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Elizabeth Earle Beske

American University Washington College of Law, beske@wcl.american.edu

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On the Opposition of Practical and Theoretical



Elizabeth Beske
American University,
Washington College of Law
beske@wcl.american.edu

Although it still may be fashionable these days to recognize a dichotomy in law schools between the practical and the theoretical, as LRW professors, we should resist the temptation. The opposing conceptions of law school as “trade school” and doctrinal academia do not neatly apply to what we do. Focusing too much on how we train our students for the real world, without highlighting our role in teaching legal analysis, may undermine our relative position in the academy and undervalue our role in legal education.

We confront daily the unmistakable reality that the world outside law school is changing rapidly and changing utterly. We get that teaching Shepard’s in print does our students a disservice. Online databases change and, with them, change our instruction techniques. We want our students well-placed to succeed, and to that end, we take seriously our obligation to keep current and to inculcate real-world skills, perhaps more so than the next professor.

But overemphasis on how “practical” we are may have its downside, in that professors regularly placed into the “skills camp” often struggle for legitimacy within their institutions. Thus, touting our profession solely in terms of practical skills – without recognizing a fundamental identity of substantive purpose between LRW and doctrinal classes – may ultimately disserve our collective aspirations for legitimacy.

Few, if any, doctrinal professors would claim teaching black letter law as their paramount pedagogical goal. Instead, we are told, they teach a critical way of thinking. The Socratic Method, for example, challenges students by means of oppositional statements and lines of inquiry into how to properly read a case, or to synthesize several cases, and to arrive at a refined

rule statement. Over time, and with consistent practice, students learn how to extract meaning from cases and to synthesize rules that permit analogical application to new circumstances. Modern strategies for transmitting this skill may differ, but the objective of the doctrinal class even today is to teach students to perceive logical connections and to extrapolate. Of course, doctrinal professors also instruct in a particular substantive context. The torts professor grounds instruction in duty, breach, and causation; the contracts professor speaks of offer and acceptance. But as to each, the pedagogical goals are nearly identical: to instruct students in a mode of analysis while – incidentally – giving them passing familiarity with a substantive body of law on which they will be tested in the future. The doctrinal class, properly understood, thus has its abstract elements (teaching of legal inquiry) and its practical applications (introduction of a specific vernacular).

What is it that we do in LRW instruction? We teach students to express legal arguments. Along the way, they learn to cite, find resources, and marshal authority. But at the same time, our fundamental focus is teaching students how to synthesize rules and reason analogically. We teach them to read cases critically, to discern logical rules, and to extend these rules into previously unanticipated situations. Just like the doctrinal professor, our stock in trade is immersing our students in the practice of legal analysis. Though fewer of us may channel our inner Professor Kingsfield as we do this, all the same; our fundamental objective differs little from that of the torts professor. Properly understood, then, our class has its abstract elements (teaching legal inquiry) and its practical applications (introduction of a specific vernacular).

The contracting job market, and mounting student debt, rightly should prompt all those in academia to navel-gaze and to ponder which among many methods of teaching legal inquiry best situates our graduates in the modern era. However, as LRW professors, we may want to be careful as we proceed. The long-term objective of situating LRW professors on terra firma within the academy may best be served by trumpeting the substantive aspects of our jobs first and foremost. ■