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主编◎许身健

## Integrated Legal Education

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This essay explores the benefits of an integrated legal education, one that combines the best aspects of traditional doctrinal courses,<sup>②</sup> lawyering skills courses,<sup>③</sup> and clinical courses.<sup>④</sup> This requires us, first, to consider the objectives of legal education and how well we are currently meeting

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them, next to consider what learning theory suggests will best help us meet those objectives, and finally to consider how to put the theory into practice. Although the essay refers to legal education in the United States and China, its ideas apply to the common elements of legal education throughout the world. <sup>①</sup>

Before discussing educational design we must address the educational objective. While law schools may pursue a variety of educational goals, their overall objective is most often to educate students to become competent and ethical legal professionals, whether they become lawyers, prosecutors, judges, governmental officials, or company officers. <sup>②</sup> To understand this objective, however, we must break it down into its component parts. Legal professionals must *understand* the legal system. That is, they must know the structure and the basic content of the law. This is the starting point of most legal education, but, as the recent influential study, *Educating Lawyers*, points out, legal professionals must also know how to analyze legal problems, how to provide legal services, and how to act in a professional manner. Theoretical legal knowledge is *important*, but so is practical legal knowledge. Thus, that study proposes “an integration of student learning of theoretical and practical legal knowledge and

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<sup>①</sup> “As a result of forces both within and outside of legal academia, *important* changes have been made in defining the objectives of American legal education. However, these changes apply with equal force to any system of training future lawyers to practice within any legal system.” David F. Chavkin, *Experiential Learning: A Critical Element of Legal Education in China (and Elsewhere)*, 22 *Global Bus. & Devel. L. J.* 3, 10 (2009).

<sup>②</sup> See Roy Stuckey and others, *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP*, 8 (2007). The fifth, and primary, goal listed is: “Law schools should help students acquire the attributes of effective, responsible lawyers including self-reflection and lifelong learning skills, intellectual and analytical skills, core knowledge and *understanding* of law, professional skills, and professionalism.” The Chinese Ministry of Education requires law schools to provide a “solid foundation, broad horizon, profound capacity and high qualification [s].” People’s Republic of China, Ministry of Education document No. 5 (2005), quoted in Kong Qingjiang, *Practice in Legal Education: International Experience and Chinese Response*, 22 *Global Bus. & Devel. L. J.* 35, 42.

professional identity.”<sup>①</sup> The core function of the legal professional is to solve problems, so we can say that an objective of legal education is to teach problem solving.

Law schools throughout the world are generally doing a good job of teaching theory and knowledge. They teach some analytical skills as well. Where they tend to have problems is in teaching students how to approach and solve legal problems, how to represent clients, or what it means to be a legal professional. Employers of legal professionals complain about the unpreparedness of law school graduates. In the United States the American Bar Association is requiring law schools to improve their training of law students in lawyering skills and professionalism.<sup>②</sup> In other countries, which require post-graduate legal internships as a prerequisite to admission to the bar, some educators argue that primary responsibility for training in lawyering skills and professionalism falls outside the law schools. For example, Dean Zhu Su Li argues: “Because Chinese legal education endeavors to strike a balance between institutional education and vocational education, I consider it more rational for parts of society, particularly

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① William M. Sullivan and others, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW, 13 (2007) .

② The American Bar Association requires that all students receive traditional courses, legal writing instruction, and instruction in “other professional skills generally regarded as necessary for effective and responsible participation in the legal profession,” as well as “the history, goals, structure, values, rules and responsibilities of the legal profession and its members.” American Bar Association Section on Legal Education, 2009–2010 Standards and Rules of Procedure for Approval of Law Schools, Standard 302 (a) (4) & (5) . Standards 302 (a) (1) – (3) require that all students “receive substantial instruction in:

- (1) the substantive law generally regarded as necessary to effective and responsible participation in the legal profession;
- (2) legal analysis and reasoning, legal research, problem solving, and oral communication;
- (3) writing in a legal context, including at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year.” By contrast, Standard 302 (b) (1) only requires law schools to provide “substantial opportunities” for students to take live client clinical or externship courses.

law firms, to supply legal skills training.”<sup>①</sup> Dean Kong Qingjiang suggests, however, that “nurturing practical, capable legal professionals should be the objective of legal education at the undergraduate level.”<sup>②</sup>

Learning theory can help us *understand* how to achieve our objectives. While we are law professors, we need to reach to other scholarly disciplines, such as *psychology*, *education*, and *sociology*. Perhaps the most familiar account of learning theory is what has become known as Bloom’s Taxonomy. An ancient Chinese saying, attributed to Confucius, says: “I hear and I forget. I see and I remember. I do and I understand.”<sup>③</sup> Another version of that saying is: “Tell me, I forget. Show me, I may remember. Involve me, and I understand.”<sup>④</sup> In a sense, the lesson from that saying is reflected in Bloom’s Taxonomy, as expressed in this popular chart:

A lecture course primarily conveys knowledge, which the students seek to remember long enough to pass an examination. Courses using the Socratic method require students to display *understanding*, to apply that *understanding*, and to engage in analysis. This is where traditional legal education often stops, without reaching the evaluation and creation stages, stages associated with the problem solving that is the hallmark of the best legal scholars and the best legal practitioners.

Legal scholars have begun to apply various forms of learning theory

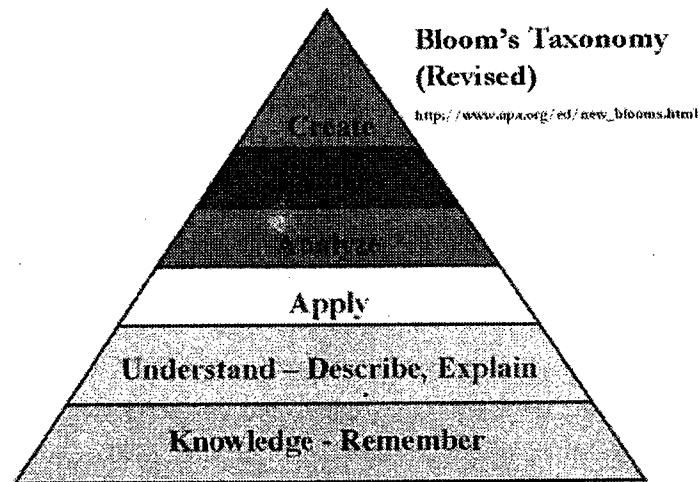
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① Zhu Su Li, An Institutional Inquiry into Legal Skills Education in China, 22 *Global Bus. & Devel. L.J.* 75, 90 (2009) .

② Kong, *supra*, at 42.

③ Quotation JHJ25848 from Laura Moncur’s Motivational Quotations, <http://www.quotationspage.com/quote/25848.html> , viewed on January 25, 2010. See David F. Chavkin, *Experiential Learning: A Critical Element of Legal Education in China (and Elsewhere)*, 22 *Pac. McGeorge Global Bus. & Dev. L.J.* 3 (2009) . Another author quotes Confucius as saying: “What I hear, I forget. What I hear and see, I remember a little. What I hear, see and do, I acquire some knowledge and skill. What I hear, see, do and discuss with another, I begin to understand.” Jay Pottenger, *The role of [clinical] legal education in legal reform in the People’s Republic of China: chicken, egg — or fox?*, 6 *Int’ l. J. Clinical Legal Educ.* 65, 73 (2004) .

④ Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 *Clinical L. Rev.* 37, 50 (1995), attributing the saying to an ancient Chinese proverb.



Based on an APA adaptation of Anderson, L.W. & Krathwohl, D.R. (Eds.) (2001)

to legal education. The following two studies are leading examples of this scholarship, and they strongly support the idea of integrated legal education.

Professor Frank Bloch's study differentiates between adult learning theory (andragogy) and pedagogy.<sup>①</sup> Law students have developed sufficient maturity that techniques appropriate for teaching children should begin to give way to techniques more appropriate for adults. Law students are in the transitional phase from childhood to adulthood.<sup>②</sup> So it is worthwhile to examine how adults tend to learn. Professor Bloch draws on the work of clinical psychologists, who make four assumptions related to adult learning.

1. "Adults see themselves as self-directing personalities, unlike

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① Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 *Vanderbilt L. Rev.* 321 (1982).

② Professor Bloch was writing about U. S. law schools, where the students are generally college or university graduates, many of whom are in their mid-twenties or older and have reached full adulthood. Law schools in much of the rest of the world tend to be younger, so may be regarded as in the period of transition from childhood to adulthood.

children who expect the will of adults to be imposed on them.”<sup>①</sup> Therefore, learning is most likely to occur when “there exists a spirit of mutual-ity between teachers and students as joint inquirers.”<sup>②</sup> Adult learners are most motivated to learn when they are learning what they think they need to learn and when they share with the teacher responsibility for learning. The so — called Socratic method is an example, because it employs *dialogue* between student and teacher. However, clinical legal education can be more of a partnership between student and teacher; it relies on learning through mutual inquiry by the two.

2. “Adults accumulate a greater amount and variety of experience than children, and, as a result, their experience becomes a greater resource for learning.”<sup>③</sup> Participatory, experiential learning techniques that reinforce the role of experience in the lives of adults work best. As Aldous Huxley suggested, “Experience is not what happens to a man; it is what a man does with what happens to him.”<sup>④</sup> Both simulation courses and clinical courses meet this criterion. They also help teach broader human relations skills, through experience with human problems.

3. “Developmental tasks are those tasks that must be dealt with at various stages in life if one is to pass from one phase of personal development to the next.” “As adults’ social roles change, their developmental tasks change, and their readiness to learn any particular subject matter or skill changes with each change in appropriate developmental tasks.”<sup>⑤</sup> Mature law students are ready to seriously study law. They are responsive to learning that approximates their future role as legal professionals.

4. “Adults seek to apply learning immediately, while children tend to see acquired knowledge only as a future benefit.”<sup>⑥</sup> Problem—centered

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① Bloch, *supra*, at 328.

② *Id.*, at 330.

③ *Id.*, at 329.

④ Aldous Huxley, *Texts and Pretexts*, 1932.

⑤ Bloch, *supra*, at 329.

⑥ *Ibid.*

learning allows immediate application of doctrine, theory, and skills.

Bloch' s analysis supports the notion that legal education should use a range of teaching methods and teach professional skills as well as legal doctrine and theory if we are to meet the objectives identified above.

Another influential article, by Professors David A. Binder and Paul Bergman, leads to a similar conclusion, though based on another branch of learning theory.<sup>①</sup> Binder and Bergman discuss the concept of “transfer,” which learning theorists divide into two categories:

1. “Near transfer occurs when students are able to apply skills that they have been taught to tasks that are relatively routine and repetitive in nature.” They mention “preparing and serving subpoenas and drafting and serving *standard pleadings*” as examples.<sup>②</sup>

2. “Far transfer... involves situational adaptations and problem solving. Far transfer situations require the ability to adapt general principles to the unique needs of specific problems.”<sup>③</sup>

Perhaps we can agree that law schools should not be trade schools, and that preparing and serving subpoenas, for example, is generally more a mechanical exercise rather than an intellectual one. If all that lawyering skills and clinical courses taught was this sort of mechanical skill, they would hardly seem to belong in a university law school. Near transfer may have its place, but law schools must aspire to far transfer, because legal professionals must engage in problem solving. Often they will confront problems that require the ability to adapt general principles to unique needs. So legal educators should design the curriculum to promote far transfer. Binder and Bergman identify four factors that tend to promote far transfer.

1. Conceptual *understanding*, which “occurs when students are aware

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① David A. Binder and Paul Bergman, *Taking Lawyering Skills Training Seriously*, 10 *Clinical L. Rev.* 191 (2003) .

② *Id.* , at 198.

③ *Ibid.*

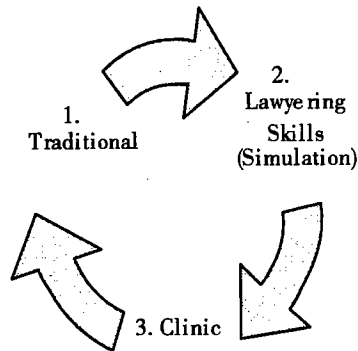
of general principles underlying different skills or practices.”<sup>①</sup>

2. Content, so that when students are exposed to a new situation “they have received instruction in comparable situations while in school.”<sup>②</sup> For example, exposure to common problems, effective strategies, judgment factors, ethical issues, and techniques for effectuating judgment provides content for far transfer.

3. Process and structure which allow repetitive practice of skills, similar problems in different contexts, simple tasks before complex ones, and are spread over time, with meaningful feedback and self-reflection.<sup>③</sup>

4. Use of simulations.<sup>④</sup>

These articles and Bloom’s Taxonomy suggest that law schools need to provide an integrated legal education, in which the various methods are deployed in a mutually reinforcing manner. This can be graphically illustrated as follows:



The traditional doctrinal courses provide the students with foundational knowledge and theory. They provide the context for the lawyering skills courses. However, the traditional courses do not transmit deep transfer of what it means to be a lawyer.<sup>⑤</sup>

① Id., at 199.

② Ibid.

③ Id., at 201.

④ Id., at 202.

⑤ See Sullivan, et al, supra, at 13.

Lawyering skills simulation courses teach how to use that knowledge and theory to advance the interest of the client, in transactional or litigation settings. They reinforce the doctrinal knowledge and place it into a practical context. They also teach basic legal skills and prepare students to represent real clients. Simulations — learning by doing — can also be used in the traditional doctrinal courses to emphasize *important* points. However, simulations cannot replace the traditional doctrinal courses, because analysis, critique and development of legal doctrine must initially emerge from study of legal texts.

The clinical courses bring a variety of problem solving challenges to the student, calling on the student to employ both doctrinal and skills learning and to use *analogies* from the doctrinal and skills courses to help solve the problems. The client is no longer abstract, but is real, and the student is required to exercise mature judgment in deciding how to represent the client. This representation reinforces the knowledge and theory learned in the traditional doctrinal course and helps the student appreciate the significance of learning legal doctrine. However, clinical courses cannot provide broad knowledge of doctrine, because the *substance* of what is taught depends on the cases that come to the clinic. And, as Binder and Bergman have pointed out, while clinical courses do include simulations, they cannot provide the systematic practice in problem solving that simulation courses provide.

*Educating Lawyers* correctly suggests: “The two kinds of legal knowledge—the theoretical and the practical—are complementary. Each must have a respected place in legal education.”<sup>①</sup> Integration of doctrinal, simulation, and clinical courses serves all the levels of Bloom’s Taxonomy: knowledge, *understanding*, application, analysis, evaluation and creation. Integration provides positive interaction between student and teacher, uses past experience as the basis for learning, follows a sequence that matches growth in maturity, and allows immediate application

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① Ibid.

of knowledge and skills. Thus integration builds on adult learning theory. Finally, integration leads to far transfer, by requiring application of general principles, *using* common problems and strategies, *using* repetition and reflection, and *using* simulation and real client interaction.

Why, then, have legal educators around the world been so slow to embrace the idea of integrated curriculum?<sup>❶</sup> Some countries, such as the United States, have made significant steps in the direction of integrated curriculum, but even in the United States there is some resistance.<sup>❷</sup> One reason is *cost*. Traditional doctrinal courses *using* a lecture or even a So-

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❶ Zhang Shengxian, A Study on Experiential Teaching System for Law Undergraduates, 2008 China Legal Education Research 47 [translation by Lei Yu] lists these problems:

“Obstacles to experiential legal education include the obscurity of experiential teaching objectives, inappropriateness of teaching sequences, lack of teaching resources, exorbitant cost, inadequacy of funds, imbalance in teaching hour arrangement due to the conflicts with classroom teaching, and the difficulty caused by the failure to gain social understanding and support.”

❷ See, for example, Celeste M. Hammond, *Borrowing from the B Schools: The Legal Case Study as Course Materials for Transaction Oriented Elective Courses: A Response to the Challenges of the MacCrate Report and the Carnegie Foundation for Advancement of Teaching Report on Legal Education*, 11 Transactions 9, 18 (2009): “the nearly exclusive use of appellate cases as the only or primary course materials continues....” However, she does mention some recent examples of the use of case studies and problems in transactional courses. *Id.* at 33–36. In addition, many other schools have taken steps toward integrating the curriculum. For example, the University at Buffalo Law School advertises “We’ ll be combining what is happening in the clinics with the school’ s focus on legal skills, helping to more fully dedicate the institution to creating practice – ready students.” Postcard announcing hiring of Professor Kim Diana Connolly as Director of Clinical Education. The University of Colorado Law School has created the Schaden Endowed Chair in Experiential Learning, who is to work “collaboratively with the Colorado Law faculty to expand and integrate Experiential Learning throughout the curriculum.” Announcement downloaded from <http://www.colorado.edu/law/jobs/> on August 18, 2010. The University of Dayton Law School adopted a “Lawyer as Problem Solver” curriculum in 2005, with a curriculum that “integrates skills more comprehensively, [and] provides practice–related tracks or concentrations in three broad subject areas....” Lisa A. Kloppenberg, *Educating Problem Solving Lawyers for our Profession and Communities*, 61 Rutgers L. Rev. 1099 (2009) . . . The Dean of the University of California, Berkeley, recently announced: “This year—in a move rare among U. S. law schools—we hired a full –time faculty skills director, David Oppenheimer, to develop a coherent program of professional instruction. .... He is working with faculty, alumni, and others to expand and integrate skills training across the curriculum and to propel our program to the forefront of legal education.” Letter from Dean Christopher Edley, May 28, 2010, <http://www.law.berkeley.edu/104.htm> , viewed on June 1, 2010.

cratic method allow one teacher to teach a hundred or even more students. Simulation classes can accommodate at most around 24 students, and clinical classes at most eight or ten students. A *second* reason is that most law professors are familiar with the customary methods of teaching in traditional doctrinal courses and are unfamiliar with the use of simulations in those courses, as well as being unfamiliar with the methods of teaching professional skills and clinical courses. Third, some professors believe that professional skills and clinical courses lack academic *substance* and that they also are not suitable subjects of serious scholarly writing. This belief is fed by failure to *understand* that experiential education is not just meant to teach mechanical skills, but is meant to deepen *understanding* of legal doctrine and theory. Finally, lack of experiential course materials is an obstacle. These four factors may lead both law school administrators and law school faculties to resist the integration of the curriculum. <sup>①</sup>

There are several answers to these obstacles. <sup>②</sup> Foremost among them is the value of integrated legal education. Even if there are *costs* to integrating professional skills and clinical courses into the curriculum, the value to student learning outweighs those *costs*. Note, too, that there are ways to minimize *costs*. For example, if a professor teaches a traditional doctrinal course and a professional skills or clinical course, the former effectively can subsidize the latter. Lack of familiarity with the methods of teaching professional skills or clinical courses can be overcome by attending training programs offered by organizations such as the Committee of Chinese Clinical Legal Educators [CCCLE] and the American Association of Law Schools or by enrollment in longer courses such as the LL. M. in

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<sup>①</sup> Particular types of experiential education face other criticisms. For example, poorly run clinics may harm rather than help professional development; clinics do not expose students to the *business* side of law practice and so may give a distorted view of practice. Similarly, simulation classes may not enhance *understanding* of client relations. This sort of criticism, however, suggests only that programs must be of high quality and that they must be part of an integrated legal education because they are insufficient if they *stand* alone.

<sup>②</sup> For a discussion of how to confront these obstacles, see Brian K. Landsberg, *Strategies to Increase the Availability of Skills Education in China*, 22 *Global Bus. & Devel. L. J.* 45 (2009).

Experiential Law Teaching offered at my law school or by participating in fellowship programs in schools such as Yale Law School and Georgetown Law Center. Proponents of integrated legal education must convince law school deans and doctrinal professors that professional skills and clinical courses strengthen the academic learning they have transmitted and that there is need for scholarly attention to such subjects as learning theory, the nature of law practice, and the performance of legal institutions — attention that can come from scholarly work by professional skills teachers and clinicians. We have seen growth in the availability of curricular materials for experiential education courses and of problem method course-books in doctrinal courses. <sup>①</sup>

The transition to integrated legal education may be difficult; it may be slow. But it is an idea whose time has come, which makes it a very powerful idea indeed.

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<sup>①</sup> In addition to the large number of clinical education and advocacy and negotiation skills books in the United States, several other course books rely on problems or simulations. See, for example, Franklin Gevurtz, *BUSINESS PLANNING* (Foundation Press, First edition 1991, Second edition 1995, Third edition 2001, Fourth edition 2008); D. Gordon Smith & Cynthia A. Williams, *BUSINESS ORGANIZATIONS; CASES, PROBLEMS, AND CASE STUDIES* (2d ed. 2008); John S. Dzienkowski & Amon Burton, *ETHICAL DILEMMAS IN THE PRACTICE OF LAW: CASE STUDIES AND PROBLEMS* (2006); Thomas F. Guernsey, *PROBLEMS AND SIMULATIONS IN EVIDENCE* (2004). China is beginning to see an increase in clinical and simulation course books. See, for example, Teng Hongqing and Liu Changxing, *ACCESS TO THE JUSTICE: CLINICAL LEGAL EDUCATION* (2010); Luo Wenyan and Brian K. Landsberg [editors], *REPRESENTING THE CLIENT* (2008) (a collection of simulation case files). The China Trial Advocacy Institute, a joint project of Renmin University School of Law and Indiana University School of Law—Indianapolis, has published a *China Trial Advocacy Handbook*, written in Chinese and English, with accompanying DVD of lectures and trial techniques. Robert Lancaster & Ding Xiangshun, *Addressing the Emergence of Advocacy in the Chinese Criminal Justice System: A Collaboration between a U. S. and a Chinese Law School*, 30 *FORDHAM INT’ L. L.J.* 356, 369 (2007).