"Teaching (About) Mindfulness: A Tale of Two Courses"

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To practice mindfulness is to pay attention in a curious, deliberate, kind, and non-judgmental way to life as it unfolds each moment. Mindfulness is currently very fashionable and has been so for sometime now in American business, education, media, popular culture, and sports. Many American law students, law professors, law schools, lawyers, and legal organizations are considering how mindfulness can be helpful in law and conflict resolution. Much of the popularity of mindfulness stems from research about how mindfulness can improve mental and physical health by reducing stress and negative affect. This Essay tells a tale of teaching (about) mindfulness in two courses: first, a seminar about law and neuroscience, and second, a required law school course about legal ethics and professionalism. These courses provide reminders that mindfulness is an experience and provides a space in which to pause.

"Charting the Course: An Empirically Based Theory of the Development of Critical Thinking in Law Students"

Albany Law Journal of Science and Technology, Vol 26(2), Forthcoming

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Recent large-scale research studies indicate that many college students graduate with critical thinking skills no greater than those they possessed upon matriculation. These findings have sent shockwaves through the academy, calling into question the value and efficacy of higher education, particularly when it comes to equipping graduates with the advanced reasoning and problem-solving skills most in demand in the 21st Century. Many of these under prepared graduates pursue advanced education, including the study of law that traditionally has groomed citizens to assume positions of high leadership and solve society’s most complex problems using advanced reasoning and communication skills. As these students enter law school, the legal academy faces intense scrutiny for failure to adopt valid empirically based teaching approaches and demonstrate adequate educational results, prompting the American Bar Association to exercise its regulatory authority to mandate that law schools must now demonstrate learning outcomes.

Traditional law school academic support programs cannot address the fundamental deficits in critical thinking among incoming students, and a scarcity of research in legal education has left the legal academy calling for empirical guidance to inform cohesive approaches to the systemic challenges it faces. To address the daunting challenges facing the legal academy, I conducted a qualitative grounded theory study to formulate a comprehensive conceptual model of the development of critical thinking skills in law students that may assist legal educators in establishing best practices for the advancement of higher order thinking skills in law students. The resulting Critical Thinking in Law Students model provides the legal academy with empirical guidance to formulate new strategies to improve learning outcomes and comply with regulatory mandates, while also offering the broader academy insight into the intricate combination of factors that affect the ability of higher education institutions to provide their students with effective education for the development of higher order thinking skills.
"Experiencing Civil Procedure: Why (and How) I Teach a Simulation-Driven First Year Course"

Experiential Education In the Law School Curriculum, Forthcoming

ROBERT L. JONES, Northern Illinois University - College of Law

This work will appear as a chapter in a forthcoming book, Experiential Education in the Law School Curriculum, by Carolina Academic Press. The chapter outlines the ways in which a first year Civil Procedure course can be structured around a single simulation and explores some of the benefits of a course organized in this fashion. In particular, the benefits of a simulation-driven doctrinal course during the first year are assessed in the context of the holistic development of young lawyers.

"The Impact of Individualized Feedback on Law Student Performance"

Minnesota Legal Studies Research Paper No. 16-13

DANIEL SCHWARCZ, University of Minnesota Law School
DION FARGANIS, University of Minnesota - Twin Cities - School of Law

For well over a century, first-year law students have typically not received any individualized feedback in their core "doctrinal" classes other than their final exam grades. Although this pedagogical model has long been assailed by critics, remarkably limited empirical evidence exists regarding the extent to which enhanced feedback improves law students' outcomes. This Article helps fill this gap by focusing on a natural experiment at the University of Minnesota Law School. The natural experiment arises from the random assignment of first-year law students to sections that take a common slate of classes, only some of which provide individualized feedback. Meanwhile, students in two different sections are occasionally grouped together into a "double section" first-year class. In these double section classes, students in sections that have previously or concurrently had a class providing individualized feedback consistently outperform students in sections that have not received any such feedback. The effect is both statistically significant and hardly trivial in magnitude, approaching about 1/3 of a grade increment even after controlling for students' LSAT scores, undergraduate GPA, gender, race, and country of birth. The positive impact of feedback also appears to be stronger among lower-performing students. These findings substantially advance the literature on law school pedagogy, demonstrating that individualized feedback in a single class during the first-year of law school can improve law students' performance in all of their other classes. Against the background of the broader literature on the importance of formative feedback in effective teaching, these findings also have a clear normative implication: law schools should systematically provide first-year law students with individualized feedback in at least one "core" doctrinal first-year class.

"Insights from Psychology: Teaching Behavioral Legal Ethics as a Core Element of Professional Responsibility"

Michigan State Law Review, Forthcoming

New England Law | Boston Research Paper No. 16-07

TIGRAN ELDRED, New England Law | Boston

The field of behavioral legal ethics — which draws on a large body of empirical research to explore how subtle and often unconscious psychological factors influence ethical decision-making by lawyers — has gained significant attention recently, including by many scholars who have called for a pedagogy that incorporates behavioral lessons into the professional responsibility curriculum. This
article provides one of the first comprehensive accounts of how law teachers can meet this challenge. Based on an approach that employs a variety of experiential techniques to immerse students in the contextual and emotional aspects of legal practice, it provides a detailed model of how to teach legal ethics from a behavioral perspective. Reflections on the approach, including the encouraging response expressed by students to this interdisciplinary method of instruction, are also discussed.

"Rebellious Pedagogy and Practice"

Clinical Law Review, Forthcoming

University of Miami Legal Studies Research Paper No. 16-23

ANTHONY VICTOR ALFIERI, University of Miami School of Law

Gerald López's groundbreaking book, Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice, introduced new critical pathways and perspectives for clinical educators to better understand and enhance their advocacy, teaching, and scholarship. Indeed, López's interdisciplinary investigation of the local, sociocultural context of the lawyering process produced a marked shift in both the pedagogy and the practice of public interest law, particularly civil rights and poverty law. A quarter century after its publication, Rebellious Lawyering stands out not only for its contextual critique of lawyering theory and practice, but also for its multifaceted integration of law, cultural studies, race and ethnicity, grassroots politics, and social movement history. At the same time, because it is descriptively anecdotal, rather than empirical, and prescriptively normative, rather than strictly methodological, it remains a work of organic and evolving clinical pedagogy and practice. The purpose of this article is to examine Rebellious Lawyering as a transformative, albeit unresolved, work of clinical theory and practice, and, thus, to underscore the continuing need to revise its teachings and practices to address a new century of poverty and inequality in America.

"The Emotionally Intelligent Law Professor: A Lesson from the Breakfast Club"

University of Arkansas at Little Rock Law Review, Vol. 36, No. 273

Brooklyn Law School, Legal Studies Paper No. 454

HEIDI K. BROWN, Brooklyn Law School

While some law review articles emphasize the importance of teaching Emotional Intelligence (EI) as part of the students' law school curriculum as a component of “professionalism,” fewer articles thus far have illuminated how professors can cultivate their own EI to become better educators. The present article aspires to provide law professors with a workable explanation of EI, and practical guidance to make EI accessible and useful in the classroom. Part I of this article explains the basic concept and components of Emotional Intelligence, and how understanding and cultivating one's own EI in a classroom dynamic can enhance teaching. This section also urges law professors to embrace a “growth mindset,” a term advanced by Dr. Carol Dweck, to describe our fundamental ability to change qualities about ourselves that we once might have thought were “fixed.” Part II describes some of the distinctive characteristics of the Millennial generation of law students; in fact, we also need to start studying the characteristics of the post-Millennial “Generation Z.” Understanding the underlying societal drivers behind the current and next generation's classroom demeanor and approach to learning will help professors overcome kneejerk “Breakfast Club”-style behavioral stereotypes based on past assumptions which may no longer be valid. Part III draws from Dr. Ken Bain's study of exemplary college-level teachers, as well as the 2013 book, What the Best Law Teachers Do, to identify specific qualities for improving effectiveness as an EI-savvy law teacher. Finally, Part IV suggests practical techniques for applying EI in the law school classroom so that
professors can adjust more readily to a constantly evolving classroom dynamic and the needs of the inimitable mosaic of individual learners within each student group.

"Learning and Lawyering across Personality Types"


Fordham Law Legal Studies Research Paper No. 2779293

IAN WEINSTEIN, Fordham University School of Law

Personality theory illuminates recurring problems in law school teaching. While the roots of modern personality theory extend back to Hippocrates and the theory of the four humors, contemporary ideas owe much to Carl Jung’s magisterial book, Psychological Types. Jung’s work gave us the categories of introvert and extrovert, as it explored what has come to be understood as the cognitive bases for our habits of mind. These are powerful ideas but also complex and sometimes obscure. Applying them to law school teaching and learning (and law practice) can be very fruitful, if we pay careful attention to ourselves and colleagues, the structure of the ideas we convey, the complexity of the skills we aim to sharpen and the settings in which we teach and learn. While the theory has something to say about teaching and learning in large groups, the most widely cited pedagogic notion that flows from personality type theory — the claim that teachers should match their mode of presentation to the learning styles of the students — is not among them. In the large classroom, we might better match our modes of presentation to the structure of the ideas we are conveying than varying our presentations to appeal to a heterogeneous group of personality types. But when we work with individual students and small groups to build problem solving, interpersonal and collaborative skills, personality type theory can be a powerful guide to how we teach as well as a useful set of ideas for our students. This paper discusses Jungian Personality Theory and the lessons it offers in a variety of teaching and learning settings in law school.

"Are We There Yet? Aligning the Expectations and Realities of Gaining Competency in Legal Writing"


U of Maryland Legal Studies Research Paper No. 2016-22

SHERRI LEE KEENE, University of Maryland Francis King Carey School of Law

Each year, it seems that more law professors express their concerns that increasing numbers of students are coming to law school underprepared for the task. Moreover, professors often express specific concerns about their students’ writing abilities. While there may be some truth to these assertions, it is also true that legal educators need to take a closer look at law school curriculums and teaching methods to make sure that students are afforded the best opportunities to succeed. Indeed, the challenges of modern legal education may reflect not only the shortcomings of today’s students, but also the need for law schools to reconsider their curricular goals and approaches to teaching. Legal skills, such as legal writing, have long maintained a subordinate position in the curriculums of many law schools. While their importance has received increased recognition as of late, many law schools continue to dedicate insufficient time and resources to teaching legal skills. Indeed, most law schools only require students to take two semesters of formal instruction in practical legal writing during their first year, and require students to take no additional legal writing courses in their second or third years. Consistent with this curricular approach, many law professors seem to expect students to gain significant competency in legal writing before they begin their second year of law school, and to be able to proceed from that point with less guidance. This article urges legal educators to consider what law schools are asking their first-year law students to learn in
just two semesters of practical legal writing, in comparison, to what law students can realistically achieve. Currently, it seems that a disconnect exists between what legal writing faculty are able to teach students in their first year and what professors teaching students in later years expect these students to know. A review of select, first-year students’ final writing assignments provides some perspective on what students are learning in their first-year legal writing courses. It is the author’s hope that this article will paint a more accurate picture of what professors can reasonably expect from students in their second and third years. Ultimately, this article asks legal educators to recognize the hard work and achievements of law students, while acknowledging all that legal writing entails and all that students still need to be taught after their first year.

"Law Blogging with Formative Peer-Assessment: Improving Students’ Writing, Digital Skills and Assessment Literacy"


EGLE DAGILYTE, Anglia Ruskin University, King's College London

This article shares experience on blog writing in law classroom, both from student perspective as well as from teaching perspective, raising questions whether module leaders and tutors of EU law should employ more blog writing exercises that are assessed either formatively or summatively. This is because law blogging engages students with the subject and helps develop multiple skills that graduate employers seek: legal writing, digital literacy, undertaking research, reading and synthesizing long and complex texts, active and deep learning.

"Thirty Reflection Questions to Help Each Student Find Meaningful Employment and Develop an Integrated Professional Identity (Professional Formation)"

Tennessee Law Review, Forthcoming

NEIL W. HAMILTON, University of St. Thomas School of Law (Minnesota)

JEROME M. ORGAN, University of St. Thomas - School of Law (Minnesota)

Law schools must now define learning outcomes for their programs of legal education. Many law schools (and many professors in individual courses) are defining learning outcomes that include values beyond just minimal compliance with the law of lawyering – called here professional-formation learning outcomes. This article, drawing on and synthesizing scholarship from law and other disciplines, will focus on the design of a curriculum with thirty reflection questions to help each student’s step-by-step development toward professional-formation learning outcomes beyond mere compliance with the law of lawyering. Section I of this article will describe the present context in which law schools must develop learning outcomes, and will highlight the number of law schools that have embraced one or both of the elements of a professional-formation learning outcome where a law school or a professor in an individual course requires that each student demonstrate an understanding and integration of:

1. proactive professional development toward excellence at all the competencies needed to serve clients and the legal system well;

2. an internalized deep responsibility to clients and the legal system.

Section II of the article analyzes the principles that should inform the design of an effective curriculum for these two professional-formation learning outcomes. Section III of the article will suggest thirty reflection questions that help each student:
1) reflect on the story, experiences and passions that brought her to law school and that she develops during law school as a means of both (a) identifying what she wants to do with her law degree and (b) proactively taking ownership over her growth toward meaningful post-graduate employment; and

2) make progress moving through developmental stages regarding these two professional formation learning outcomes; so that

3) she can begin to define and to live out who she wants to be as a lawyer in the context of what clients and the legal system expect of her.

"Saving the Canary"

Syracuse Law Review, Forthcoming

Northeastern University School of Law Research Paper No. 264-2016

JEREMY R. PAUL, Northeastern University - School of Law

In this Essay, I offer preliminary reflections on two questions. First, given the looming issue of a breakdown in the law school business model, why has it been so difficult for law school administrators and faculties to innovate and stay ahead of the curve? My point here is that the competitive posture of law schools and commendable commitments to academic integrity are much more to blame than concern for self-interest or a general reluctance to change. Second, I will highlight how current fiscal challenges risk blinding us to the even scarier questions involved in keeping legal education relevant in a rapidly changing landscape. The need for contemporary relevance challenges wealthy schools as well, and, although financial pressures vary, even many of the strongest schools have their eye on enrollment and rankings at the expense of true innovation. My emphasis here is that the Socratic method, the focus on appellate cases, and the general focus on “thinking like a lawyer” gave legal education a head start on the Internet age. But a head start doesn’t help much in a marathon, and our charge now is to invent a second, or, depending on one’s attitude toward co-op and clinical education, a third act. We owe our students and the country our best efforts if we are to do our part to ensure that democracy and the rule of law remain the dominant tools of social organization for the twenty-first century.

"Preparing Law Students for Information Governance"

35 Legal Reference Services Quarterly, online: 16 May 2016

SUSAN DAVID DEMAINE, Indiana University Robert H. McKinney School of Law

Information governance is a holistic business approach to managing and using information that recognizes information as an asset as well as a potential source of risk. Law librarians and legal information professionals are well situated to take leadership roles in information governance efforts, including instructing law students in information governance principles and practices. This article traces the development of information governance and its importance to the legal profession, offers a primer on information governance principles and implementation, and discusses how academic law librarians and other legal educators can teach information governance to law students using problem-based learning or similar pedagogical methods.
"Saving Legal Education"
Gonzaga University School of Law Research Paper No. 2016-8
DANIEL J. MORRISSEY, Gonzaga University - School of Law

This piece describes the difficult situation that legal education finds itself in. While law schools offer programs that are more enriching than ever, they do so at much higher costs than in previous decades. The resulting tuition increases have causes graduating students to become burdened with large debts. At the same time, their employment, particular for those at non-elite law schools, have become more problematic. The article provides ample statistics and examples to support these disturbing trends.

"Foreword - LatCrit Praxis @XX: Toward Equal Justice in Law, Education and Society"
TAYYAB MAHMUD, Seattle University School of Law - Center for Global Justice
ATHENA MUTUA, State University of New York (SUNY), Buffalo, SUNY Buffalo Law School
FRANCISCO VALDES, University of Miami - School of Law

This article marks the twentieth anniversary of Latina and Latino Critical Legal Theory or the LatCrit organization, an association of diverse scholars committed to the production of knowledge from the perspective of Outsider or OutCrit jurisprudence. The article first reflects on the historical development of LatCrit’s substantive, methodological, and institutional commitments and practices. It argues that these traditions were shaped not only by its members’ goals and commitments but also by the politics of backlash present at its birth in the form of the “cultural wars,” and which have since morphed into perpetual “crises” grounded in neoliberal policies. With this background, the article turns to the current foundations for the future intergenerational transmission of the LatCrit mission and outlines a number of potential future challenges. It concludes with a description of the symposium essays written primarily by a new generation of LatCrit scholars, both the potential inheritors and creators of current and future substantive, methodological and institutional LatCrit practices.

"The Relationship between Class Participation and Law Students' Learning, Engagement and Stress: Do Demographics Matter?"
Field, Rachael M., Duffy, James, & James, Colin (Eds.) Promoting Law Student and Lawyer Well-being in Australia and Beyond. Ashgate, Farnham, Surrey, 2016
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Student participation in the classroom has long been regarded as an important means of increasing student engagement and enhancing learning outcomes by promoting active learning. However, the approach to class participation common in U.S. law schools, commonly referred to as the Socratic method, has been criticised for its negative impacts on student wellbeing. A multiplicity of American
studies have identified that participating in law class discussions can be alienating, intimidating and stressful for some law students, and may be especially so for women, and students from minority backgrounds. Using data from the Law School Student Assessment Survey (LSSAS), conducted at UNSW Law School in 2012, this Chapter provides preliminary insights into whether assessable class participation (ACP) at an Australian law school is similarly alienating and stressful for students, including the groups identified in the American literature. In addition, we compare the responses of undergraduate Bachelor of Laws (LLB) and graduate Juris Doctor (JD) students.

The LSSAS findings indicate that most respondents recognise the potential learning and social benefits associated with class participation in legal education, but remain divided over their willingness to participate. Further, in alignment with general trends identified in American studies, LLB students, women, international students, and non-native English speakers perceive they contribute less frequently to class discussions than JD students, males, domestic students, and native English speakers, respectively. Importantly, the LSSAS indicates students are more likely to be anxious about contributing to class discussions if they are LLB students (compared to their JD counterparts), and if English is not their first language (compared to native English speakers). There were no significant differences in students’ self-reported anxiety levels based on gender, which diverges from the findings of American research.

"Law Student Lifestyle Pressures"

Field, Rachael M., Duffy, James, & James, Colin (Eds.) Promoting Law Student and Lawyer Well-being in Australia and Beyond. Ashgate (Routledge), Farnham, Surrey, 2016

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One significant factor influencing student wellbeing is the degree to which their studies are subject to external lifestyle pressures. These pressures are relieved or exacerbated by choices students make around their approaches to study, and the amount of time they devote to work and leisure. This Chapter considers results from a 2012 survey of law students at the University of New South Wales (UNSW), Sydney, Australia. Those results are compared to results from a similar US law student survey, and comparable data from the UK and Australia more broadly. In addition, the UNSW study compares key lifestyle choices of undergraduate (LLB) and graduate (JD) law students. The significance of the analysis in this Chapter for understanding law students’ wellbeing is that comparing American and Australian law students’ lifestyle patterns provides insights into contextual variation between both groups, which is important to bear in mind when comparing American and Australian research on law students' wellbeing, and appreciating the limits of such comparisons. In particular, much of the wellbeing literature to date has focused on course-based stressors, but in light of recent research indicating that improvements in students’ course-based experiences may not have a direct effect on law students’ elevated levels of psychological distress, it is important to understand the broader life pressures and stressors that may be impacting law students’ wellbeing.
"Shaking the Foundations: Criminal Law as a Means of Critiquing Assumptions of the Centrality of Doctrine in Law"

Livings and Gledhill (ed) The Teaching of Criminal Law: The pedagogical imperatives, Routledge, Forthcoming

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While fundamental doctrines and legal principle figure strongly in textbook and superior court analyses of the criminal law, the practical operation of the law is far more open to other approaches. This chapter explores how it is useful to demonstrate to students the variable and political use of doctrine and principle in constructing and interpreting criminal law the way courses are constructed. This includes courses that range beyond the traditional offences such as homicide to include new offences that are significantly different in their construction - such as terrorism, drugs and sexual assault offences; and that include offences that are rarely appealed, such as public order and police powers offences. Doing so exposes students to how the different players in criminal justice define crime, and the different outcomes that can lead to in different offences and courts.