps no other class than legislation is it more important to position the academic classroom against the backdrop of real world experiences.[109] Legislation courses reveal a "political education paradox"

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107. HESS & MCAVOY, *supra* note 3, at 6 (explaining that "*how* to [deliberate political issues] is a pedagogical challenge, in part because classrooms are unusual political spaces"); *see also* HESS, *supra* note 4, at 24 ("Many adults either want schools to mirror their ideas or fear that adding controversy to the curriculum *creates* controversy, as opposed to simply teaching young people how to deal more effectively with the kinds of political controversies that exist outside of school.").

108. HESS & MCAVOY, *supra* note 3, at 28. "[U]nlike adults in other public spaces, students are not able to easily exit situations that they find uncomfortable or offensive." *Id.* at 6. *See also* HESS, *supra* note 4, at 6 (2009) (avoiding controversial issues "send[s] a host of dangerous and wrongheaded messages").

109. *See* William Hurst, *The Content of Courses in Legislation*, 8 U. CHI. L. REV. 280, 284 (1941) ("But for the student[s], questions and notes are relatively barren unless set against

by which faculty need to provide students with a balanced education, while preparing them to participate in an ideological and divisive context.[110]

Conversations about how to successfully teach a law school legislation course might seem a bit like the popular film *Groundhog Day*.[111] The course has raised perpetual and longstanding pedagogical challenges.[112] A 1949 book review in the *Yale Law Journal* perhaps said it best that "[u]nless the instructor knows what he is after and keeps a firm grip on the material, a course in legislation is likely to wander almost anywhere and hence arrive nowhere."[113]

Decade to decade, scholars continue to revisit the questions of whether to require a course in legislation, what content properly belongs in a legislation course, what materials are best suited for legislation.[114] Legislation courses have always played a unique and often clunky role in law school curricula. Is it a first-year course or an upper-level course?[115] Is it a doctrinal course or a skills course? Is the course about the political processes that led to a law's enactment?[116] Is it about interpreting and understanding legislative enactments as a matter of statutory interpretation?[117] Is it about the

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a rich record of legislative experience in a field such as this, where expertness must be sought not in terms of formulae but of trained intuition.").

110. HESS & MCAVOY, *supra* note 3, at 4 (explaining that "[p]art of the ethical challenge of teaching about politics is determining where political education ends and partisan prostelyizing begins").

111. GROUNDHOG DAY (Columbia Pictures 1993). *Groundhog Day* has become a slang term in society to refer to an unpleasant situation that keeps repeating like Bill Murray's character who is stuck in the same day: Groundhog Day.

112. Ethan J. Leib, *Adding Legislation Courses to the First-Year Curriculum*, 58 J. LEGAL EDUC. 166, 174 (2008).

113. Thomas I. Emerson, *Book Review: Cases and Other Materials on Legislation*, 58 YALE L.J. 1414, 1414 (1949) (reviewing HOWARD E. READ & JOHN W. MACDONALD, CASES AND OTHER MATERIALS ON LEGISLATION (1948)).

114. *See generally* Hurst, *supra* note 109 (describing the challenges of positioning legislation in the law school curriculum); Leib, *supra* note 112, at 181–88 (explaining that approaches to teaching legislation can be "so varied," ranging from legislation/regulation courses, legislative process courses, administrative law primer courses, or substantive law courses with legislative emphasis).

115. Leib, *supra* note 112, at 169 (noting that Harvard unanimously added legislation to its 1L curriculum).

116. *See, e.g.*, Dakota S. Rudesill et al., *Legislation/Regulation and the Core Curriculum*, 65 J. LEGAL EDUC. 70, 78 (2015) (explaining that some courses approach the material from the perspective of the political process model, focused on procedural rules governing legislative bodies, ballot access, candidacy qualifications, campaign finance, lobbying, etc.).

117. *See, e.g.*, *id.* at 71 (explaining that one-half of the time spent in Ohio State's 1L legislation course is devoted to statutory interpretation).

administrative process of implementing legislation?[118] These questions have plagued the field of legislation, but have also fostered a level of intentionality among faculty in the field.[119]

These questions have also plagued perceptions of the course. Confusion about course coverage can lead to student discontentment, so legislation faculty must deploy a unique intentionality.[120] Students can enter a legislation class with vastly different expectations and experiences. Some are politically-minded students seeking respite from the case-based method of traditional law school courses, while others might be looking to check a box and fulfill a skills requirement with little organic interest in the material.[121] The course can feel confusing and disorganized to students because they do not know what to expect and because the course already feels notably different than other courses.[122] Professors of legislation are consequently aware of student needs in designing the course.[123] They are attentive to ensuring that the class is organized and clear to students and to facilitating student enjoyment of the course materials.

Whatever the answers are to the challenging pedagogical questions raised above regarding course design and course content in any one particular institution, a few central points emerge from this ongoing pedagogy dialogue specific to the field of legislation. First, professors of legislation are uniquely self-aware and conscious about course design and outcomes. Unlike a more traditional law course tested on a bar exam, legislation professors have a level of consciousness to their course selection, course content, and organization that they have had to navigate in setting up the course. They have had to decide whether they are teaching a course with a substantive focus only or a skills component. They have had to decide

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118. *See, e.g.*, *id.* at 72–78 (explaining that the other half of the first year course not focused on statutory interpretation is focused on the administrative process). This reflects the "Leg-Reg" model of the course. *Id.*

119. *See, e.g.*, Leib, *supra* note 112, at 169 (noting that it is important to think about the content in the course); Rudesill, et. al., *supra* note 116, at 82 (noting that professors have to decide the content of the course and then they have to decide the order of the course).

120. *See* Leib, *supra* note 112, at 174.

121. *See* Garrett, *supra* note 13, at 11 (noting that many "boutique" legislation courses "appeal to students with a special interest in legislatures and politics, but are not considered a necessary part of the course of study for most students").

122. Leib, *supra* note 112, at 177 (explaining that "rather than shy away from these problems and refuse to make the course required, . . . schools just need to be honest with students about the course from the outset").

123. *See id.* at 177–78 (explaining that professors of legislation need to have "greater attention to student needs and careful course design" to "mitigate—even if they cannot fully eliminate—student discomfort").

whether they are teaching a course rich with political theory or political process. They have likely had to try many iterations of the course and adapt year to year. Legislation faculty are uniquely aware of what they are teaching and why it suits their course and their students.

B. A Clear Alignment with Experiential Learning

Legislation courses also offer a clear pedagogical alignment with the goals and objectives of simulation courses. While challenges lurk, so to do great pedagogical opportunities. Legislation courses are uniquely grounded in political conditions in ways that common law classes are not consistently. They involve what Diana Hess would call "tipping" issues as they move from closed to open issues in the public debate or from open to closed.[124]

Legislation faculty are also already fully challenging existing student schemas for law study. They correct the profoundly "court-centric" emphasis that is otherwise present throughout the law school curriculum.[125] They offset this common law focus and provide a different institutional focus that reveals the "dominance of statutes and regulations over common law."[126] As Ethan Leib described, first year courses are heavily "dominated by a judge-centered perspective on the law, in which all legal questions are answered by people in black robes—and generally black-robed people at the appellate level. That neither reflects reality, nor approximates how lawyers need to perceive the workings of the law."[127]

Legislation courses "cure students of their excessive attention to appellate arguments and judge-made common law in their first-year coursework."[128] They "instill respect for methodological pluralism about law" because "legislatures and agencies 'think' differently about lawmaking and law-application than courts do—and they operate quite differently too."[129] Legislation courses frankly respond to what has been described as the "twentieth century's 'orgy of statute making.'"[130]

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124. HESS, *supra* note 4, at 124.
125. Garrett, *supra* note 13, at 11.
126. *Id.* at 14.
127. Leib, *supra* note 112, at 170.
128. *See, e.g.*, William N. Eskridge & Philip P. Frickey, *Legislation Scholarship and Pedagogy in the Post-Legal Process Era*, 48 PITT. L. REV. 691, 692 (1987) (explaining how the first-year curriculum focuses on judicial analysis and "few, if any, courses [require] similar scrutiny of statutes"); Leib, *supra* note 112, at 170.
129. Leib, *supra* note 112, at 171.
130. Eskridge & Frickey, *supra* note 128, at 691 (quoting GRANT GILMORE, THE AGES OF AMERICAN LAW 95 (1977)).

Legislation courses play an important role in the curriculum generally and specifically in implementing the new ABA Standards. Legislation courses are distinctly contextual and grounded in law as well as politics, economics, and society.[131] Legislation can be the "primary instrument of ordered social change."[132] This context requires a dynamic method of delivery. Avoidance of sensitive issues is not a desirable outcome in a course like legislation.[133] It diverts the students away from some of the important conversations in the legislative field, such as abortion, gender and racial equality, immigration, and education.[134] Professors want to avoid the "sterile view of the legislative process" that one might get from a book.[135]

Successful learning requires student engagement with the material and with each other. Students need to see that the legislative process involves "grappl[ing] with live modern problems."[136] They need to get a "flavor of practical politics and of the clash of social and economic forces."[137] Students need to see that the "legislative process is awkward, unruly and badly integrated with other government functions; the problems it must solve are complex and pressing."[138]

In political debate also lies opportunity for effective teaching in an experiential approach.[139] Perhaps "[p]aradoxically, conflict also generates the tension which *stimulates* such learning."[140] In that sense, the work of the Legislation professor to simulate for students how to work within the context of political divisiveness to achieve client-centered goals is more important than ever. Conflict is not "antithetical to democratic education;" it is central to the legislative process and to democracy itself.[141]

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131. Emerson, *supra* note 113, at 1414 ("[I]n the field of legislative law-making, the play of political, economic and social forces is particularly strong.").

132. Joseph Dolan, *Law School Teaching of Legislation: A Report to the Ford Foundation*, 22 J. LEGAL EDUC. 63, 63 (1969). *See also id.* at 71 (explaining that "law schools leave the impression that the common law and its evolution is the method of social change").

133. HESS & MCAVOY, *supra* note 3, at 176 (concluding that "the cost of avoidance was simply too high" in the view of many public educators).

134. *Id.* at 175.

135. Emerson, *supra* note 113, at 1416 ("One fails to obtain from the book a clear appreciation of the function and actual operation of a modern legislative body.").

136. *Id.* at 1416–17.

137. *Id.* at 1416.

138. *Id.* at 1417.

139. *See* HESS, *supra* note 4, at 6 (noting that schools can be great sites for dialogue about political controversies because teachers can foster deliberation and schools are often more diverse than the venues young people otherwise inhabit).

140. Louis Herman, *Teaching Through Conflict: A Peace Praxis for the Classroom*, 32 PEACE RES. 78, 78 (2000).

141. Sharon Todd & Carl Anders Sastrom, *Democracy, Education and Conflict: Rethinking Respect and the Place of the Ethical*, 3 J. EDUC. CONTROVERSY 1, 1 (2008); *see also* HESS,

Legislation students thus *should* be solving problems of real significance and import.[142] Legislation courses reveal the benefits of experiential learning and the promise of it. Through successful experiential learning in a Legislation course, students can learn how to legislate in a pluralistic world, how to face conflict, and how to channel conflict into legislative activity.[143]

Thus, the work of a Legislation professor training students in how to deal with conflict and how to *face* it is critical to our successful classrooms.[144] The modern political climate uniquely positions the Legislation classroom as a pioneer in modern legal education instead of the high-stakes outlier.[145] To successfully teach legislation, "it becomes crucial to ask how these conflicts arising out of different world views, and which often lead to violence, bullying, and ostracization, can be confronted" and confronted so as to see "respect emerging out of the minefield of contestation over values, beliefs, opinions and truth claims?"[146]

Legislation faculty follow a longstanding legacy of thoughtful course design, organization, and intentionality in an individual professor capacity.[147] These unique perspectives and expectations cumulatively present challenges to teaching legislation successfully, but suggest an unparalleled readiness of legislation faculty to be leaders in implementing the new ABA Standards in a distinct modern backdrop.

IV. STRATEGIZING INTERACTIVE AND INCLUSIVE EXPERIENTIAL LEARNING CLASSROOMS

In this context, experiential learning and assessment need to be carefully designed to facilitate faculty and student success. Formally, experiential learning courses must be primarily experiential in nature, and must "integrate doctrine, theory, skills, and legal

supra note 4, at 12 (explaining that "there is an intrinsic and crucial connection between the discussion of controversial political issues, especially among people with disparate views, and the health of a democracy").

142. *See* Dolan, *supra* note 132, at 69, 85 (noting that many early courses in legislation were unsuccessful because they did not deal with problem solving, instead only focusing on technical aspects).

143. *See* Todd & Sastrom, *supra* note 141, at 1.

144. *Id.* ("The question that we raise here is not how do we do away with conflict, but how do we actually *face* it in ways that further the democratic project?").

145. *See, e.g.*, Bahls, *supra* note 105, at 1046–47 ("Students therefore must understand how political objectives influence the law. Law schools should prepare students to make policy arguments to legislatures and courts to improve the law and the delivery of justice.").

146. *Id.* at 5.

147. *See, e.g.*, Emerson, *supra* note 113, at 1414 ("[T]here appears to be no particular agreement upon what it should attempt to do or how it should be taught. . . . [Thus,] "any study of legislation can readily lose touch with reality and degenerate into useless sterility.").

ethics."[148] They must also provide opportunities for students to perform in the Standard 302 professional skills.[149] They must also develop the concepts underlying the professional skills being taught, provide multiple opportunities for performance, and provide opportunities for self-evaluation.[150] Simulation courses, in particular, must recreate experiences "reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a set of facts and circumstances."[151] These tasks must be supervised by the faculty member, including opportunities for feedback, and they must also include a classroom instructional component.[152]

One model on which to structure a simulation course is to design the classroom itself around the intersection of deliberative democracy and education pedagogy.[153] This model designs the course around the principles of equality, tolerance, autonomy, fairness, engagement, and literacy.[154] Equality suggests that all students are expected to be contributing to the discussion and are equally capable of doing so, consistent with general governance principles.[155] Tolerance provides an important limit on decision-making, requiring students to be tolerant and respectful of the range of classroom discussion that transpires.[156] Autonomy empowers students to direct aspects of their projects and graded work.[157] Fairness serves as a balance on autonomy, requiring that individual self-interest alone not direct the class.[158] Engagement ensures that students consider competing evidence and peer perspectives.[159] Literacy requires students to consider evidence and materials supporting the particular assignment or simulation.[160] The next section builds on

148. ABA STANDARDS, *supra* note 1, at 16 (Standard 303(a)(3)(i)).
149. *Id.*
150. *Id.* (Standard 303(a)(3)(ii)–(iv)).
151. *Id.* at 17 (Standard 304(a)).
152. *Id.* (Standard 304(a)(i)–(iii)).
153. HESS & MCAVOY, *supra* note 3, at 77 (defining "deliberative democracy as a form of government in which free and equal citizens (and their representatives) justify decisions in a process in which they give one another reasons that are mutually acceptable and generally accessible, with the aim of reaching conclusions that are binding in the present on all citizens but open to challenge in the future").
154. *Id.* at 77–79.
155. *Id.* at 77 (explaining that "the principle of political equality holds that all citizens should be allowed to contribute to decision-making").
156. *Id.* at 78 (encouraging students to consider their personal preferences and whether they align with the additional goal of tolerance).
157. *Id.* (including also the autonomy to "revise one's values and commitments").
158. *Id.* (ensuring that students do not solely engage the material from personal preferences).
159. *Id.* at 79 (encouraging students to be informed and concerned).
160. *Id.* (explaining that literacy is a precursor to engaging in democratic discourse).

this framework with specific assignment and assessment strategies.

A. Student-Driven Projects

Experiential courses are positioned for success when designed in a student-centered approach. At the heart of the ABA reforms is a shift toward student-centered learning. Training adult learners, like law students, particularly requires student-centered learning techniques. Adult learners uniquely want to be in control of their learning processes.[161] In that sense, a legislation course navigating challenging political divisiveness will benefit heavily from student-driven content.

Student-centered learning is an approach in which students develop learning goals and work to achieve them.[162] This allows students to build on their "unique background knowledge and experiences and further explore, select, and use tools and resources."[163] Four main premises support the student-centered learning approach. First, learners are self-directed and prefer to manage their learning instead of having their learning imposed on them.[164] Second, learning occurs best experientially, particularly for more experienced students.[165] Third, students must be ready to learn.[166] Fourth, learning needs to be contextualized in the real world and seen as "problem-centered rather than subject-centered."[167]

This transforms students from passive recipients to "owners of learning, goals, decisions, and actions."[168] This type of learning model is a "paradigm shift" for students and faculty alike.[169] It requires careful ownership and leadership to ensure that students are positioned for success[170] and allows students to have flexibility and options.[171]

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161. *See* Warren, *supra* note 17, at 86.

162. Eunbae Lee & Michael J. Hannafin, *A Design Framework for Engagement in Student-Centered Learning: Own It, Learn It, and Share It*, 64 EDUC. TECH. RES. & DEV. 707, 708 (2016).

163. *Id.* (explaining that "[s]tudents navigate unspecified paths, monitor progress, and develop personal strategies").

164. Kristin B. Gerdy, Jane H. Wise & Alison Craig, *Expanding our Classroom Walls: Enhancing Teaching and Learning Through Technology*, 11 J. LEGAL WRITING INST. 263, 269 (2005).

165. *Id.* at 269–70.

166. *Id.* at 270.

167. *Id.* at 271.

168. Lee & Hannafin, *supra* note 162, at 711.

169. *Id.*

170. *See id.*

171. Gerdy, Wise & Craig, *supra* note 164, at 269.

Recognizing the diversity of political and ideological perspectives in a legislation course and the range of students' level of engagement in the course, student-driven projects can shape the entirety of the simulation course content. In my course, as an example, a student-centered project is fifty percent of the students' overall course grade. The remaining half is allocated to participation and in-class assignments designed to teach, reinforce, and practice the skills and theories underlying the course. This ensures a considerable degree of autonomy and engagement.

Structuring a simulation course around student-centered learning is certainly central to the revised ABA Standards, but it is also integral to diffusing political volatility. Designing a simulation around faculty interest alone and faculty expertise alone, will limit the coverage, narrow course perspectives, and create a static pedagogy over time. Certainly for many "paper classes" in the upper-level curriculum, faculty have long since allowed students to direct the content of the papers they write. What is notable about this approach, in contrast, is the range of *types* of projects students can select and the role of the students in shaping the goals and means of assessment of their projects.

A sample directive to students regarding course project assignments is attached at Appendix A. In my course, for example, students can choose from three different types of projects. First, they can do field work where they embed themselves within a group, legislative office, committee, taskforce, etc. and help to achieve a legislative goal. In field work, the students are more advocacy driven and they are guided by the standing goals and directives of the group. For example, students might help a non-profit organize a rally day at the statehouse or write legislative position papers for an organization. Second, students can also do a case study on a live legislative or statutory interpretation issue. Here, students are often tethered to a bill or a topic less than a group or an event. They are often more objective than subjective in studying a bill or statutory interpretation dispute. The students seek to understand more objectively why a bill is proposed or sought, who supports/opposes it, what drafting considerations shaped it, how the bill moves through the process, etc. Third, students can conduct a historic case study of past legislative enactments. For this version, students are objective and independent. It ensures that students can pick a project that can be done remotely and subject to each student's individual availability.

If students select the *type* of project they want to engage in (thus selecting projects ranging from objective to advocacy and historic to

current events) and the subject matter of the project, the professor will have achieved three critical successes. First, the professor ensures that the simulation is dynamic and grounded in the kind of real-world lawyering anticipated in simulation courses. Second, if selected early enough in the semester, it gives the professor a springboard to design all other course content and simulations, thus diffusing critiques regarding the professor's role in selecting content. Third, it shifts some of the heavy lifting of course preparation and research to the students each semester.

Allowing students to self-direct their topic selection ensures a broad range of topics covering the political and subject-matter spectrum at the federal, state, and local level. For example, a prior legislation course offering included the following range of topics and projects:

- Comparative case study on efforts to legalize marijuana in Colorado, Washington, Ohio, and Kentucky (state–comparative).
- Drafting proposed Louisville City Council ordinance banning plastic bags in grocery stores following other city models (city–comparative).
- Case study on Kentucky's efforts to criminalize strangulation (state).
- Study of the political conditions leading to the passage of the Affordable Care Act and the political conditions that would be necessary for its repeal (federal).
- Historical study of G.I. Bill enactments and obstacles (federal).
- Study of how and why executive orders governing immigration policy are used in lieu of or in addition to legislation (federal).
- Study of "hate rhetoric" in legislation comparing the Chinese Exclusion Act to modern legislation seeking to limit or ban Muslim Americans (federal).
- Case study of proposed law requiring medical review panels in medical malpractice claims and the Kentucky Justice Association's lobbying efforts in opposition (state).
- Analysis of the legislative goals and objectives of the Black Lives Matter Movement (federal/state).
- Drafting legislation requiring personal finance curriculum in schools (state).

- Case study on Kentucky bill regarding students' rights of religious expression in public schools and universities (state).

These topics notably span the *type* of projects that students are electing to complete, the subject matter of projects that students are electing to study, and the political approach or perspective that shape the students' interests and objectives. This ensures that the projects are structured in a way that is relevant, dynamic, and diverse. It does not compel students to engage divisive topics if they are not comfortable, but it makes space for students to do so, if that is their professional and academic goal. This method also ensures that professors are fostering an environment and structure to facilitate experiential learning, but not growing fatigued or burned out from developing ongoing simulations from year to year.

Importantly though, faculty would not want their efforts to design a course around student-centered projects to transform into a cohort of eighteen to twenty independent studies that the faculty member oversees. Successful simulation course design should include a careful construct of "autonomy, scaffolding, and audience."[172] Autonomy is the ability of students to make their own decisions and act voluntarily, owning and mediating the learning process to accomplish their learning goals.[173] Professors, in this capacity, support the learning process, rather than dictate it.[174] Here, professors support students in selecting, shaping, and executing a project of the students' own design and choosing, as is discussed above.

Autonomy, of course, has to be deployed with caution.[175] It is not the same as independence.[176] It involves an "internal locus of control," but faculty support this with scaffolding.[177] Scaffolding as a concept depicts how faculty build the structures to support learning, but are poised to gradually remove those structures as the students succeed and thrive.[178] The simulation course professor then builds the classroom time that complements the student-centered project around exercises that develop, strengthen, and inform the larger mass of student projects that are underway.

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172. Lee & Hannafin, *supra* note 162, at 715.
173. *See id.*
174. *See id.*
175. *See id.*
176. *See id.*
177. *Id.* at 716 tbl.2.
178. *Id.* at 716 tbl.2, 719.

Of course, autonomous learning with scaffold support should not be occurring in a vacuum. Just as real-world lawyering does not occur in a vacuum, so to must a simulation course be sure to bring the student-centered projects to an audience in a thoughtful and dynamic presentation. Students need to present and discuss their work with "authentic" audiences.[179] This will help students see the value of their work beyond this teacher and this classroom to see its real application.[180] This model can be characterized as the "own it, learn it, and share it."[181]

With that structure in mind, I have found it helpful to structure classroom presentations around a "student as expert" model that governs the scope of the project and ensures a strong degree of both literacy and engagement. This stands in stark contrast to the "student as advocate" model. The student is not advocating for the bill in his or her class presentation, even if a specific outcome was ultimately the student's reason for selecting the project. What the student *wants* the outcome to be is not relevant to the presentation in front of the class. Those comments and perspectives may accompany a written submission to the professor.

Rather, students should plainly understand that the goal of their assignment is to be an expert on the topic that they have selected. Students should frame their project with a set of questions that they seek to answer and set out to answer those questions. In this sense, student presenters should prepare to answer any range of questions from any range of perspectives on the topic thoughtfully and objectively. For example, if a presenter is studying a felony expungement bill, the student should be prepared for questions about the risks of expunging felonies, the benefits of expunging, the stakeholders on all sides of the debates, the legislative challenges, the substance of the bill, etc. They will thus be assessed on their ability to analyze the questions they have identified and their ability to demonstrate mastery of the material.[182]

A "student as expert" model positions students to begin in a thoughtful, objective frame. It teaches them to acknowledge weaknesses, counter perspectives, and context. It stands in stark contrast to a defensive framing as advocates defending a position. This

179. *Id.* at 717 tbl.2, 721.

180. *See id.* at 721.

181. *Id.* at 724 tbl.3.

182. I often explain this scope in class by analogy to the "pivot foot" in basketball. Students need to plant their foot on a topic with a set of inquiries. They must then be able to move agilely within a certain range of that pivot foot. For example, if the student has studied a "tort reform" bill in Indiana, he should be prepared to answer questions such as how that bill compares to bills enacted in other states or prior bills proposed in that state.

models professionalism for our students and teachers them to engage with adverse perspectives thoughtfully and respectfully. Ultimately, it prepares them to be better advocates because their advocacy begins with a candid objective understanding of the subject matter.

Because the topics that students select are relevant, timely, current events, it is critical that the class share a common set of knowledge (literacy) to ensure equality in engagement. Some students in the class may hold entrenched perspectives on the topic and the level of knowledge and support for the topic may vary considerably. To manage these considerations, the student presenters must select short readings to prepare the classmates for the presentation. For example, if a student is presenting on the legalization of marijuana, she might include the legislation considered in her home state, a successful bill passed in another jurisdiction, and a short reading in support of and in opposition to legalizing marijuana. This technique ensures that the speaker grounds herself in an objective command of the material. It ensures that classmates have a common set of terminology, facts, and content as a foundation to further discussion. These readings are assigned to the class on the day the student presents. This also empowers students to move their presentation toward the analysis of the legislative process, statutory interpretation, or other substantive points tied to the course, instead of wasting precious presentation time on the who, what, when, where, and why of the particular legislative proposal.

B. Experiential Observations

Students enter any class with existing preconceptions about the world and concepts, particularly in a politicized class like legislation.[183] The trick for law faculty is to harness that constructivist approach by which students want to evaluate new knowledge and concepts against existing experiences.[184] An experiential learning requirement seeks to harness these constructivist approaches. It positions students to learn through connecting new information to existing knowledge.[185]

One way to help students experience a field with more candor, sophistication, and relevance is to require them to each complete an experiential learning component of the course. This is a graded requirement that directs the students to go spend one to two hours

183. *See* Warren, *supra* note 17, at 86.
184. *See id.*
185. *See id.*

observing the legislative process (or it could apply in any substantive field) in action.[186] For legislation, it might be a committee hearing, a legislative debate, a meeting between a constituent and a legislator, or any other observable component of the legislative process. Although it is not the pedagogical "gold standard," this can even be done via television, live streaming, recordings, etc. This softens the ability of working, overwhelmed, busy students to contest the requirement as difficult or overwhelming.

Whether students are savvy and interested in the course or just taking the course to fulfill a graduation requirement, an experiential observation learning requirement can be a useful pedagogical tool. For savvy students, it will position them to act as observers to test their existing assumptions or views about the field. They can use their constructivist adult-learning approaches to compare and contrast their experience to their existing assumptions about the field. For students just trying to complete a graduation requirement, this will ensure that they get closer to the field and more entrenched in it.

Ideally, this requirement will also ensure that the students see real world conflict in action. They can observe how disagreements manifest in the legal system, how lawyers navigate that disagreement, how they prepare for that conflict, and how they lawyer through it. It can help "show" instead of "tell" the roles that successful lawyers must play.

Students are able to see theory come to life, give shape to process and procedure, and also master a substantive area. This allows the students to pick a substantive area of interest to them. For example, a student interested in drafting a "bag ban" bill imposing a fee for the distribution of plastic bags in grocery stores was able to locate an online video of a city council meeting in another jurisdiction to watch and brainstorm strategies for passing a similar bill in Louisville. Another student attended training for citizen activists organized by a group of progressive nonprofits before the peak of the Kentucky legislative session to observe and critique how citizens are informed of the legislative process and advised to engage in it. This requirement gets the students out of the classroom and observing the field in action.

186. See Appendix B for a sample Experiential Learning Assignment.

C. Assigned Roles in Simulation Role Plays

Assigned role plays can also be an effective tool to train students to work in adversarial conditions and to diffuse political divisiveness. It can build more versatile literacy and also tolerance. Students are more likely to participate more inclusively when they are playing a role.[187] Many law faculty use simulation exercises, but distinctly here the roles are all assigned and rotating to allow all students to experience different roles on various issues. It also ensures fairness in student experience, ensuring that all students are more systemically pushed out of their comfort zone to play new roles.

For example, one effective way to teach statutory interpretation might be to assign students to role play a judicial confirmation hearing. They each draw a dominant approach to statutory interpretation (e.g., textualist, purposivist) out of an envelope and they role play in that character. A judge in the confirmation process will then be called to "testify" before the class in which she will describe her approach to statutory interpretation. The other students—in their roles as members of the judiciary committee—will then ask the types of critical questions a purposivist would ask of a textualist, etc. This technique pushes students to try on various identities, to master the material, and to see the interplay between different theories. It avoids a critique on, for example, Justice Scalia or a personalized debate in which students opine on the theories in the abstract based merely on their own political and legal views. The goal is to ensure that students are versatile in discussing and critiquing all theories.

Role plays are also useful in the presentation of final projects.[188] Rather than allowing students to ask questions and critique a final project from their subjective perspective or their own individual political perspective, the final projects are presented as testimony with some students assigned (with tent cards visually displayed in front of them) as "supporters," "opponents," and "undecideds" with respect to the proposal being presented. This technique ensures that presenters are asked a balanced range of questions. It will also ensure that the student participants are not dogmatic or ideologically entrenched in their questioning of the presenter. Rotating the tent cards around from speaker to speaker ensures that students

187. Stephanie Wildman, *The Classroom Climate: Encouraging Student Involvement*, 4 BERKELEY WOMEN'S L.J. 326, 329 (1989).

188. See Appendix C for a sample peer feedback form for final project presentations.

play different roles and view different proposals more or less critically depending on their assigned role.

This technique also incorporates graded assessment of the students' abilities to stay in role and to actualize the role they were assigned. These accompanying assessment points are addressed in the next section.

D. Holistic, Sustained, and Assessed Student Participation

Student-centered learning, however, cannot allow a classroom to become a series of individual independent studies, each under faculty supervision. It would not be effective or sustainable to merely supervise a series of individual projects whereby students only stay narrowly focused on their own learning and performance. Rather, it is also critical that faculty create a collaborative classroom in which students work together within the course framework.[189]

The classroom must also be an inclusive place in which faculty and students can share respective views and perspectives.[190] This is not simply about respecting student space, but rather about expanding the range of perspectives they will face in the field. In legislation specifically, students will encounter opposition in enacting legislation, interpreting legislation, and implementing legislation. That opposition will most likely come from adversaries with competing views and perspectives. To complete a simulation course project in isolation is to distort the experiential component of the course. To create an inclusive classroom is an important normative goal for teaching generally, but also to avoid distorting the realities of the field.[191]

Thus, a successful simulation course should be built around graded participation that is holistic and sustained. Left unmanaged, most law students approach class participation in a serial or sporadic manner.[192] A serial manner means that students generally let one classmate carry the load of class participation until they are done. Another student then picks up the weight of class partic-

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189. Meyers, *supra* note 100, at 95 ("A shared set of goals and a common course agenda are important determinants of students' reaction to the class and their motivation to learn.").

190. Sheri Saunders & Diana Kardia, *Creating Inclusive College Classrooms*, UNIV. OF MICH. CTR. FOR RESEARCH ON LEARNING & TEACHING, http://www.crlt.umich.edu/gsis/p3_1 (last visited Mar. 27, 2017).

191. *See generally id.* (explaining that inclusive classrooms require thoughtful attention to course content, session planning, and knowledge of the enrolled students).

192. *See, e.g.*, Kevin J. O'Connor, *Class Participation: Promoting In-Class Student Engagement*, 113 EDUC. 340 (2013) (suggesting techniques to break from the typical participation patterns in college classrooms).

ipation and carries it another distance. The stakes of class participation thus are passed along like "participation hot potato" from student to student.

In addition, students generally approach class participation as a sporadic exercise. In this sense students manage all of their competing responsibilities—from work to journals to family commitments—as one would approach the arcade game of "whack-a-mole." If they have not participated regularly or lately in a particular class, they might make a push to get it out of the way or build up some professional capital with the professor. They then disengage and turn to "bopping" out other tasks like the moles that pop out of the arcade game in an endless and exhausting flurry of activity.

Neither of these approaches, serial participation nor sporadic participation, adequately reflects law practice or prepares students well to be law colleagues. Both also present the risk of being implicitly exclusionary. Women, for example, are often more acculturated to be silent, well before they arrive in a law school classroom.[193] Rather, class participation should be consistent and assessed.[194] It should be active and inviting to engage a large number of students.[195]

Effective experiential learning will also require useful feedback.[196] Effective education requires formative feedback that gives students the chance to gauge their performance and adjust.[197] The incorporation of more assessment into the syllabus is a critical component of the new ABA reforms, despite very little research supporting how law students will perceive the increased use of assessment.[198] Effective feedback needs to be non-controlling and informational, provide rationales, and affirm student competency.[199]

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193. Wildman, *supra* note 187, at 326–27.

194. *See generally* Alex Steel, Julian Laurens & Anna Huggins, *Class Participation as a Learning and Assessment Strategy in Law: Facilitating Students' Engagement, Skills Development and Deep Learning*, 36 U.N.S.W. L.J. 30, 54 (2013) (recommending ways to tie assessment to reinforcing learning outcomes and to minimizing barriers to class participation).

195. *See generally* O'Connor, *supra* note 192 (proposing a range of techniques to achieve effective class participation).

196. *See* Emily Zimmerman, *What Do Law Students Want?: The Missing Piece of the Assessment Puzzle*, 42 RUTGERS L.J. 1, 1 (2010) ("Some of the most pointed critiques of legal education focus on law student assessment.").

197. Daniel Schwarcz & Dion Farganis, *The Impact of Individualized Feedback on Law Student Performance* 2–3, 7 (Minn. Legal Studies, Working Paper No. 16–13, 2016), http://ssrn.com/abstract=2772393 (noting, however, that "remarkably limited empirical evidence actually demonstrates that better feedback can improve students' performance in the law school setting").

198. *See* Zimmerman, *supra* note 196, at 4.

199. Paula J. Manning, *Understanding the Impact of Inadequate Feedback: A Means to Reduce Law Student Psychological Distress, Increase Motivation, and Improve Learning Outcomes*, 43 CUMB. L. REV. 225, 245 (2013).

When delivered properly, the feedback should promote an internalization of values and a sense of purpose.[200] Notably, a majority of law students surveyed wanted multiple graded assignments—as the new ABA Standards would suggest; these preferences decline from the beginning to the end of the students' first year of law school.[201] Exit surveys of first year students revealed consistent interest in having class participation graded, but diverse perspectives about other forms of assessment.[202]

Simulation courses create a carefully constructed classroom community that "encourages a culture of questioning, respect, and risk taking."[203] And, the remainder of the class that is not presenting, simultaneously, on any given day needs to be engaged in thoughtfully critiquing the student to ensure that they are advancing their knowledge of the course material.[204] It is not a productive use of class time to allow students to sit and passively absorb their classmates' presentations.

V. CONCLUSION

In modern political times, legislation faculty are presented with unique challenges implementing the ABA Standards in the wake of great polarization and divisiveness. While these challenges might not have been anticipated, they merit additional development, discussion, and training to help faculty and students alike implement successful simulation courses. This article begins the dialogue with at least one model of how a course might be adapted to reflect real-world lawyering on current event issues while tempering criticism or marginalization. This article highlights how student-centered projects can structure the entire course with assigned role plays and graded participation as at least one effective model for a simulation course.

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200. *See id.*

201. *See generally* Zimmerman, *supra* note 196 (studying student preferences for assessment in terms of quantity and type of graded assignments, ungraded assignments, feedback, and class participation).

202. *See id.* at 49.

203. *See* Warren, *supra* note 17, at 100 (quoting NAT'L RESEARCH COUNCIL, HOW STUDENTS LEARN: HISTORY, MATHEMATICS, AND SCIENCE IN THE CLASSROOM (M. Suzanne Donovan & John D. Bransford eds., 2005)).

204. See Appendix C for a sample peer feedback form for final project presentations.

APPENDIX A

Legislation
Professor Abrams

Overview of Final Course Project

The Task

- You will pick from one of three options for a final class assignment or a hybrid of these options. We will work together in the first weeks of the semester to finalize a project proposal and work plan for each of you. Any of these could be done on the federal, state, or local level. They can build on existing work and expertise.
    - OPTION A: Interactive legislative field work
    - OPTION B: De-constructing a "live" legislative or statutory interpretation issue
    - OPTION C: Historical survey of landmark legislation

Objectives

- Cultivate your subject-matter expertise in a particular statutory field;
- Apply theories of statutory interpretation, legislative process, and lawmaking to real world contexts;
- Practice the legislative process, research, interpretation, and drafting skills that we have covered this semester;
- Enhance the depth and breadth of your professional skills beyond the casebook experience;
- Expand your lens for analyzing law, careers in law, and law reforms to include legislative roles and avenues for legislative and political advocacy;
- Re-invigorate your law school educational experience by getting you in the legal community or engaging you in historical, social, political factors to consider, not just what the law is, but how it is made and interpreted.

Assessment

- This project counts for 50% of your overall course grade.
- 40% of your work will be a written submission documenting the project.

- 10% of your work will be a presentation to your classmates highlighting your work on the project and responding to questions effectively.
- The various deadlines along the way will count for the "skills exercises" component.
- I will distribute an assessment framework at a later date.
- Assessment categories will generally include (1) successful and accurate integration of substantive course material; (2) mastery of hierarchy of authority and source usage; (3) thoughtful and sincere engagement in the subject matter; (4) professionalism and polish.

Description of Options

- *OPTION A:* Interactive legislative field work
    - Successful performance of this option requires you to connect with a local organization and complete experiential legislative work with the group, for the group, or in observation of the group. This might include drafting proposed legislation for an organization, writing a position paper on proposed legislation, conducting state research of comparative legislation, attending a lobbying day, etc. The key goal is to engage yourself in an interactive manner in any part of the legislative process. If you select this option, you will spend more time "doing," thus the fieldwork emphasis.
    - Your final written work product will be a journal documenting your project, reflecting on what you've learned, and critiquing the task that you observed or on which you worked. It should be polished, professional, and thoughtful. It should answer the questions of (1) with whom did you work; (2) on what issue(s) did you engage; (3) what did you learn from your experience; (4) how could the process or product be strengthened. Your journal should focus heavily on integrating the course material and showing mastery of it. Your intended audience is law scholars.
    - Your final journal should attach as appendices a billable hours report documenting your hours completed; and any relevant materials (e.g., the legislation at issue).

- You will circulate your journal to the class in advance of your final presentation.
- Your oral presentation will highlight your experience; distribute representative work product (e.g., draft legislation, lobbying notes, etc.); highlight critiques and reflections; and answer any student questions about the fieldwork effectively.
- This entire project should take approximately 15 hours to complete.

- *OPTION B: De-constructing a "live" legislative or statutory interpretation issue*
  - Successful performance on this component requires you to dissect or de-construct an existing "live" statutory interpretation debate at the federal or state level. Your final work product will be a "bench memo" to the judge summarizing the issue in specific terms; highlighting the positions of both parties; documenting those positions in theoretical and specific terms related to our course material; and suggesting a position.
  - The final work product is a bench memo. The accompanying briefs and statutory texts should be attached as appendices.
  - You will circulate your bench memo to the class in advance of your final presentation.
  - Your oral presentation will summarize the key issues; answer student questions about the text; and critique the strengths and weaknesses of the parties' arguments.
  - This requires less collaboration, but is more research-oriented. You are not facilitating an entity in achieving its specific goals, but studying a particular subject matter or piece of legislation.
  - This entire project should take approximately 15 hours to complete.

- *OPTION C: Historical survey of landmark legislation*
  - Successful performance on this option will require you to select a book that chronicles the enactment of a piece of landmark legislation. (I am pleased to provide a sample listing of texts that suit this assignment well or help you brainstorm one.) You

will read the text and prepare a book review critiquing the book and summarizing its contributions to legislation and statutory interpretation. It should summarize the legal framework of the piece of legislation depicted in the text using primary sources exclusively; summarize the narrative of statutory enactment presented by the author; describe legislative obstacles presented in the text; and critique the text overall. Your target audience is law scholars contemplating reading the text. Your review should answer the questions of (1) why read this book; (2) what does this book offer; (3) what are the limitations of this book. It should, at bottom, present a thoughtful articulation of the substance of the book and a reflective critique on the books' strengths and weaknesses. I will provide samples. Your commentary should be tightly grounded in analyzing the book through our course material. It should consider legislative theories, competing approaches to statutory interpretation, procedural and drafting considerations, etc., as relevant to the scope of the book.

- You will circulate your book review to the class in advance of your final presentation.
- Your oral presentation will highlight excerpts from the text that reinforce your key points; highlight key pieces in your book review; and answer any student questions about the text.
- This entire project should take approximately 15 hours to complete.

APPENDIX B

SAMPLE Legislation Experiential Learning Assignment

ASSIGNMENT: You will complete a 1–2 hour experiential learning assignment. I have canceled a class session to make time in the syllabus for you to complete this requirement. This assignment invites you to get out of the law school and attend an event related to the legislative process. You have complete flexibility to select the event or subject matter that interests you most and advances your professional goals most directly. You could watch a committee hearing or floor debate. You could attend a rally at the Statehouse for a cause of your choosing. You could interview lawyers or lobbyists who do legislative work as a career. You could meet with your Senators or Representatives to discuss an issue of interest to you. The opportunities are endless. You are also welcome to do this with another classmate or two, but you must submit the write-up independently. To help you brainstorm, I've listed below a few opportunities and sites of interest. Just pre-approve it with me to be sure it meets the expectations *before* you attend.

- Here is a link to meetings related to Louisville Metro Government: https://louisville.legistar.com/Calendar.aspx. Call and confirm before attending.
- Live coverage via Internet stream of Kentucky Assembly: http://www.ket.org/legislature/.
- Federal legislative coverage on C-SPAN. This is a link to forthcoming coverage, but archived materials also exist: http://www.c-span.org/schedule/.

The experience that you select should involve at least one hour of observing and experiencing the legislative process in action. After you have completed your observation/engagement, send me a journal of approximately 2–3 pages in length responding to the following questions:

(1) **What experiential learning opportunity did you select?** Provide specific details of what you attended or observed, where it was held (or Internet source), and length of time.

(2) **Why did you select this experience particularly?** Explain what you hoped to learn from the experience or how you sought to grow from the experience.

(3) **Describe in detail the substance of the experience.** For example, what was the committee meeting about, what was the floor debate discussing, what did you discuss with your legislator, etc.?

(4) *** Reflect actively on what you learned from the experience. *** How did it comport or not comport with your expectations? What surprised you? What impressions did it leave with you? How did the experience connect back to your course material directly or indirectly? I've starred this question to reflect that it is the core of what I want you to focus on in your write-up.

DUE DATE: This assignment is due by ___, but I strongly encourage you to complete it much sooner than that. I am giving you the bulk of the semester to complete it just to provide maximum flexibility.

Please have fun with this. This is intended to be an interactive way to bring the course content to life. Pick something that advances you professionally, not merely a "busy work," "check the box" approach. Use this as a chance to network, engage, and learn!

APPENDIX C

LEGISLATION FINAL PROJECT PRESENTATIONS
Peer Feedback

Feedback provided to: _____

Feedback provided by: _____

What did you find most interesting about your peer's presentation?

How did your peer's work product strengthen your mastery of the course material?

What questions do you have for your peer about the scope, purpose, or outcome of the project that your peer undertook?

How can your peer strengthen the project content and its rooting in the course material?