RAISING THE BAR, RAZING LANGDELL

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INTRODUCTION

As an introduction to this *Wake Forest Law Review* Symposium, *Revisiting Langdell: Legal Education Reform and the Lawyer's Craft*, I briefly highlight some of the longstanding, substantial damage Christopher Columbus Langdell has done to law schools and to legal education. I also briefly survey some remedies suggested by reason, experience, common sense, and modern cognitive psychology.[1]

I. THREE LANGDELLIAN ERRORS

A. Overview

Langdell did much of his damage by promoting three wrong and counterintuitive notions: (1) law is a science of principles and doctrines known with certainty and primarily traced through case law,[2] (2) studying redacted appellate cases is "much the shortest and best, if not the only way" of learning such law,[3] and (3) despite Langdell's own roughly fifteen years of practice experience, practice experience taints one's ability to teach law.[4] As we shall see, far from elevating legal education, these notions have damaged it, oversimplified it, and rendered it much less rigorous than we should demand.

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1. For a more detailed analysis of the issues addressed in this introduction, see generally Harold A. Lloyd, *Exercising Common Sense, Exorcising Langdell: The Inseparability of Legal Theory, Practice, and the Humanities*, 49 WAKE FOREST L. REV. 1213 (2014).

2. *See* C.C. LANGDELL, A SELECTION OF CASES ON CONTRACTS, at vi (2d ed. 1879).

3. *See id.*

4. *See* BRUCE A. KIMBALL, THE INCEPTION OF MODERN PROFESSIONAL EDUCATION: C.C. LANGDELL, 1826–1906, at 166 (Daniel Ernst & Thomas A. Green eds., 2009). Langdell later moderated his views somewhat on practice taint so long as there were sufficient other faculty members who lacked practice experience. *See id.* at 167, 190.

B. Purported Science and Study of Redacted Appellate Cases

1. Claimed Certainty and Efficiency

Langdell's wrong and counterintuitive notions (1) and (2) above are directly related, and I shall survey them together. Quoting Langdell more fully, Langdell claimed that:

> Law, considered as a science, consists of *certain* principles or doctrines. To have such a mastery of these as to be able to apply them with constant facility and certainty to the ever-tangled skein of human affairs, is what constitutes a true lawyer; and hence to acquire that mastery should be the business of every earnest student of law. Each of these doctrines has arrived at its present state by slow degrees; in other words, it is a growth, extending in many cases through centuries. This growth is to be traced in the main through a series of cases; and much the shortest and best, if not the only way of mastering the doctrine effectually is by studying the cases in which it is embodied.[5]

Yet, Langdell also contradictorily claimed that the "vast majority [of cases] are useless and worse than useless for any purpose of systematic study."[6]

2. Actual Bad Science and Worse

Langdell's train thus jumped its tracks (if it ever had any) at the outset. As Holmes noted, how can it be scientific to ignore most cases when purporting to do a science of actual cases?[7] In addition to this problem with Langdell's "science," other problems abound. Law develops through means other than cases. For example, law also develops through statutes and regulations, and case law is in fact generally subordinate to statutes and regulations in our democratic system of government.[8] Furthermore, much of the law is not knowable with certainty. If it were, what use would we have for lawyers or dissenting opinions? By definition, for example, a vague term such as "due process" lacks the clear definitional boundaries needed for such certainty.[9] We should not distort the law by claiming such certainty exists when it does not.

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5. LANGDELL, *supra* note 2, at vi (emphasis added).

6. *Id.*

7. *See* DAVID ROSENBERG, THE HIDDEN HOLMES: HIS THEORY OF TORTS IN HISTORY 46–47 (1995).

8. *See* Lloyd, *supra* note 1, at 1227.

9. "A word is *vague* if there is no way of telling just where correct use of the word begins and where it leaves off, as things vary in degrees." STEPHEN F. BARKER, THE ELEMENTS OF LOGIC 39 (1965). For a further discussion of vagueness, see Harold A. Lloyd, *Law's 'Way of Words:' Pragmatics and*

Furthermore, redacted appellate cases do not always provide the best and most efficient way to study the law. First, it is a subversion of legal order to start with the lower law of cases rather than, for example, the higher law of applicable constitutions or statutes.[10] Second, how can we judge the quality of a case analysis of a constitutional or statutory provision if we have not also independently read and analyzed the provision itself in light of its full, true context, including purpose?[11] Even where a case purports to give such full context, good lawyers must make their own inquiry. Third, Langdell's claim fails where no cases exist interpreting or applying the statute, constitutional provision, or rule in question. Fourth, if a rule and its explanation can be set out in a page, how can it be more efficient to teach the rule with a redacted ten-page (or even two-page) case? By taking such an inefficient approach, do we not "dumb down" legal education by both the loss of coverage and by the loss of time for analysis such inefficiency entails?

3. Redaction and Loss

a. Loss of Craft and Life

In addition to these problems, the word "redacted" brings us to even deeper problems with Langdell. First, redacted appellate cases have been gutted of much of their life and humanity. Not only do Langdell's "scientific" scissors snip away at what really happened, but also the appellate judges themselves only see what made it into the record. Our position as case readers is even more myopic. Even if we read the entire case, we only see what these judges thought important to mention from a record already bereft of much of what occurred.

Thus, much of the lawyer's craft (including strategy decisions and much if not all of any operative contract or other document text), as well as the personalities involved and the human consequences of such cases, can be largely lost. This is a big deal: what kind of "law" are we really studying when we lose such craft and humanity? Whatever it is, I feel safe in saying it is an oversimplified version we should reject. If we are to really study law, we must look beyond the appellate fragments Langdell would have us read. We must also explore the multiple layers of action, decision, text, and human effects of what lawyers actually do.

Textualist Error, 49 CREIGHTON L. REV. (forthcoming 2016) (manuscript at 60–62), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2658278.

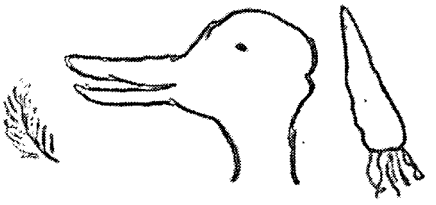
10. *See* Lloyd, *supra* note 1, at 1227 (discussing the hierarchies of the law).

11. *See* Lloyd, *supra* note 9 (manuscript at 45–56) (discussing context).

b. Overlooked Framing, Narrative, and Humanities

i. Overlooked Framing of Facts

This leads us to deeper waters still. Part of this missed craft and humanity can include the roles of framing, narrative, and the humanities in cases. Redacted appellate cases can create the illusion that facts were simply given when in truth multiple reasonable frames existed. For example, is the following a drawing of a duck or of a rabbit?[12]



A redacted appellate case may simply assume that it is a duck (perhaps because it is eyeing the feather and ignoring the carrot) or that it is a rabbit (perhaps because it is ignoring the feather and eyeing the carrot). However, a careful lawyer should see both possible framing choices (among others[13]) and how they might drive a case in different ways. For example, if the case is about a stolen duck, taking this picture as one of a rabbit probably means it will have little evidentiary use in the case (unless perhaps the feather could play some role).

ii. Overlooked Narrative and Framing

To give a concrete actual example, Professor Linda Edwards notes how competing story frames drive cases such as *Hamdi v. Rumsfeld*,[14] and how nothing in Langdell's "science" can arbitrate between such narratives.[15] In *Hamdi*, a Louisiana-born U.S. citizen relocated to Saudi Arabia with his parents and was later captured in

12. This illustration is from Harold Anthony Lloyd, *"Original" Means Old, "Original" Means New: An "Original" Look at What "Originalists" Do*, 67 NAT'L LAW. GUILD REV. 135, 140 (2010).

13. Is it a hare? A goose?

14. Hamdi v. Rumsfeld, 542 U.S. 507 (2004).

15. Linda H. Edwards, *Where Do the Prophets Stand?* Hamdi, *Myth, and the Master's Tools*, 13 CONN. PUB. INT. L.J. 43 (2013); *see also* Harold A. Lloyd, *Narrative in Law and Life: Some Frequently Asked Questions*, SECOND DRAFT, Fall 2015, at 2, 4–5.

violence following September 11, 2001.[16] He was confined in Afghanistan, Guantanamo, and then in U.S. military jails.[17] As Professor Edwards notes, "The administration did not disclose its allegations against him, and he had no opportunity to refute them. The government argued that because the United States was under attack by terrorist forces, it could keep Hamdi . . . essentially for as long as it chose."[18]

Edwards persuasively argues that *Hamdi* turned on something like the following competing narratives: the "myth of redemptive violence" where the executive branch required a "virtually free hand" to protect us all from a world described as "an overwhelmingly dangerous place"[19] and the narrative of "the hard-won freedoms secured [for American citizens] by the American Revolution and the founding of the Nation."[20] As Edwards also persuasively argues, the Supreme Court found the "hard-won freedoms" to be the more compelling narrative and thus ruled that Hamdi could not be indefinitely detained without a trial.[21] In doing so, "[t]he majority of the Supreme Court saw the arguments primarily through the lens of the American story establishing the liberty and safety of citizens as against an unconstrained Executive."[22] Of course, nothing in Langdell's "science" gives us the means to resolve these competing narratives. Instead, it masks questions of great importance, such as whether following the rule of law really weakens us and whether violence is "the only effective answer to human evil."[23]

iii. Overlooked Classical Rhetoric and Framing

Grasping the importance of framing also helps us see how Langdellian law school suffers from the absence of a careful study of classical rhetoric. Classical rhetoric understood the importance of framing and thus explored (among many other things) types of persuasion, invention of argument, arrangement of argument, and the extremely critical notion of "stasis" (or framing of the real issue without waiving matters of real importance), not to mention logic and fallacy.[24]

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16. *Hamdi*, 542 U.S. at 510.
17. *Id.*
18. Edwards, *supra* note 15, at 59–60.
19. *Id.* at 61, 63.
20. *Id.* at 64.
21. *Id.* at 66.
22. *Id.*
23. *Id.*
24. *See* RICHARD A. LANHAM, A HANDLIST OF RHETORICAL TERMS 165–66, 170–74 (2d ed. 1991).

To touch on just one of these critical areas of rhetorical study, stasis theory locates issues on a line that includes the following three questions, each of which concedes the issue before it: "Does it exist?" "What is it?" What is its quality?[25] If we start our debate at the stage of quality (for example, we agree that the debate is about whether a murder was justified), we have conceded the first two issue locations (i.e., that a killing occurred and that it was murder). Fumbled stasis can thus be grievous error.

Given the importance of narrative and framing in the law, how can we in good conscience not be teaching these critical classical rhetorical skills to law students? Instead of a case-based approach, which ignores the vast majority of cases and redacts others to create the appearance of certainty where it does not exist, we need to expand upon and explore law's true complexities through more study of framing, narrative, and classical rhetoric. We need to stop oversimplifying what we do.[26] (Classical rhetoric, by the way, had its own Langdell who did it great damage: Peter Ramus who reduced rhetoric to mere style and delivery.)[27]

4. Creating Adversaries and De-emphasizing Transactional Practice

Unfortunately, the damage of Langdell's case method does not end with all the injuries noted above. The adversarial posture of redacted appellate cases can also create the illusion that best practices are always adversarial. This is simply not true. Situations can be win-win (especially in transactions) if only the parties and their lawyers are smart and creative enough to achieve such an end.[28] I have no doubt that much needless suffering has occurred and much wealth has been lost (or never created) because of this adversarial illusion.

This focus on appellate cases also ignores nonlitigation practice. Students interested in these areas are often simply left adrift and are in any event often given fewer opportunities to shine in law school. Just a few days ago, a student interested in transactional law noted all of the available moot court competitions and asked me

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25. *See id.* at 93.

26. See Lloyd, *supra* note 1, at 1235–36, on the importance of rhetoric in legal education. *See generally* Harold A. Lloyd, *Plane Meaning and Thought: Real World Semantics and Fictions of Originalism*, 24 S. CAL. INTERDISC. L.J. 657 (2015) (discussing how issues, rules, applications, and conclusions can all turn in different ways depending upon the frames, concepts, metaphors, and narratives involved).

27. *See* EDWARD P.J. CORBETT & ROBERT J. CONNORS, CLASSICAL RHETORIC FOR THE MODERN STUDENT 504 (4th ed. 1999).

28. *See, e.g.*, Lloyd, *supra* note 26, at 680–81 (examining a ring dispute that could be a win-win for both parties if their counsel would only ascertain their clients' real interests).

why those interested in transactional law do not have their own competitions as well. That is of course a very good question.

C. *"Taint" and the Alleged Theory-Practice "Divide"*

1. *The Dilemma*

Turning to Langdell's notion that we should trust the education of our lawyers to those who have never practiced law, I have trouble imagining a sillier or more frightening idea. Lawyers uphold our democracy, protect our rights, and expand and protect our transactional wealth. Who in his right mind would entrust legal education to those who have never practiced and thus almost certainly could not perform these vital functions themselves?

And yet, thanks to Mr. Langdell, we find ourselves in just such a silly and frightening situation. Even worse, any remedy might at first seem hopeless. The need for practice experience can be understandably lost on those who lack it; yet, those persons still control much of the academy. How can they know how much their students suffer from lack of instruction about matters and skills they themselves do not know or possess? And worse, how can we ever hope for change when those in charge at best cannot know what they do not know and at worst have elevated opinions of their own ignorance?[29]

2. *Market Concerns*

To succeed, we need to explore Langdell's error in ways that those without legal experience can comprehend. We might first point out the simple problem of market economics. The pay disparity between "high-caste" and "low-caste" professors can be quite large. For example, according to the 2013 report by the Association of Legal Writing Directors and the Legal Writing Institute, the average salary for nondirector legal writing faculty members was $78,479 for the 2012–13 academic year.[30] In comparison, the median annual salary for the 2011–12 academic year at the University of North Carolina School of Law was $115,826 for an assistant professor and $174,417 for a tenured

29. Perhaps when reform is complete we can all chuckle at the notion of a practice-pure law Brahmin and at those who seriously tried to play the role. However, the damage is too real at this point for any such levity. For those who doubt how bad the damage can be, I direct them to read Lawrence Rosenthal, *Those Who Can't Teach: What the Legal Career of John Yoo Tells Us About Who Should Be Teaching Law*, 80 MISS. L.J. 1563 (2011) (discussing the poor analysis of a legal "scholar" in the Bush torture memos).

30. ASS'N OF LEGAL WRITING DIRS. & LEGAL WRITING INST., REPORT OF THE ANNUAL LEGAL WRITING SURVEY: 2013, at ix (2013).

professor.[31] It takes a very devoted legal writing professor with years of practice experience to keep teaching in such a disparate (and even upside-down) pay market. This should matter to the "high-caste" professor as well. If the "low-caste" teachers quit or are fired for lack of tenure, will that not increase the workload of everyone else? And if the "high caste" teachers cannot perform this additional work because they lack the necessary practice experience, will this be cause for their own termination? Whatever the answer, it would be an odd-sounding claim that a "high-caste" professor should not be expected to have the qualifications to perform the presumably more basic tasks entrusted to the "lower-caste."[32]

3. Logic and the "Divide"

In our attempt to persuade, we might also take a closer look at the theory-practice divide that the notion of the practice-pure law Brahmin presupposes. To explore whether we can indeed have such a divide, we can begin with some key definitions. When we speak of "theory," we typically mean something like "systematically organized knowledge applicable in a wide variety of circumstances."[33] When we speak of "practice," we typically mean something like "to carry out in action."[34]

These definitions immediately call into question any real divide between theory and practice. In the case of theory, does applicability to circumstances not include applicability to practice? In the case of practice, does not carrying out an action require some plan, some cognitive organization? Does the "divide" not therefore necessarily disappear?

4. Fact, Meaning, and the "Divide"

This disappearing "divide" does not depend upon the particular definitions we happen to choose for "theory" or "practice" or both. Belief in such a divide defies both fact and the very nature of meaning itself.

a. Facts

As for fact, one need not look far to see that practitioners do first-rate scholarship and that teachers with practice experience do first-rate practice work. For example, our Wake Forest faculty includes a professor who wrote a ground-breaking constitutional law

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31. Lloyd, *supra* note 1, at 1246 n.174.

32. I neither wish nor purport to explore the law of tenure or the way it might play out or develop as struggling law schools lay off untenured faculty and turn to tenured faculty to fill the breach. I just wish to raise these questions for those who may have not yet thought of them.

33. AMERICAN HERITAGE COLLEGE DICTIONARY 1406 (3d ed. 1993).

34. *Id.* at 1073.

book while practicing law,[35] and another professor who has argued at the United States Supreme Court and other courts of appeal while teaching at the law school.[36] And a review of our faculty website shows many other examples of such "multitasking."[37]

b. Meaning

As for meaning, we need not look far to see that the very nature of meaning itself rejects any such purported divide. Though many different definitions of meaning exist (too many for me to explore here),[38] it is hard to see how meaning can be divorced from experience since we only engage with the world and with ourselves through our mental and physical experiences. Taking "experience" to include both the external (objective or public) and the internal (i.e., private, such as thoughts and memories), I suggest the following tweaked definition from Charles Sanders Peirce for "meaning": "Consider what actual or possible effects 'we conceive the object of our conception to have. Then our conception of these effects is the whole of our conception of the object.'"[39]

This squares with both common sense and law practice.[40] What does a statute mean? To answer this, we flesh it out, we describe how it would play out in practice, in the world of experience. What does a particular contract provision mean? To answer that, we do the same. If one of its terms is vague, we similarly wrestle with how different people might read the provision in different conceivable circumstances.

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35. *See* MICHAEL KENT CURTIS, NO STATE SHALL ABRIDGE: THE FOURTEENTH AMENDMENT AND THE BILL OF RIGHTS (1994) (written while practicing law, a practice that lasted approximately twenty years).

36. Professor John Korzen has argued at the United States Supreme Court and various courts of appeal while simultaneously teaching. *Faculty Profiles: John Korzen*, WAKE FOREST U. SCH. L., http://law.wfu.edu/faculty/profile/korzenjj/ (last visited Mar. 20, 2016).

37. *See Faculty Profiles*, WAKE FOREST U. SCH. L., http://law.wfu.edu/faculty/profile/ (last visited Mar. 20, 2016).

38. *See* Lloyd, *supra* note 1, at 1216–17, 1250–54.

39. *See id.* at 1217 (quoting CHARLES SANDERS PEIRCE, *How to Make Our Ideas Clear*, *in* 5 COLLECTED PAPERS OF CHARLES SANDERS PEIRCE 248, 258 (Charles Hartshorne & Paul Weiss eds., 1963)). Peirce's actual words were: "Consider what effects, which might conceivably have practical bearings, we conceive the object of our conception to have. Then, our conception of these effects is the whole of our conception of the object." PEIRCE, *supra*.

40. It also squares with modern cognitive psychology, as discussed below. We do not take a purely objective or canonical approach when doing the simulations noted above. We do them from a "perspective of someone actually experiencing the scene." BENJAMIN K. BERGEN, LOUDER THAN WORDS 71 (2012); *see also* GEORGE LAKOFF & MARK JOHNSON, METAPHORS WE LIVE BY 132–33 (2003) (on the "canonical person").

But of course if the very essence of meaning involves experience, then there can be no divide between theory and practice. As suggested by our initial definitions, without practice, theory is left with nothing to explain or organize. And without theory, practice cannot exist because there is no structure within which it can take place. Thus, Langdell's claim that practice taints is not just false. It is gibberish, mere syllables without meaning since neither theory nor practice can exist without the other. To paraphrase Kant, this exercise shows us that theory without practice is empty while practice without theory is blind.[41]

5. Cartesian Dualism and the "Divide"

Continuing along these lines, it is also hard to see how any alleged divide between theory and practice does not suffer from the same kinds of problems that afflict Cartesian dualism. Descartes believed that mind is an inherently different substance from body, with the former essentially involving thought or consciousness and the latter essentially involving bulk or spatial extension.[42] Although he believed minds and bodies were causally interrelated, he unsurprisingly could never clearly explain how this worked.[43] How can dimensionless thought even touch, much less move, something physical? The very notion seems to involve a contradiction: though thought has no dimensions, it can nonetheless somehow take hold of and move a body with dimensions. Gilbert Ryle famously mocked this notion with his "ghost in the machine" label—the mind is somehow a nonphysical ghost that resides in and operates the body.[44]

Any purported theory-practice divide raises similar questions. If theory is essentially different from practice, how can the two interrelate? How does dimensionless theory grab hold of practice? In a way, this seems even more confusing than the Cartesian mind-body problem. There at least the ghost was purportedly in the machine—here it is not clear where the ghost could or should reside.

However, again, if one understands "experience" to include *both* external experience (i.e., objective or public experience) *and* internal experience (i.e., private experience, such as thoughts and memories), these problems evaporate. The interrelationships of mind and body

41. Kant said: "Thoughts without contents are empty, intuitions without concepts are blind." IMMANUEL KANT, CRITIQUE OF PURE REASON 45 (F. Max Muller trans., Anchor Books 1966) (1781). He also said: "Neither of these qualities [i.e., concepts versus intuitions or percepts] is preferable to the other. Without sensibility objects would not be given to us, without understanding they would not be thought by us." *Id.*

42. THE OXFORD COMPANION TO PHILOSOPHY 579 (Ted Honderich ed., 1995).

43. *See id.*

44. *See id.* at 312–13.

and of theory and practice are both defined in terms of the same thing: how they play out in experience.[45]

6. Modern Cognitive Psychology and the "Divide"

Through its notion of embodied meaning, modern cognitive psychology also grasps this necessary theory-practice fusion. As George Lakoff and Mark Johnson have noted: "The peculiar nature of our bodies shapes the very possibilities for conceptualization."[46] We can only experience the world through our senses and our senses are tied to our bodies. As Benjamin Bergen puts it, language can only become meaningful through our "sensory-motor and emotional systems, which define goals and imagine, recognize, and carry out actions."[47] For example, how can we conceive of a particular concrete object other than as our eyes might see it or as our other bodily senses (such as touch) might gauge it?

Abstract concepts are no different. If we were uniform spheres in a universe of only spheres, what would we mean by such "abstract" concepts as left and right? These concepts make sense to us because we are looking out from bodies that have left and right sides.[48] This same embodied-meaning point applies to real world legal abstractions as well. For example, we cannot really talk about the concept of consideration without explaining how it plays out in the real world of experience. That experience is again defined by our bodily senses and by our reasoning within the limitations of sensory-motor and brain functions that we have.

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45. The more monistic approach I suggest of course raises its own questions, and I lack the space to explore them in detail here. For purposes of this Article, suffice it to say that, with some caveats, I am generally in sympathy with William James who, as Graham Bird puts it, distinguishes "ordinary mental experiences and physical items . . . by the contextual relations among pure experiences." GRAHAM BIRD, WILLIAM JAMES 120 (1986). As a first caveat, I would tend to agree with James that "purity" of experience here is relative to the "unverbalised sensation it embodies" and that adults in ordinary circumstances do not experience such purity. *See id.* at 99. I would therefore speak in terms of the relations among experiences, not just pure experiences. Second, I am sympathetic with James's belief, as Graham puts it, that experience has "a certain character of 'self-transcendence' but this is not to make a reference to some inexperiencable [sic], independent reality but only to other accessible parts of experience itself." *Id.* at 111. Finally, I am also sympathetic with Peirce's three categories of experience as shedding further light on the nature of experience and the various ways it functions. *See, e.g.*, CHRISTOPHER HOOKWAY, PEIRCE 106 (1985). I hope to explore these lines further some future day.

46. GEORGE LAKOFF & MARK JOHNSON, PHILOSOPHY IN THE FLESH: THE EMBODIED MIND AND ITS CHALLENGE TO WESTERN THOUGHT 19 (1999).

47. *See* Lakoff, *Foreword* to BERGEN, *supra* note 40, at x.

48. *See* LAKOFF & JOHNSON, *supra* note 46, at 34.

Since theory and practice both involve experience and experience involves body, theory and practice are thus joined literally at the hip. This involves not only obvious cases (such as physically shaking hands to seal a deal) but also anything else we can conceive since conception ties back into experience.

Failure to recognize this leads at best to inferior teaching. As embodied-meaning research shows, mental recreations tied to experience improve performance. For example, bowlers performed better when they had practiced by visualizing proper bowling techniques.[49] Visualizing bad techniques had reverse results.[50] Of course, visualizing no techniques would just be empty. Studies also show that the more good practice experience (including simulation) we have, the faster we are to grasp and respond.[51]

Students thus need to see real contracts in contract classes, real complaints and answers in civil procedure, and video or live examples of excellent advocacy in courses purporting to teach advocacy. Students thus need law professors who have sufficient practice experience to bring these matters alive in class, including providing experienced commentary.

Exams are also learned by doing. Thus, periodic exams, not just final exams, need to be given. Students also need to be given good sample exams with good answers. This of course involves more work by professors who have become accustomed to just giving a final exam and will no doubt have some resistance. However, I believe in the overall goodness of the academy and trust that we will ultimately do the right thing.

7. Law as Craft

Of course, this all brings us back around to what we already know: law involves doing and creating the things lawyers and judges do. In other words, law involves "craft" or the "[s]kill in doing or making something."[52] As skill is the "[p]roficiency, facility, or dexterity that is acquired or developed through training or experience,"[53] law professors must have the necessary training or experience to impart such skills themselves. As I have argued elsewhere, this generally requires a minimum of five years of real practice experience.[54] As law schools continue to change, the last thing faculty without substantial practice experience should want to do is climb out on a limb alongside only other faculty lacking

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49. *See* BERGEN, *supra* note 40, at 25.
50. *See id.*
51. *See id.* at 85.
52. AMERICAN HERITAGE COLLEGE DICTIONARY 331 (4th ed. 2002).
53. *Id.* at 1277.
54. Lloyd, *supra* note 1, at 1242.

practice experience. That not only focuses on a deficiency, but I also would not want to bet in favor of that limb holding long term.

I especially have this concern in the case of young teachers with many years hopefully ahead of them in the academy. If I lacked experience, I would want to climb out only on limbs holding those with practice experience, learn from them, and share in their ethos. I would also want to hear more discussion of possible solutions for younger teachers lacking practice experience, such as sabbaticals for obtaining practice experience (and thereby potentially letting such younger teachers earn larger salaries for a while to help them pay off their educational debts).

All that said, however, younger teachers who seek such experience can be caught in an unfair dilemma. Even if they recognize the importance of practice experience for their teaching and scholarship, they also face the prejudice against practice and thus reasonably fear how actual practice experience might impact their employment. Let's please end this nonsense and encourage younger teachers and would-be teachers to do the right thing and obtain the experience they need to be well-rounded law professors.

CONCLUSION

A. Putting Cases in Context

In concluding, let me elaborate briefly on three points. First, I am not saying that we should not read cases in law school. Lawyers of course need to read cases—just as they also need to read constitutions, statutes, rules, contracts, and all the other materials that make up their practice. What I am saying is that focusing primarily on redacted appellate cases is a mistake for the reasons given above.

B. What Three-Year Law Schools Can Realistically Do

Second, it is unrealistic to expect three-year law schools to turn out all-around, practice-ready attorneys. To be practice ready, such graduates would have to be competent attorneys from day one. Michael Eraut has defined professional competency as "the ability to perform the activities within an occupation or function to the standards expected in employment."[55] Of course, with only three years of study and never having practiced *as a lawyer* for one day, graduating competent attorneys on day one would be impossible on its face. However, we can teach students how to excellently perform things that can give them a competitive advantage plus a head start. For example, we can bring our practice experience to class

55. MICHAEL ERAUT, DEVELOPING PROFESSIONAL KNOWLEDGE AND COMPETENCE 187 (1994).

and walk our students through actual contracts and explore how they play out in the real world. I try to do this as best I can in my Commercial Leasing and my Contracts and Commercial Transactions classes. We can also try to instill the importance of the humanities in what the students will be doing as a lawyer. I not only try to do this in my Classical Rhetoric class but also in all my other classes as well.

C. Abandoning Meaningless Distinctions & Elevating the J.D.

Finally, as a corollary to all this, I hope I have shown that we cannot make any meaningful distinction between doctrinal and nondoctrinal faculty if the former is seen as teaching just theory and the latter as just teaching practice. I say we quit using these terms. I do not use them unless I have to do so in a piece like this. Instead, I focus on the following mantra I have written before: "Let's teach the law in all its dimensions, elevate our standards as a result, and make the juris doctor one of the most rigorous, important, fascinating, useful, and sought-after degrees in academia."[56]

56. Harold Lloyd, *From Days of Auld Langdell: Crisis and Reform in Modern Legal Education*, HUFFINGTON POST: HUFFPOST C. (June 25, 2014), http://www.huffingtonpost.com/harold-lloyd/from-days-of-auld-langdel_b_5212107.html.