Book Review

Kimberly E. O'Leary, Jeanette Buttrey and Joni Larson, *Improving Student Learning in the Doctrinal Law School Classroom: Skills and Assessment*, Durham: Carolina Academic Press, 2020, pp. 148, $26 (paperback)

Reviewed by Elizabeth M. Bloom

The COVID-19 pandemic required law professors to shift teaching techniques virtually overnight. Although the abrupt shift to online teaching certainly came with difficulties, it also created opportunities to challenge old ways of thinking about curriculum design and to envision new and innovative pedagogical approaches. Using that transition as a launching point, *Improving Student Learning in the Doctrinal Law School Classroom: Skills and Assessment* seeks to help law professors reshape their teaching approaches with the goal of improving student learning in law school doctrinal courses. Framing the paradigm as a shift in thinking from "Did I teach X" to "Did they learn X" (4), the authors challenge the implicit assumptions baked into law school curriculum design that certain courses should teach doctrine while others are meant to teach skills. Instead, the authors contend, students must build skills in *all* of their classes to make their learning of doctrine meaningful and transferrable. Ultimately, the authors suggest that teaching skills and doctrine simultaneously helps students build the legal analysis skills required to understand the particular doctrine being taught and then demonstrate their understanding by applying that doctrine successfully.

The authors advocate for an approach that centers on active learning and frequent formative assessment to ensure students are learning. The overall design of the book models this suggested approach by sprinkling into each chapter multiple "professor prompts" that encourage the reader to immediately envision how to apply the book's pedagogical suggestions to concrete course design. After the initial chapters contextualizing the pedagogical framework, subsequent chapters culminate with workbook pages comprising proposed exercises to enable professors to plan specific teaching and assessment activities that fulfill their teaching objectives. These workbook pages will undoubtedly help busy professors plan suitable active-learning activities by enabling them to skip right to the workbook pages for the topics they choose to pursue. Although reading each chapter first provides important information to help contextualize the subsequent workbook activities, a professor in a time crunch

Elizabeth M. Bloom is a Teaching Professor at Northeastern University School of Law.

will absolutely benefit from consulting the workbook pages even without read-ing the preceding chapter.

At the outset, the authors address the misperception that their proposed peda-gogical approach comes at the expense of course coverage. They point out that course coverage is already arbitrary; every professor makes a different decision about what to cover and how much time to devote to particular topics within a specific course. Thus, they argue that their approach will not be more time-consuming (especially given the development of digital learning-management systems designed to facilitate active learning) and in fact that professors who sacrifice active learning for more extensive course coverage actually do a dis-service to those students who fail to master the doctrine being taught.

To support their case for a shift in focus from the material the professor is delivering to the knowledge the students are receiving and ideally co-constructing, the authors rely on educational research demonstrating that active learning and frequent assessments help ensure learning is happening. To that end, in Chap-ter 1, *Understanding the Basics of Learning Theory: What You Need to Know,* the authors provide a basic overview of four well-established learning theories that provide the foundation for their recommended approaches: (1) backward design theory, (2) scaffolding, (3) knowledge and skill transfer, and (4) Bloom's Taxonomy.

Using backward design theory, a professor first articulates the desired results, next chooses the method for measuring whether students achieved the results, and then finally plans what teaching strategies to use to ensure the students are able to achieve the specific learning outcomes. The authors demonstrate how professors should approach the design process separately for each individual class session and for the course as a whole. They emphasize how professors should be thinking beyond performance on law school exams and instead about what the students will actually need to be able to do with the knowledge in legal practice.

Next, to help students build knowledge, the authors suggest providing scaf-folding to the students. In this context, scaffolding is "modeling or demonstrating how to solve a problem (10)" and assisting students through explicit approaches such as verbalizing and diagramming thought processes (10). To support knowledge and skill transfer (the ability to apply a skill to new contexts), the authors suggest making explicit connections so the students understand how the knowledge and skills being taught in one specific course connect to their other law school courses. They use the example of damages, a legal concept students will be exposed to in many of their law school courses, to demonstrate how the repetition enables students to apply their developing understanding of the concept in multiple classes such as torts and contracts. The professor prompts encourage professors to make explicit connections for their students regarding how the material they are teaching applies to courses students are simultaneously taking or will take in the future to help lay the foundation for successful skill transfer.

Chapter 1 concludes with a basic overview of Bloom's Taxonomy of Cognitive Objectives to provide a framework for the different types of skills students should be able to demonstrate to prove learning has taken place. Beginning at the lowest skill level of remembering and building to the highest of evaluating and creating, Bloom's Taxonomy requires professors to intentionally design teaching and learning activities that help students build and demonstrate knowledge at the appropriate level of cognition within the taxonomy. An additional suggestion to develop the authors' framework further is for professors to be transparent about their reliance on Bloom's Taxonomy to enable students to partner more effectively with their professors in progressing through the levels of the taxonomy. Once students understand that as lawyers they will ultimately be responsible for mastering the highest levels of cognition, they will be more inclined to willingly embrace the learning activities required to help get them there. Having provided a basic grounding in learning theory, in Chapter 2, *Assessment, Feedback, and Calibration,* the authors emphasize the necessity for frequent assessment and feedback to ensure students are learning. Mandated since 2014 by ABA Standard 314, frequent formative assessment activities with meaningful feedback help professors and students determine what the students know and then adjust the learning process to promote learning.

After providing a basic overview and definitions of formative and summative assessment and the purposes served by each (formative: to inform what concepts need attention; summative: to benchmark against predetermined competencies), the authors focus on the necessity of first creating a learning environment in which students are receptive to feedback, next making sure feedback is as specific as possible in diagnosing difficulties, and finally laying out clear standards to ensure the students understand how to use the feedback to remedy weaknesses and achieve success.

The authors' suggested approaches in this chapter align precisely with the research on best practices of teaching and learning. The authors suggest professors early on (even when introducing a topic) use frequent assessments such as discussion questions, polls, and hypotheticals to assess what students know and help professors determine which topics need to be prioritized. After the material has been taught, students should practice retrieval regularly at spaced intervals through activities like quizzes, in-class exercises, and polls, with self-guided and professor-guided feedback. Woven into these exercises is the expectation that professors will build skills of student self-regulation so that students are actively partnering in the feedback process to realize their academic growth. The authors note that even the summative assessment for the course (the final exam, designed to ensure course objectives have been met) can be used for formative purposes to help students continue to develop strategies for learning new skills that they will need to demonstrate in subsequent courses. To illustrate, professors could model for students how to review their fall final exams to identify problematic trends that they can then work to rectify over the spring semester. Although the main emphasis is on students' using this information to grow as learners, the authors also recommend that professors use student assessment data to reflect

on and adjust their own teaching. For example, when data indicates that many students are struggling with the same concepts, professors should develop different approaches to teaching that material in the future.

The authors approach Chapter 3, *Being Intentional About the Process: How Are Students Learning?,* by introducing the metaphor of learning the law as similar to learning to build a house. With this metaphor, they seek to emphasize the importance of intentionality in teaching so students are able to build knowledge and use it effectively to construct meaning. To establish the requisite framework within which to structure learning, the authors recommend beginning with the policy objectives that drive the law with the rationale that if students understand why these rules have been made and how the rules making up the law are intended to be fair, they can build a more contextualized understanding of the rules and how best to apply them.

Noticeably missing from this recommendation is the reality that not all laws are in fact intended to be fair. If students are introduced instead to the concept of the nonneutrality of law and prompted to interpret laws within their historical and social context, they will learn not only how to apply laws but also how to analyze laws critically and challenge laws that perpetuate inequities.

The authors next challenge the traditional view that students should learn the black-letter law on their own and advocate for professors to spend considerable class time on these building blocks to ensure deep learning. They provide suggestions for assessment that are tied back to Bloom's Taxonomy's progression of lower-order to higher-order tasks so a professor can consciously articulate what the learning objective is and design the assessment accordingly. The authors suggest chunking information for students to help make the information travel seamlessly from short-term to long-term memory and help students move to higher levels of thinking. They expand on the "building a house" metaphor as they propose ideas for assessments and specific chunking exercises that make learning explicit for students. This decision to use a nonlegal example to illustrate best practices of teaching ensures that their approaches are accessible for professors teaching in any area of the law. Their suggested exercises include having students submit written outlines on specific, discrete topics to test their understanding. This idea provides the added benefit of persuading students to engage in regularly spaced intervals of learning that ensure they do not leave the learning of the course material until the final summative assessment.

Chapter 4, *Fully Understanding the Client's Problem,* recognizes the critical importance of teaching students to connect their doctrinal learning to the reality that they will soon be actual lawyers whose primary responsibility will be to understand and fulfill their clients' multilayered goals. To this end, the authors restate the necessity of making explicit connections between law school courses for their students, pointing out that thinking about how a lawyer will serve clients should occur not only in the professional responsibility course or clinical offerings but should be introduced early and often. The authors emphasize that since appellate cases and short hypotheticals tend to drive law school teaching, the presence of client goals (or clients at all, for that matter) is hidden and needs

to be intentionally drawn out. In addition to building higher-level legal skills, exercises that require students to solve real client problems reinforce that the legal analysis that drives the law school curriculum is designed to teach them to help their own future clients solve legal problems.

Chapter 4 concludes with a recognition that interacting with clients involves acknowledging the presence of factors such as race, socioeconomic status, gender, and sexual orientation, which affect power dynamics and the attorney-client relationship. The authors suggest that professors deliberately construct class exercises addressing these realities and recommend a website for professors to learn more about cross-cultural lawyering. Given the current national reckoning over race in the wake of the murder of George Floyd and the disproportionate impact of COVID-19 on communities of color, this chapter would benefit from additional ideas, strategies, and resources to help professors intentionally approach these critical social justice components of their course design.

In Chapter 5, *Identifying the Law Needed to Resolve the Problem*, the authors offer strategies for professors to address the reality that although students learn each area of law in neatly packaged doctrinal courses, they will need to draw from information learned in multiple courses to address the issues future clients will raise. Professors possess the power to make this reality explicit for the students by finding ways to demonstrate this crossover in subject matter. The authors advocate for starting discussion of new legal concepts with the functional equivalent of the "You are here" sticker on maps by situating the material being taught within the larger context. Helping students understand the basic foundational concepts such as whether the legal issue is a criminal or civil dispute, whether its analysis requires reliance on statutory, common, or administrative law, and whether the dispute will be in federal or state court helps them see how the basic grounding concepts interrelate and prepares them for the day they will need to work through these analyses on behalf of real-life clients. Again, the authors emphasize the importance of making explicit connections between material learned earlier in the course and in other courses. For example, a professor teaching evidence should place evidentiary rules within specific subject matter contexts so a student understands how these rules will affect evidence admitted in a criminal trial (overlap with criminal law) and establishing the intent of a decedent when drafting his will (overlap with trusts and estates).

A particularly powerful workbook exercise at the end of Chapter 5 is designed to help a professor connect an appellate case to the clients within it. It suggests that the professor identify a case that has multiple issues that are covered at different times throughout the course. Rather than assigning the case to the students to read, the authors suggest that the professor create a summary of the facts and present it to the class as a hypothetical case with which the client is seeking assistance. The students can then identify the possible issues that might come up before reading the actual case and self-assessing how they would have performed for their client. This exercise connects to the book's ongoing theme of helping students envision themselves as future lawyers who will need to make decisions about how best to assist clients with real legal problems.

Chapter 6, *Processing Systems: Retrieving Legal Rules to Envision Possible Outcomes,* recognizes that to help prepare law students for legal practice, they need to understand that legal issues come in the form of facts presented by clients that lawyers need to translate into rules of law to pursue as possible avenues for relief. To develop this skill, students need to build an understanding of the foundational tools used to make sense of the law. Some areas of the law require satisfaction of an elements test or balancing of factors, while others require understanding of different legal standards (such as the reasonable person standard) and legal tests (the questions you ask to determine whether the standard is met). Moreover, legal analysis must be conducted by posing a series of questions in a logical order, which requires students to understand how best to approach legal inquiries for different subject areas. The authors offer some well-established visual and auditory tools for accomplishing these tasks, such as concept maps, flowcharts, and call-and-response in the classroom to help students approach legal analysis in a methodical and systematic manner.

In this chapter, the authors also introduce the concept of flexible thinking, acknowledging that the law is a tool of change and lawyers must use the law to imagine multiple possible outcomes for their clients and advocate for shifts in rules and processes in an ever-changing society. In suggesting different classroom activities and assessments to teach students to be flexible thinkers, the authors connect this back to the highest level of thinking in Bloom's Taxonomy, evaluation and creation. The authors focus on techniques for teaching students about normative values embedded in legal doctrine to help them advocate for specific legal rules based on principles of fairness. Their premise is that once students build the skills required to assess possible outcomes, they will be able to argue for or against specific rules that either promote or work against their desired legal outcomes. To help illustrate this point, the authors list a series of factors such as "commingling of ethnicities and cultures" and "reconstructions of power dynamics" that have made flexible thinking necessary as of late (87). Although the discussion of flexible thinking is guided by an implicit assumption that law should be a tool for systemic change, this chapter would benefit from a more explicit recognition that many of the changes lawyers must pursue are necessitated by the many inequities built into the system and not only the recent shifts in societal thinking that the authors describe.

The workbook section of this chapter contains a simple yet effective checklist tool professors can use as a starting point for course design to ensure that their course covers all of the different types of legal processes and that they are explicit in their teaching of them. It provides ideas for different types of assessments, ranging from quizzes to test understanding of elements and factors and essays for evaluating sequencing and flexible thinking to discussion threads for assessing normative thinking and testing overall understanding. Pedagogical goals for the discussion threads could be expanded from merely gauging student understanding to recognizing and appreciating that law students possess the power and knowledge to help expand their professors' thinking and that of the classroom community.

In Chapter 7, *Formulating Advice,* the authors draw upon the skills and steps emphasized in earlier chapters to support the proposition that rather than focusing solely on whether the client has a claim (a traditional call of the question on law school exams), lawyers must take other factors into account to address whether clients would choose to pursue their claims, such as evidence, resources, and ideological values. For example, the professor prompt for this section reads, "When you are teaching a particular legal doctrine, are there opportunities to provide students with scenarios that require them to not only parse the legal elements, standards, policies, or factors, but also require them to grapple with client goals and outside factors" (94)? Once again, the authors briefly touch on how counseling a client may be affected by differences in client and lawyer culture, and they acknowledge the potential impact of the presence of intercultural differences based on varying identities of professors and students. These important principles could be developed further, given their interconnectedness to the authors' focus on developing students into flexible thinkers who possess the power to change the inherent disparities in the legal system. Perhaps an acknowledgment that the legal system is undeniably rooted in and perpetuated by structural oppression with accompanying suggested resources for further learning on this topic would help magnify the importance of designing in an intentional manner a course that emphasizes a lawyer's obligation to develop cultural competence.

In this chapter, the authors suggest exercises to help students generate legal advice ranging from drafting opinion letters and client memos to designing tools like Prezi or PowerPoint presentations for teaching clients about the law. The authors recommend instructing students to take into account personal characteristics of the client to ensure materials are accessible and use an appropriate tone. An accompanying prompt in the workbook asks, "Is there an educational benefit to giving the client a specific identity (e.g., race, ethnicity, gender, religion, language, etc.) in this exercise" (99)? Expanding on this prompt would help provide professors with the educational tools needed to thoughtfully approach and answer this complicated question.

The authors begin Chapter 8, *Creating New Outcomes: Working Toward Creativity,* acknowledging that students need to be able to use the knowledge they generate in the course to *do* as opposed to just to *know,* since as lawyers they will be expected to *solve* their clients' problems. Accordingly, professors need to create a learning environment that connects what is happening in the classroom to what practitioners actually do: create possible solutions for clients. Professors must teach their students to think creatively and show them how to "work their way to the edge of the knowledge they understand and reach forward into something that is not in the outline or class notes" (105–06). This advanced skill of being able to design different novel approaches to solving legal problems is also called ideation fluency.

The authors express concern that traditional legal education does not promote creative thinking, providing examples of traditional law school grading systems that reward students for merely repeating back what their professor has taught

them and that utilize standardized rubrics and multiple-choice questions that contain only one correct answer. The authors posit that creating classroom environments that encourage creative thinking begins with encouraging students to ask questions that challenge these traditional paradigms. The authors suggest the following three approaches for classroom instruction that promotes creativity:

1. *Domain-relevant knowledge.* The authors begin by prioritizing learning the content, since you cannot be creative without knowing the law. Accordingly, because legal concepts build upon one another in a variety of complex ways, professors need to ensure that students learn the content over the course of the entire term (as opposed to cramming before the final exam) so they retain the material and can interact with it in sophisticated and creative ways.

2. *Critical thinking skill*s. Students need to be taught skills of metacognition (self-regulated learning) so they can become aware of and learn to self-direct their thinking and learning. Students should be instructed that effective lawyering is not about finding the correct answer, but rather about developing skills and strategies to identify and creatively obtain desirable client outcomes.

3. *Motivation.* Professors should create a classroom environment that promotes intrinsic (as opposed to extrinsic) motivation. Research reveals that when students are engaged in the material, they are internally driven and process deeply, thus promoting creative lawyering. The current law school environment with its pronounced emphasis on grading (an extrinsic motivation-based structure) works against intrinsic motivation, despite evidence that students who are intrinsically motivated learn best.

Chapter 8 concludes with active-learning techniques for creating an environment focused on creativity that challenges students' higher-order thinking skills through actively engaging students, enhancing intrinsic motivation, and holding students accountable for developing knowledge throughout the entire semester. One of the examples in the workbook is a mind map to help students understand the law by visualizing connections among concepts. Having students select a legal concept and identify related topics and subtopics helps students make connections among topics and think about the content area in more expansive and creative ways. This approach works particularly well for visual students and is often a successful alternative for students who have trouble organizing the law using traditional outlines.

In Chapter 9, *Enhancing the Classroom Environment for Students with Disabilities (Without Taking Away from Those Who Do Not),* the authors address the increasingly common reality that many law school students have physical and psychological disabilities, many of which are undiagnosed. The authors propose specific strategies for effectively teaching students with disabilities that range from slow processing speed to lack of focus and memory building. As the authors point out, their suggested approaches will support not only the learning of students with disabilities, but the learning of all students in the law school classroom.

Since students with slow processing speeds have trouble digesting reading material and understanding spoken classroom lectures, professors can address reading issues by encouraging students to annotate the text, and address listening issues by speaking more slowly. The authors also suggest that professors make recordings and class materials available before and after class.

For students who have trouble seeing relationships within information, the authors suggest that professors help students visually map out the material by beginning at the highest overview level (major concepts in the table of contents) and working toward the lowest level (individual rules). Professors should then methodically walk students through different ways to organize the law, whether in traditional outline format or visually on easel paper. This will enable students to make sense of relationships among complicated legal concepts and in turn be able to apply that information to hypothetical fact patterns.

For students with attention deficit disorder, attention deficit hyperactivity disorder, and anxiety, the authors recommend building relationships, varying active-learning activities to ensure active engagement, and creating a visual record of the flow of the lesson so that when the mind wanders students have documentation to enable them to fill in the blanks on what they missed. Finally, the authors propose multiple strategies for building memory, including spaced repetition and touching as many different parts of the brain as possible to enable multiple approaches to problem-solving. For example, a professor can engage in multisensory teaching by talking about an idea while physically drawing it out so that students who struggle in one area can draw from their more honed areas of problem-solving ability.

In the conclusion, the authors once again acknowledge how challenging it is for professors to envision and implement new pedagogical approaches. They suggest that selecting one or two worksheets or skills-based exercises per semester is an excellent starting point for professors to ensure they are designing their courses with a focus on student learning as opposed to delivery of content. The authors make a persuasive case that putting active learning and formative assessments at the forefront of doctrinal course design will equip law students with the requisite skills to be effective lawyers and lifelong learners. This book will be especially useful to doctrinal professors who are looking for manageable ways to begin introducing skills-based teaching techniques that are grounded in well-established principles of educational psychology.