

Do We Need Subject Matter-Specific Pedagogies?

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Spur-of-the-moment exam for members of the law faculty:

“OK, everyone, please take out your laptops and write an essay on the following topic: *Would your class be different or the same if every subject in law school had its own unique teaching methodology?*”

This Article considers our collective responses to this little pop quiz. If the quiz had asked something more basic about teaching methods in casebook courses, like *Why do you teach the way you do?*, I expect we would probably hear traditional justifications that are commonly articulated in the legal academy. Some teachers would stress the importance of case-driven Socratic dialogue, others would mention when and where they focus more on problems, or introduce case files, or lecture to cover some material, or assign short written exercises, and so on. In short, we would prove what we already know, which is that many law professors already deploy a rich diversity of techniques to further their educational objectives.

But what we wouldn't be able to discern is why we use those techniques. Do they reflect teachers' preferences and styles, their students' preparation, the scheduling or structure of the classes (i.e., frequent short class meetings or fewer but longer sessions), or do they arise from a deep understanding of the particular material being taught? Are the teaching methods we use due solely to our own styles or approaches, or do we get pulled in different directions by the substance of what we are covering? And whether we do or not, should we? Is good teaching simply good teaching wherever it is done, or is there something different about how we teach, or ought to, within each academic discipline?

As the originator of the conference program that became this symposium on the *Pedagogy of Procedure*,¹ I guess I have already staked out a pretty non-

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1. I served as 2015 chair of the AALS Section on Teaching Methods, and was consequently responsible for initiating the *Pedagogy of Procedure* conference program. Though I trace the idea for this subject-specific teaching methods program back at least to 2012 Section Chair Barbara Glesner Fines, 2015 Program Chairs Patti Alleva and Jennifer Gundlach should be acknowledged both for organizing the AALS Annual Meeting Section on Teaching Methods Program and for spurring this symposium. I can take credit only for recognizing an interesting idea and putting the right people in place to implement it.

neutral position on the question. Notwithstanding, I think it is helpful to spell out some of the reasons I believe we can improve our teaching by developing an aggregate vision of how each course fits into the larger picture of a law student's learning, defining the role of each of the standard required courses within the overall picture of learning law, and considering carefully what specific means might be especially suited to enabling students to learn what they need to learn in each of those subjects.

Law professors already know that to do our very best in the classroom, we have to be exquisitely conscious of 1) what our students need to know; 2) what they need to know how to *do*, and 3) what approaches, materials, or techniques we can adapt or devise to help them get there. Phrasing it that way, however, shows just how many things we are juggling at once. And most law teachers do, in fact, aim to carefully consider all three of these concerns as we design our classes. But our individual courses, and the composite legal education they constitute, could be stronger if, rather than each of us thinking these things through on our own, we developed a more deliberate notion of what each of our classes was *for*—that is, if each of the academic subjects in law schools adopted an integrated model of what topics each of its classes covered, what thinking processes or methods of lawyers' work each introduced or reinforced, and what pedagogical methods were uniquely well-suited to teaching the subject. From there we can refine methodologies for reinforcing the parts of “thinking like a lawyer” that our courses are particularly good at, while being reassured that our colleagues are picking up the slack on some of the corollary skills that are less emphasized in our material. Which might be a welcome relief for everyone.

As an academic body we might aim to be more goal-oriented for each of the traditional required classes. It should not be left solely to caring and effective educators working on their own to determine what it means to teach and learn their subjects rather than just to know them. Understanding learning must be an enterprise of the discipline as a whole, and an obligation of all of the participants in it. This requires more than determining what new changes in law must be introduced, which classic cases should be retained, or which no longer serve important purposes. It even goes beyond devising new techniques for helping students understand or experience the material. At its base, it requires continually refining or redefining what it *means* to learn the subject, and then from there to devising (or at least revising) methods of helping students do so. Consequently, to meaningfully consider how teachers can better teach and students can better study within the civil procedure class, we simply have to have professors of civil procedure at the core of the inquiry. There may be a rich pool of others' work that those law teachers can draw from,² but in the end

2. Innovations in legal pedagogy come from many places. Clinicians have long developed their own methods of integrated experiential learning. And all law schools may have deans who prioritize engaging students across the curriculum; or maybe writing specialists whose individual counseling of students to improve drafts of papers gives them an invaluable perspective on the struggles their students have in mastering certain material; or perhaps support specialists whose efforts to help students understand how to work and thrive in a law

they alone are the ones who are best-suited to translate those insights into what works for their own courses. Subject-specific pedagogy, then, of necessity has to bridge what in some instances have been gaps between faculty who think deeply about *what* they teach and those who think deeply about *how* to teach.

Plenty of this work is already going on, of course. The papers in this symposium are just a few of the many, many examples of reflective law professors wisely contemplating how best to serve the needs of their students. In fact, one example of these efforts in the field of civil procedure is examined in Part I of this paper. Yet the legal academy nonetheless can stand to be even more systematic about the kind of thoughtful questioning and experimentation that the papers here and elsewhere typify.³

The myriad benefits of exploring law teaching specifically within individual doctrines can be broadly categorized within two distinguishable, overlapping, frequently-treated-as-interchangeable yet conceptually distinct concerns: 1) improved pedagogy⁴ within each course, and 2) more thoughtful curriculum⁵ design across the sequence(s) of courses.⁶

I. Pedagogy: Promoting Better Teaching of Each Individual Subject

Learning theory in legal education is often general.

Much of the foundational work in law school pedagogy (including, essentially, Langdell⁷) approaches the educational endeavor as if all of it can be done in the same way. Current conversations on teaching and learning in law schools tend to seek to improve law school teaching on the whole. They do so by helping law professors make their courses more active, become more deliberate about laying out course objectives, providing instruction, developing

school environment provide insight into specific points of confusion or barriers to student proficiency. Most institutions have their own versions of these and so many others whose jobs or dispositions give them a special interest or expertise in fostering better teaching and learning methodologies. The question becomes how to translate that work from generic expertise in understanding teaching and learning generally into specific ideas about how to advance student learning in civil procedure. And torts. And corporations. And

3. Or to apply Alleva & Gundlach's framework in this symposium, as law professors we much apply metacognition to our own ongoing learning of both the substance of the law we teach and our evolving means of helping students to learn it. See Patti Alleva & Jennifer A. Gundlach, *Learning Intentionally and the Metacognitive Task*, 65 J. LEGAL EDUC. 710 (2016).
4. I am using "pedagogy" here to mean the methods and practices of teaching, e.g., case exegesis, practice hypotheticals simulation exercises, classroom polling with clickers, flipped classes with recorded video instruction, and so forth.
5. By "curriculum," I am referring the aggregate course of study followed by students as they make their way through law school.
6. My thanks to Victoria Eastus for a helpful elucidation of the distinction between pedagogical methods within courses and structure and signaling of overall curricular design. Letter from Victoria Eastus to NYLS Curriculum Committee (Aug. 24, 2015) (on file with the author).
7. For an early examination of Christopher Columbus Langdell's impact on legal education, see ALBERT J. HARNO, LEGAL EDUCATION IN THE UNITED STATES (1953).

materials, and crafting effective assessment and feedback mechanisms.⁸ Perhaps this is an artifact of a history in which much of the discussion of law teaching has centered on the value of our “signature pedagogy”⁹: the case method and its concomitant Socratic dialogue.¹⁰ Make those interchanges across the board even more successful, or enhance them with other classroom techniques, and law classes will all become stronger and students will learn more. Since, with the exception of specialized experiential courses, we are all presumed to teach the same way—the thinking goes—there may be little need to differentiate, because we are all capable of adapting good teaching techniques to our own classes.

And whether this is in response to the historical primacy of Socratic dialogue in legal education or in contrast to it, it does seem clear that as law professors we are paying ever more attention to how students learn in our classes.¹¹ From legal educators using contemporary tools to reach their students more effectively¹² to programs on teaching in law school,¹³ symposiums on assessing students to

8. See, for example, frequently referenced texts such as GERALD F. HESS ET AL., *TECHNIQUES FOR LAW TEACHING* 2 (2011); NELSON MILLER, *TEACHING LAW: A FRAMEWORK FOR INSTRUCTIONAL MASTERY* (2010); MICHAEL HUNTER SCHWARTZ, SOPHIE SPARROW & GERALD F. HESS, *TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM* (2009); PHILIP C. KISSAM, *THE DISCIPLINE OF LAW SCHOOLS: THE MAKING OF MODERN LAWYERS* (2003); MADELEINE SCHACHTER, *THE LAW PROFESSOR’S HANDBOOK: A PRACTICAL GUIDE TO TEACHING LAW* (2004).
9. As it famously has been characterized in the Carnegie Report. WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW*, 47-86 (2007).
10. See, e.g., Joseph A. Dickinson, *Understanding the Socratic Method in Law School Teaching After the Carnegie Foundation’s Educating Lawyers*, 31 W. NEW ENG. L. REV. (2009); James R. Beattie Jr., *Socratic Ignorance: Once More into the Cave*, 105 W. VA. L. REV. 471 (2003); David D. Garner, Comment, *The Continuing Vitality of the Case Method in the Twenty-First Century*, 2000 B.Y.U. EDUC. & L.J. 307 (2000); Elizabeth Mertz, *Teaching Lawyers the Language of Law: Legal and Anthropological Translations*, 34 J. MARSHALL L. REV. 91 (2000); Peggy Cooper Davis and Elizabeth Ehrenfest Steinglass, *A Dialogue About Socratic Teaching*, 23 N.Y.U. REV. L. & SOC. CHANGE 249 (1997); Russell L. Weaver, *Langdell’s Legacy: Living with the Case Method*, 36 VILL. L. REV. 517 (1991); Myron Moskowitz, *Beyond the Case Method: It’s Time to Teach with Problems*, 42 J. LEGAL EDUC. 241 (1992). Cf., Anthony S. Niedwiecki, *Lawyers and Learning: A Metacognitive Approach to Legal Education*, 13 WIDENER L. REV. 33 (2006) (characterizing traditional Socratic teaching as implicit and rote, and urging law professors to study learning theories and metacognition to teach legal reasoning more directly and deliberately).
11. Indeed, the new learning-outcomes assessment requirements mandated for law schools under ABA Standard 303 would essentially require that we make this adjustment if we were not already moving in that direction. See AM. BAR ASS’N, *Standard 303: Curriculum*, in STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2015-2016 16 (2015).
12. For just a few examples, see Michele Pistone & Warren Binford, *Use of Technology in Teaching*, in BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD 129 (Deborah Maranville et al., eds.) (2015); Deborah J. Merritt, *Legal Education in the Age of Cognitive Science and Advanced Classroom Technology* 14 B.U. J. SCI. & TECH. L. 39 (2008); DAVID I.C. THOMPSON, *LAW SCHOOL 2.0: LEGAL EDUCATION FOR A DIGITAL AGE* (2009).
13. For example, the long-standing annual conferences and workshops sponsored by the Institute for Law Teaching and Learning, *Institute Conferences*, INSTITUTE FOR LAW TEACHING AND LEARNING, <http://lawteaching.org/conferences/> (last visited Apr. 21, 2016); or the

enhance their learning,¹⁴ TED-style talks,¹⁵ and new casebook series¹⁶—or even the perennial law professors’ revising their teaching strategies to address the presumed deficits of incoming generations of students¹⁷—it feels like a focus on teaching and learning in law school has moved from a conversation that was sometimes absent or taking place privately among a few interested colleagues to a more central part of the responsibilities inherent in the profession.¹⁸

I think it simply *has* to be true that paying ever more rigorous attention to what helps law students learn, and how we can better teach them, is an affirmative good for legal education. After all, if as law professors we actually ascribe to the “plan, do, critique, repeat” model that structures much of our clinical education,¹⁹ then a critical examination of teaching methods (and student learning) is simply an integral step in the process of teaching itself.²⁰

teaching and learning conferences sponsored by the Society of American Law Teachers (SALT), e.g., *2014 SALT Teaching Conference*, Society of American Law Teachers, <https://www.saltlaw.org/2014teachingconference/> (last visited Apr. 21, 2016).

14. E.g., *Workshop on Measuring Learning Gains: Institutional Effectiveness for the New Era*, ASS’N OF AM. L. SCH., <https://memberaccess.aals.org/eweb//DynamicPage.aspx?WebKey=EC4821F4-2FF5-4D7D-8751-4253D9E4F921&> (last visited Apr. 21, 2016).
15. See LegalED’s new series of Igniting Law Teaching conferences, *Igniting Law Teaching 2015*, LegalED, <http://legaledweb.com/igniting-law-teaching-2015/2015/3/19/igniting-law-teaching-2015> (last visited Apr. 21, 2016).
16. For a thoughtful discussion of the future directions law school casebooks may take, see Carol L. Chomsky, *Casebooks and the Future of Contracts Pedagogy*, 66 HASTINGS L.J. 879, 882-85, 893-97 (2015). Within the past decade almost all legal publishers seem to have introduced new textbook series intended to help structure more innovative legal pedagogy, such as Carolina Academic Press’s Context and Practice books or West’s Interactive Casebook series. In addition, other legal publishers have rolled out supplements to standard casebooks for those law professors who want to provide more information about how to learn their subjects. For one example, see Wolters Kluwer’s Jumpstart series.
17. The conversation takes its most recent form in considering the specific learning needs of millennials. For some of the many contributions to the current dialogue, see Rebecca Flanagan, *The Kids Aren’t Alright: Rethinking the Law Student Skills Deficit*, 2015 B.Y.U. EDUC. & L.J. 135 (2015); Jason S. Palmer, “The Millennials are Coming!”: *Improving Self-Efficacy in Law Students Through Universal Design in Learning*, 63 CLEV. ST. L. REV. 675 (2015); Ruth Vance & Susan Stuart, *Of Moby Dick and Tartar Sauce: The Academically Underprepared Law Student and the Curse of Overconfidence*, 53 DUQ. L. REV. 133 (2015); Emily A. Benfer & Colleen F. Shanahan, *Educating the Invincibles: Strategies for Teaching the Millennial Generation in Law School*, 20 CLINICAL L. REV. 1 (2013).
18. Which is the founding philosophy of the Institute for Law Teaching and Learning. *Institute History*, INSTITUTE FOR LAW TEACHING AND LEARNING, <http://lawteaching.org/about/history/index.php> (last visited Aug. 5, 2015).
19. This may be an unfair oversimplification of clinical methodology, but at its core, clinical education in law school is centered on learning both from well-planned practical experience and from thoughtful reflection about that experience after it occurs. See Carolyn Grose, *Beyond Skills Training, Revisited: The Clinical Education Spiral*, 19 CLINICAL L. REV. 489, 497-501 (2013) (summarizing clinical teaching methods).
20. In fact, I take this to be the central point of Patti Alleva & Jennifer Gundlach’s call for what

While they can be enormously helpful, though, these overarching inquiries into effectiveness in law teaching sometimes do little to differentiate among types of law classes, courses for first-year or upper-level students, or specific subjects.²¹ Even the most contemporary examinations of law teaching tend to treat the subject somewhat globally. In the 2013 survey *What the Best Law Teachers Do*, for example, the authors examined how a sampling of highly effective law professors planned and conducted their classes, interacted with students, and provided feedback and grades.²² Professors included in the study taught an extraordinarily wide range of courses,²³ and throughout the book the focus is placed squarely on commonalities in approach among the teachers regardless of their subjects or course structure. Similarly, Roy Stuckey's 2007 explication of *Best Practices for Legal Education*²⁴ constructed broad categories in which to offer recommendations, notably for "experiential courses"²⁵ and "non-experiential"²⁶ classes, but did not distinguish more specifically by subject matter.²⁷ Intended message or not, the thrust of these projects could be understood to suggest that effective pedagogical modalities could be adapted by dedicated law professors to most courses in the curriculum, perhaps with accommodation made for the differences between primarily doctrinal and principally skills-based classes.

they term "intentional teaching." See Alleva & Gundlach, *supra* note 3, at 711.

21. One example of this is the extended dialogue about the importance of active learning for law students. The many articles focusing directly on the topic, and exploring it in-depth, have tended to focus on active learning as a generally positive force in legal education, leaving it to individual teachers to develop means of using active-learning techniques in their courses. See Steven I. Friedland, *Trumpeting Change: Replacing Tradition with Engaged Legal Education*, 3 ELON L. REV. (2011); Jessica Erickson, *Experiential Education in the Lecture Hall*, 6 NE. U. L.J. 87 (2013); Paul L. Caron & Rafael Gely, *Taking Back the Law School Classroom: Using Technology to Foster Active Student Learning*, 54 J. LEGAL EDUC. 551 (2004); Robin A. Boyle, *Employing Active-Learning Techniques and Metacognition in Law School: Shifting Energy from Professor to Law Student*, 81 U. DET. MERCY L. REV. 1 (2003); Gerald F. Hess, *Principle 3: Good Practice Encourages Active Learning*, 49 J. LEGAL EDUC. 401 (1999). Of course, many of the ideas espoused in these and other pieces on active learning in law schools do end up being deployed within specific exercises, tips and teaching techniques, so perhaps it is circular to characterize the primary discourse around active learning in law schools as generic, while excluding the many more examples of particularized considerations of active learning. Still, it seems fair to me to suggest that the *idea* that active learning is valuable tends to be discussed in the abstract rather than contextualized in any individual subject or course of study.
22. MICHAEL HUNTER SCHWARTZ, GERALD F. HESS & SOPHIE M. SPARROW, *WHAT THE BEST LAW TEACHERS DO* (2013).
23. The book notes that "[t]he subjects' course loads include everything from foundational doctrinal courses, to legal writing, to advanced seminars that focus on social movements affecting the law." *Id.* at 14.
24. ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION* (2007).
25. *Id.* at 165-205.
26. *Id.* at 207-34.
27. Teaching methodology for experiential legal education is further developed in SUSAN BRYANT, ELLIOTT S. MILSTEIN & ANN C. SHALLECK, *TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY* (2014).

Yet more specific examples of examining pedagogy within subjects do already exist.

Obviously, I am oversimplifying when I claim that much of the discussion of teaching methodology in law has been generic or divisional rather than focused in specific areas of legal doctrine. In addition to the informal assistance that individual faculty members have always offered their colleagues who were taking on new subjects, a literature of approaches, tips and techniques exists for teaching the varied academic subjects taught in law school.²⁸ Professors of legal writing, in particular, have a long history of working to refine the techniques for teaching and learning that discipline.²⁹ But often these efforts have focused more on the rather micro questions of how-to with respect to unique exercises, or modes of teaching particular topics within the subject, rather than asking more macro questions about the teaching of that subject itself.³⁰

28. It could even be argued that the teachers manual for every textbook lays out a pedagogy for the courses using it. In my experience that is not quite true, however. Most traditional teachers manuals provide points to emphasize, responses to questions or problems posed in the book, or perhaps give sample syllabuses to guide users in making decisions about what to include and what to cut in different iterations of the class. They only rarely move beyond the material itself to suggest what it actually *means* to teach and learn it. For more in-depth advice on the whys and hows of teaching a particular course, many law professors might be better-served by consulting the invaluable volume *TEACHING THE LAW SCHOOL CURRICULUM* (Steven Friedland & Gerald F. Hess eds. 2004); it is chock-full of exercises and teaching suggestions organized by academic subject and targeted to particular courses. Or see the *STRATEGIES AND TECHNIQUES FOR TEACHING* series of monographs edited by Howard E. Katz, which are intended to help new law teachers acclimate themselves to teaching almost any common law school course.

For a further list of resources organized by academic subject matter see a law review bibliography of new materials in legal pedagogy published as Arturo L. Torres & Karen E. Harwood, *Moving Beyond Langdell: An Annotated Bibliography of Current Methods for Law Teaching*, *GONZ. L. REV.*, Special Edition 1994, at 1; updated as Arturo López Torres & Mary Kay Lundwall, *Moving Beyond Langdell II: An Annotated Bibliography for Current Methods in Law Teaching*, *GONZ. L. REV.*, Special Edition 2000, at 1.

29. Not all scholarship by teachers of legal writing is about the teaching of writing or law, of course, but much is. For an in-depth analysis of the contributions of this work and an extensive bibliography of works published at the time (much more has emerged since), see Terrill Pollman & Linda H. Edwards, *Scholarship by Legal Writing Professors: New Voices in the Legal Academy*, 11 *LEGAL WRITING: J. LEGAL WRITING INST.* 3 (2005). Law school clinicians similarly have an extensive history of careful consideration of teaching methodologies specific to their discipline(s). See Stephen Ellmann, *What We Are Learning*, 56 *N.Y. L. SCH. L. REV.* 171 (2011/12) (summarizing developments in the field of clinical legal education and introducing articles published as part of a symposium honoring twenty-five years of the Clinical Theory Workshop).
30. One possible exception to this generalization may be DAVID NADVORNEY & DEBORAH ZALESNE, *TEACHING TO EVERY STUDENT: EXPLICITLY INTEGRATING SKILLS AND THEORY INTO THE CONTRACTS CLASS* (2013). This text seeks to integrate outcome goals for student learning into the design of a Contracts course. The manuscript provides a structure for teaching academic skills, legal reasoning and theoretical perspectives in a unified course covering contracts doctrine. *Id.* at xii-xiii. The effort is impressive, and I acknowledge that it is fairly congruent with my own approach to first-year teaching in contracts and other courses. But the book only begins a conversation about learning in Contracts courses. It does not

Not entirely, however. The *Saint Louis University Law Journal* regularly publishes collected volumes on the teaching of _____ subject. In 2003, the topic was civil procedure. Treating that earlier symposium as a case study and prior counterpoint to this current symposium reveals both the promise of the work that has been done already, and the potential of work yet to come.

A few caveats before diving in: First, I am not a civil procedure teacher. I provide an outsider's perspective on what this writing has to offer. That may have value, coming as it does without an already-developed personal approach to thinking about and teaching the subject. But, of course, it also comes without the inherent expertise professors of the course possess. Second, 2003 is a long time ago in the world of civil procedure. Most law teachers agree that this is the traditional first-year class whose basic doctrine has undergone the most radical revision in recent years. The Supreme Court's decisions in *Twombly*³¹ and *Iqbal*³² caused most civil procedure professors not simply to fold those cases into their courses as flour is kneaded into bread dough, but instead to fundamentally rethink what students needed to learn about pleadings under the Federal Rules of Civil Procedure.³³ That means there is a risk that considerations of civil procedure teaching from 2003 may already have become dated. At the least, they undoubtedly no longer constitute a complete reflection of what the authors themselves would have to say about their subjects.

Still, the 2003 civil procedure symposium continues to provide an excellent example of what was happening around teaching the subject at that point in time. If I were asked by my dean to take on teaching civil procedure tomorrow (note to dean—not an actual suggestion), even with the recent doctrinal changes I would simply devour those papers in addition to the more current ones in this symposium. I would view them as an amazing pool of knowledge

especially interrogate the pedagogy of the *subject* of contract law itself and how we can best help students comprehend it. Nor could this one text possibly comprehensively convey the rich collection of approaches that contracts professors are already developing to enhance their instruction. It is worth noting that the authors agree, and are fairly explicit about hoping to inspire similar work in other fields. See notes about applicability to other common introductory subjects in law school in *Introduction: Overview and Structure of the Book*, especially at page xiv. *Id.* at xi-xiv.

31. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).

32. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

33. As, for example, Christine P. Bartholomew's article *Twiqbal in Context* does in the current symposium. Prof. Bartholomew's article no doubt will be helpful to all experts in the field as they consider ways to teach the current pleading standards. From a different angle, the piece can be seen as a terrific example of what it means for law professors to reconsider how students learn a complicated rule works in context. Prof. Bartholomew takes for granted that her students must read *Twombly* and *Iqbal* and discern the rules of pleading that they establish, but she reconceives what it means to "know" these new rules. Understanding that, especially for beginning law students, being able to state legal rules is often not at all the same thing as being able to use them, Bartholomew provides carefully chosen examples that must, essentially, generate richer contextual comprehension of how the rules actually operate on the ground. Christine P. Bartholomew, *Twiqbal in Context*, 65 J. LEGAL EDUC. 744 (2016).

and thought. As I maniacally leafed through the papers I would find some general words of wisdom from friendly guides immersed within the topic,³⁴ and I would come subconsciously to lump the pieces I've read into three concrete categories of advice that their authors have for me:

A. "Here's an especially good way to teach this civil procedure thing that we all have to cover."

As a new initiate to teaching the subject of civil procedure I would be eager for anything that could give me precise prescriptions for doing my job well. As a teacher of first-years already, I know that students struggle to learn how to read cases in law school generally, and that the older and most classic cases often prove to be the most confounding. But knowing that in the amorphous abstract is not as helpful as understanding that early on I am going to assign *Pennoyer v. Neff*.³⁵ Someone who can help me pinpoint common mistakes students make in comprehending or applying this particular case, or providing tools and strategies for aiding students in interpreting and using it, will enable me to not simply lament a frequent problem but try to take steps toward solving it.

The *St. Louis University Law Journal* symposium offers me a wealth of the sort of practical information that I can immediately implement in my new course if I am so inclined. Several articles help me use specific cases or problems to realistically illustrate core concepts. Keith E. Sealing shows what I could do with the *Exxon Valdez* cases.³⁶ David Sloss explains how *Reeves*³⁷ might help my students (and probably me) work through the tangled morass of the *Celotex*³⁸ trilogy.³⁹ From a broader vantage point, Bob Carlson and Melissa Cole show me how I could use the example of slavery reparations⁴⁰ or the narrative overlay of film theory⁴¹ as framing devices or recurring touchstones in my course. The present symposium also provides me with some hands-on teaching methods that I can adopt wholesale or in parts by giving me specific ways to teach

34. For example, Judge Michael A. Wolff's introduction to the symposium, *The Most Important Course in Law School?*, 47 ST. LOUIS U. L.J. 1 (2003) or senior scholar Joseph J. Simeone's *Reflections on Fifty Years of Teaching Civil Procedure*, 47 ST. LOUIS U. L.J. 87 (2003).

35. *Pennoyer v. Neff*, 95 U.S. 714 (1877).

36. Keith E. Sealing, *Civil Procedure in Substantive Context: The Exxon-Valdez Cases*, 47 ST. LOUIS U. L.J. 63 (2003).

37. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133 (2000).

38. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) and its companions *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986) and *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986).

39. David Sloss, *Using Reeves to Teach Summary Judgment*, 47 ST. LOUIS U. L.J. 127 (2003).

40. Bob Carlson, Student Perspective, *Why Slavery Reparations Are Good for Civil Procedure Class*, 47 ST. LOUIS U. L.J. 139 (2003).

41. Melissa Cole, *Projecting Civil Litigation Through the Lens of Film Theory*, 47 ST. LOUIS U. L.J. 21 (2003).

personal jurisdiction,⁴² the intricacies of federal pleadings law,⁴³ or how to understand common litigation documents by working on drafting parts of them within a larger context.⁴⁴

I am not certain this is all pedagogy, precisely, because it says more about what to teach than how to teach it, but in many papers these two notions are deeply intertwined. And I am certainly grateful that my civil procedure-teaching predecessors are guiding my coverage and course-framing decision so that I do not have to start my own class from scratch.

B. “Here’s how to teach critical lawyering skills within the context of civil procedure.”

If I am a seasoned law teacher coming newly into the civil procedure field, I am going to want to bring in some of what I know how to do in other courses. I already understand that immersive experiential learning can be richer and often leads to deeper comprehension in almost any subject.⁴⁵ So should my students draft a complaint for a specific client they meet in person or through a written fact summary? That kind of project might help my students consider the well-pleaded complaint rule while they reflect on the ways that tactical considerations may lead attorneys to provide as few details as possible within the boundaries of the law. But what are the transactional costs of devoting time and teaching attention to such an exercise within the typical civil procedure class, especially if it is taught within a single semester? Are there ways to make the project more concise and focused, or at least to ensure that the drafting experience is especially meaningful?

Here, too, both symposiums deliver to my new course a rich trove of ways to apply what is generally good practice in teaching and learning. In the 2003 symposium, Larry L. Teply and Ralph U. Whitten outline a whole approach to integrating cases, explanatory text, and problems in my course,⁴⁶ and they offer by way of example an integrated plan for teaching venue that builds off of *Pfeiffer v. Insty Prints*.⁴⁷ I could use their work to bring flipped classes, individual or group assignments, or other means of experiential learning into my course.

42. Cynthia Ho, Angela Upchurch & Susan Gilles, *An Active-Learning Approach to Teaching Tough Topics: Personal Jurisdiction as an Example*, 65 J. LEGAL EDUC. 772 (2016).

43. Bartholomew, *supra* note 33.

44. David B. Oppenheimer, *Using a Simulated Case File to Teach Civil Procedure: The Ninety-Percent Solution*, 65 J. LEGAL EDUC. 817 (2016).

45. Experiential learning is perhaps best exemplified in a quotation commonly (perhaps incorrectly) attributed to Confucius: “Tell me, and I will forget. Show me, and I may remember. Involve me, and I will understand.” The enormous body of work on experiential learning done both in and outside of legal education cannot possibly be encapsulated here, but for an influential text in the field of experiential learning see DAVID A. KOLB, *EXPERIENTIAL LEARNING: EXPERIENCE AS THE SOURCE OF LEARNING AND DEVELOPMENT* (1984).

46. Larry L. Teply & Ralph U. Whitten, *Teaching Civil Procedure Using an Integrated Case-Text-and-Problem Method*, 47 ST. LOUIS U. L.J. 91 (2003).

47. *Pfeiffer v. Insty Prints*, No. 93-C2937, 1993 U.S. Dist. LEXIS 15319 (N.D. Ill. Oct. 29, 1993).

Ana Maria Merico-Stephens & Aaron F. Arnold will show me how to use a competitive, team-based, multiple-choice game to reinforce my students' mastery of the rules we study.⁴⁸ Kevin M. Clermont, on the other hand, urges me to spend a little more time on the landmark cases in civil procedure, which he reminds me are considered groundbreaking and important for a reason.⁴⁹ He reminds me that slowing down a little, and using some of the key cases in my new course as case studies to be elaborated on and pondered in depth, will help my students build the schemata that all of them will need as expert lawyers as they consider and help to resolve their clients' problems.⁵⁰

Meanwhile, my colleagues in the current symposium can help concretely. David Oppenheimer will provide me already partially completed drafting exercises so that my class can *efficiently* learn from working with these documents in their (simulated) context.⁵¹ Christine Bartholomew has generated a whole plan for group-work exercises that essentially require students to see for themselves how to apply the contemporary pleadings rules.⁵² And in addition to providing a helpful framework for thinking about teaching generally and teaching personal jurisdiction specifically, Cynthia Ho, Angela Upchurch and Susan Gilles provide a wealth of appendix materials that I am not ashamed to say I might adopt wholesale when I first attempt to cover the subject.⁵³

Once again, I am thankful for and appreciative of the ways that this community of colleagues can help me apply what I know about law teaching overall to my hypothetical new civil procedure course. And, once again, what I would take away from my reading is both concrete and readily capable of being implemented.

But then there is this third category of articles and ideas that I encounter in the symposiums that I am particularly intrigued by. In addition to giving useful concrete proposals, they more broadly offer tantalizing suggestions of not-quite-yet-realized possibility as I am trying to understand my role as a new professor of civil procedure:

C. "Here's what a deep comprehension of civil procedure distinctively contributes to an understanding of what law is, or of what it means to be a lawyer."

One question in the back of my mind as I begin to construct my course is far broader and more basic than the how-tos that I have thought about so far:

48. Ana Maria Merico-Stephens & Aaron F. Arnold, *One Proposed Tool for Learning, Playing and Reducing Anxiety in Civil Procedure*, 47 ST. LOUIS U. L.J. 59 (2003).

49. Kevin M. Clermont, *Teaching Civil Procedure Through its Top Ten Cases, Plus or Minus Two*, 47 ST. LOUIS U. L.J. 111 (2003).

50. *Id.* at 119-21.

51. Oppenheimer, *supra* note 44, at 833-38.

52. Bartholomew, *supra* note 33, at 765-71.

53. Ho, Upchurch & Gilles, *supra* note 42, at 805-16.

What exactly *is* the study of civil procedure as an academic discipline? As a professor and course designer, I need to know what topics should be covered within the course, and how much weight each should be given. Should my pedagogic choices be driven primarily by what attorneys may need to know or do in practice; or based on building a broad understanding of the doctrine; or on building basic legal academic skills; or something else entirely?⁵⁴ In other words, is civil procedure a study of rules and decisions regarding federal courts, or am I using those materials to introduce my students to the *way* that civil procedure experts understand and use them? How do my answers to that question affect not just what I teach but the way I teach it?

Practicing lawyers would likely respond that civil procedure is (or should be) an introduction into the modes and methods of litigation as cases move through one or more courts. Theoreticians might posit that the course is a broad inquiry into the power of the judiciary and/or the way judicial authority operates.⁵⁵ Am I really going to have to choose between a theoretical emphasis in my class or a practical one? Of course I don't actually want to do either—I want to do both. This last set of symposium papers begins to point the way.

Though no one paper alone spells this out, a careful reading of the symposium articles is starting to aid me in forming a much more conceptual understanding both of what I am going to be teaching and why I am going to be teaching it. In the *St. Louis* symposium, Lonny Sheinkopf Hoffman wants me, and probably my compatriots in all law teaching, to “teach by example.”⁵⁶ Along the way, though, he specifically urges me to think of civil procedure courses as demonstrating “authentic examples of legal decision-making.”⁵⁷ Why is that so important in this course, when it could seem to be equally true of the cases selected for examination in any law school class? Perhaps that is because, as George Rutherglen explains, my civil procedure course can (in his opinion, should) explicitly teach students to consider strategic behavior and motivation.⁵⁸ Rather than just rehashing the same mid-twentieth century jurisdictional opinions we earlier generations of law students were assigned

54. I don't mean to suggest that civil procedure experts are not already aware of this seeming tension, only that, as a newcomer, I would struggle with trying to resolve it. Undoubtedly most courses in civil procedure probably do try to touch at least in part on all of these concerns. For specific examples of ways that some civil procedure teachers have attempted to introduce practice-oriented experiences in their courses, see Raleigh Hannah Levine, *Of Learning Civil Procedure, Practicing Civil Practice, and Studying A Civil Action: A Low-Cost Proposal to Introduce First-Year Law Students to the Neglected MacCrate Skills*, 31 SETON HALL L. REV. 479 (2000); Larry L. Teply & Ralph U. Whitten, *Teaching Civil Procedure Using an Integrated Case-Text-and-Problem Method*, 47 ST. LOUIS U. L.J. 91 (2003).
55. For an examination of tensions pulling the civil procedure course in different directions as it affects one law school, see Robin Pogrebin & Edward Klaris, *The Rules of the Game*, THE LAW SCHOOL, Autumn 2006, at 25, 25-35, http://www.law.nyu.edu/sites/default/files/ECM_PRO_061129.pdf (publication of NYU School of Law).
56. Lonny Sheinkopf Hoffman, *A Parting Reprise*, 47 ST. LOUIS U. L.J. 43, 45 (2003).
57. *Id.* at 44.
58. George Rutherglen, *Teaching Procedure: Past and Prologue*, 47 ST. LOUIS U. L.J. 13 (2003).

for their own sake, he wants me to use the cases I assign in civil procedure to show my students how “the discordant shapes of human conflict” affect the development of law.⁵⁹ (And I think it important to note that while this precise goal is not explicitly given by some of the other civil procedure teaching experts, it is very likely met by the kinds of contextual experiential work that all of civil procedure teachers in the present symposium advocate.)

Meanwhile, Jack H. Friedenthal urges me to make my course especially practical, and offers examples such as teaching students how lawyers make choices among particular courts and judges, or revealing the tactical considerations implicated when they determine to seek an interlocutory appeal or, conversely, decide to await final judgment, assuming there are mechanisms that could make either option available.⁶⁰ The focus on teaching strategy is again echoed by Jason M. Schmiege, who assures me that his understanding of the entire subject of civil procedure is encompassed by a law professor’s quote in *The Buffalo Creek Disaster*: “I can win any argument—if you let me phrase the question.”⁶¹

From these papers I am starting to see my job from a much wider lens. The articles collectively remind me that law students must come to understand that lawyers tend to use procedural requirements and motions as *tools* rather than simply as limiting instructions. Litigators, such as I once was, come to intuitively understand the strategic nature of procedural requirements, but that is because their work requires positioning their clients as advantageously as possible. Law students, on the other hand, tend to study civil procedure from an objective or even omniscient viewpoint. This may be one reason why they can have a hard time understanding how procedural rules operate in the real world. In fact, this may go a long way toward explaining this current symposium’s repeated emphasis on learning civil procedure in context.⁶² As this symposium’s civil procedure authors intimate, the distinction between substantive and procedural rules is not intuitive for legal novices,⁶³ and yet it is absolutely central not only for understanding the law of civil procedure itself, but really for deeply comprehending all of the cases they will read in law school and in their legal careers.

In other words, both symposiums seem to be telling me that, as a new instructor in the subject, I am going to have to consider how to bridge the divide between students’ simply *reading* procedural rules and genuinely *knowing* them. All within the limitations of having a set number of credit hours, and

59. *Id.* at 20.

60. Jack H. Friedenthal, *Exploring Some Unexplored Practical Issues*, 47 ST. LOUIS U. L.J. 3 (2003).

61. Jason M. Schmiege, Student Perspective, *Phrasing the Question: The Use of The Buffalo Creek Disaster in Teaching Civil Procedure*, 47 ST. LOUIS U. L. J. 149, 149 (2003) (quoting GERALD M. STERN, *THE BUFFALO CREEK DISASTER* 81 (1977)).

62. Oppenheimer, *supra* note 44; Ho, Upchurch & Gilles, *supra* note 42; Bartholomew, *supra* note 33.

63. *E.g.*, Alleva & Gundlach, *supra* note 3; Ho, Upchurch & Gilles, *supra* note 42.

a large volume of dense jurisdictional and rule-bound concepts that I will be expected to cover. I still do not know quite how to do this. After all, I'm new to (and actually only imagining myself to be) teaching civil procedure. Moreover, the questions are difficult ones, and ones that even longtime professors of the subject may wrestle with in their teaching.

But that is exactly the point: By having an engaged dialogue specifically about what is uniquely demanding in teaching the subject, and which approaches are best-suited to helping students master it, even those law professors who are not themselves especially interested in developing expertise in learning theory can find ways to strengthen their instruction and help their students learn civil procedure more comprehensively, more meaningfully, and more effectively.⁶⁴ If I were newly teaching civil procedure, I would absolutely want my friends in the field to keep the suggestions for specific teaching techniques coming. I would look for assistance from subject-matter experts to develop the kinds of active-learning modules that I understand how to create in other law classes so that I could appropriately modify them for this new subject. I would hope, eventually, to be able to bring the genuine joy to the subject that I see from the speakers and authors in this current symposium, or from those back in 2003, but I am certainly going to need their help to get there. For that reason alone I am going to want a robust conversation about teaching the subject of civil procedure to continue to show me how to excel in my new role. Even if I followed that discussion closely, however, I would still be thinking just about improving my own course, or (if I am generous) about teaching my specific students.

But in addition to giving me solid suggestions for improving my course, both the St. Louis civil procedure symposium and this one show me that there is room to think more expansively about my new class. I am beginning to see that I might have to think *differently* about how I teach in civil procedure compared to what I did back when I taught torts or contracts. I am going to have care not just about new bodies of law, but also, maybe, about different areas of my students' developing lawyer brains. Most centrally, I want to know more about this idea of civil procedure providing a unique portal to envisioning the strategic work that lawyers do.

Doni Gewirtzman posits that our courses are intrinsically better when form and substance align.⁶⁵ In other words, the pedagogical methods in our courses should feel different from one another as each strives to reflect the

64. Perhaps the recent seismic shifts in the doctrine itself has pushed teachers of civil procedure further ahead in critically examining the instruction in their discipline than those of us who teach other subjects. If so, this can serve only to make their conversations ever more sophisticated and reflective. And, assuming Alleva & Gundlach's thinking about intentionality in teaching is correct (which I believe it is), then that review already moves the subject's teaching toward being more effective. Alleva & Gundlach, *supra* note 3.

65. See Doni Gewirtzman, *Reflections on Substance and Form in the Civil Rights Classroom*, 54 ST. LOUIS U. L.J. 783, 783-84 (2010) (considering his own pedagogy in a class on sexuality and the law as part of the Saint Louis Law Journal's symposium on teaching civil rights law).

very processes of the subject matter we are teaching. Although I firmly believe that structure can create or reinforce meaning, as a beginner in the subject I simply don't know enough about the *subject* of civil procedure to parallel my methods with my message. I am going to have to rely on the amassed wisdom of experienced civil procedure colleagues to help me understand how our subject fits into my students' overall growth as beginning attorneys.

To a great extent, a novice teacher or new instructor in a particular subject is always going to need to look to more experienced peers for guidance. What all these experts that I have consulted suggest, then, is more basic than just getting help mastering the subject. I am learning from them that rather than just trying simply to cram the topics and material into my brain and class notes as quickly as I can, I need to start by trying to get into the mindset of a proceduralist. And once I have adopted that worldview it will (and should) shape everything about how I structure and teach my class.

Which then raises the broader question: Isn't that going to be true for everything I teach?

II. Curriculum: Considering the Collective Design of Legal Education

In addition to improving the individual pedagogies of essential law school courses, a collection of subject-specific inquiries into the theories and methods of teaching foundational classes should eventually result in a richer view of the law school curriculum as a whole. An enticing notion from the third group of St. Louis symposium authors was that civil procedure classes do certain things *better* than other classes do. Both that earlier symposium and this present one suggest that the subject of civil procedure can have a powerful role in showing students the strategic choices that undergird all resolved litigation.⁶⁶ This is especially important when we remember that law students primarily study appellate decisions written in such a way that their reasoning seems inevitable. Showing those students the strategies and tactical decisions underlying those cases helps them see more broadly that legal arguments are in fact constructed, not simply found or discerned. And this is one point of concentration in just one subject, and could itself benefit from further examination and elaboration.

What would we learn about the enterprise of legal education as a whole by consciously overlapping the careful consideration of pedagogy within each individual subject?

It is at this point a tired cliché to observe that the basic curriculum in law remains remarkably standardized. Despite a few progressive approaches⁶⁷ and

66. Indeed, having students somehow get inside of some of those decisions in order to better grasp the role of procedure in litigation seems to undergird the experiential approaches adopted by both Oppenheimer and Bartholomew. See Oppenheimer, *supra* note 44, and Bartholomew, *supra* note 33.

67. Well-known broad-scale examples include Northeastern University School of Law's emphasis on hands-on co-op placements, or CUNY law school's early practice/skills orientation and concomitant de-emphasis on traditional casebook courses and examination methods. See Roger I. Abrams, *Co-op Program*, 15 ST. JOHN'S J. OF LEGAL COMMENT. 295

some experimentation around the edges,⁶⁸ the core subjects taught in the first year—civil procedure, contracts, constitutional law (though sometimes this one gets moved to the second year), criminal law, legal writing/reasoning, property, torts—have not budged in generations.⁶⁹ The basic upper-level doctrines are pretty consistent as well: criminal procedure, corporations/business organizations, evidence, professional responsibility and trusts and estates, with maybe bankruptcy, family law, federal courts or tax added to the mix.⁷⁰ Either this persistence is due solely to the stubborn lack of creativity (or interest) of the law school professoriate, or it simply has to be true that we believe this combination of courses somehow conveys something important about how law works.

I will confess to a professional and probably personal investment in thinking the latter. I want to believe that law schools and law professors have reasons for what we do. I am operating, then, from the presumption that the consistency in the law school curriculum stems from some implicit consensus that the standard required courses convey something essential.

But that supposition simply raises the next question: Why? Are these classes standard because everyone needs to know these subjects in order to be well-prepared for the profession, or are there more complicated reasons for choosing the root subjects in law school? It could simply be that these

(2001); Judith Kleinberg & Mark Barnes, *CUNY Law School: Outside Perspectives and Reflections*, 12 *Nova L. Rev.* 1 (1987) (describing the then-current curriculum of CUNY law school amid pressure for the school to become at least somewhat more traditional in its educational design). But there have also always been skeptics to curricular innovation. See, e.g., Matthew S. Steffey & Paulette Wunsch, *A Report on CUNY's Experiment in Humanistic Legal Education: Adrift Toward the Mainstream*, 59 *UMKC L. Rev.* 155, 179 (1991) (predicting that CUNY law school would “surely evolve into a mainstream local law school or disappear”). And, naturally, there are many more recent examples, as virtually all law schools work to develop a twenty-first-century reformation of legal education. See, e.g., Keith A. Findley, *Rediscovering the Lawyer School: Curricular Reform in Wisconsin*, 24 *WISC. INT'L L.J.* 295 (2006) (examining the theories underlying curricular revisions at the University of Wisconsin Law School); Jamie R. Abrams, *A Synergistic Pedagogical Approach to First-Year Teaching*, 48 *DUC. L. Rev.* 423 (2010) (considering curricular innovations at American University's Washington College of Law); Toni M. Fine, *Reflections on U.S. Law Curricular Reform*, 10 *GERMAN L.J.* 717, 739-41 (2009) (commenting on Washington and Lee's all-encompassing third-year professionalism course).

68. For example, though many schools now incorporate some introduction to administrative or regulatory law within the required curriculum, electives in the first year have become more common, and the credits and prominence accorded to the teaching of writing and lawyering skills has increased markedly at many law schools in recent decades. But the nucleus structure of the basic first-year courses has resiliently remained. See *A SURVEY OF LAW SCHOOL CURRICULA: 2002-2010* (Catherine L. Carpenter, ed. 2012) (report of the ABA Section on Legal Education and Admissions to the Bar).
69. Not coincidentally, of course, these subjects also form the centerpiece of most bar examinations.
70. See, e.g., NANCY B. RAPOPORT & JEFFREY D. VAN NIEL, *LAW SCHOOL SURVIVAL MANUAL: FROM LSAT TO BAR EXAM*, pp. 131-35 (2010) (discussing recommended courses for upper-level law students).

courses are predicates to all other learning for prospective lawyers. In the same way that some version or another of gross anatomy, cellular biology and pathology are viewed as essential building blocks for further coursework in the development of future doctors,⁷¹ mastery of torts, contracts and property may be necessary precursors to more advanced topics in law school.

But I'm not satisfied with that explanation, and, as a profession, we do not seem to behave as if that were (at least entirely) true. Only a small fraction of the upper-level curriculum in law school actually builds off these specific subjects. Moreover, even if these central courses captured the state of the art in nineteenth- or early twentieth-century legal doctrine, can it really be said that little has changed in the legal profession since then?⁷² Law professors acknowledge that our laws do not actually have the neat boundaries suggested by their divisions into these topics.⁷³ Where do we situate the teaching of topics like product warranty that neatly overlap both tort and contracts doctrine? Or nuisance, as it implicates property and tort concepts? How do we teach crucial lawyering skills like taking into account procedural posture, which is so essential to reading and comprehending cases in all beginning law classes, but is also considered in detail as its own subject in civil procedure courses? Moreover, it simply is not true that the basic required subjects featured at the beginning of law school are necessary to learning the upper-level curriculum. A general idea of how to parse statutes and how case law interacts with regulatory authority may be a prerequisite to the study of income tax, but it is hard to see how the material knowledge acquired in any of the introductory courses is directly required.

Many teachers of at least first-year courses emphasize that one of their primary goals, or even *the* principal objective of their courses, is teaching students to “think like lawyers.” Surveying the particular set of legal doctrines that the course is composed of is crucial, but we tacitly accept that students do not permanently master these subjects when we expect law graduates to have to review them in detail in the course of their bar exam preparation. Yet we do expect that, somehow, through the sequence of required and elective courses in law school, students will master the skills necessary to reason, write, solve

71. See Lisabetta Divita, *Medical School 101: What Medical School is Really Like*, STUDENT DOCTOR NETWORK (Jan. 24, 2010), <http://www.studentdoctor.net/2010/01/medical-school-101-what-medical-school-is-really-like/> (listing gross anatomy, histology, pathology and biochemistry as the most common first-year medical school classes).

72. In a paper about traditional and emerging modes of teaching, Jeremiah A. Ho notes as an aside how much of the traditional pedagogy of first-year legal education is grounded in the legal formalism of nineteenth- and early twentieth-century legal thinking, even as the law has moved toward more critical and practically based methods of reasoning. Jeremiah A. Ho, *Function, Form, and Strawberries: Subverting Langdell*, 64 J. LEGAL EDUC. 656, 656-62 (2015).

73. And we even go so far as to ask whether law is a “discipline” at all, or rather just an examination of what lawyers do. Carrie Menkel-Meadow, *Taking Law and ____ Really Seriously: Before, During and After the Law*, 60 VAND. L. REV. 555, 556-58 (2007) (tracing this notion of law being about the practices of lawyers back to Karl Llewellyn’s *THE BRAMBLE BUSH: ON OUR LAW AND ITS STUDY*).

problems and identify legal issues raised in the professional settings they will encounter as law graduates. Implicitly, then, we seem to posit that the accretion of the courses in the core curriculum will accomplish that overarching goal.

But if the core curriculum in most law schools is intended to initiate students to the processes of legal thinking while also familiarizing them with some basic categories of law, one question worth asking is whether all of the standard courses are expected to contribute to law students' learning and acculturation *in the same way*. Law professors would all probably concede that core law school courses are intended to produce both knowledge of doctrine and methodological mastery. By doing so with different approaches and emphases, they collectively enrich an understanding of how the law works.

It is only if those within each discipline focus on articulating what processes of legal reasoning, in addition to core substantive knowledge, their academic subjects emphasize that we can develop the kind of substance-specific teaching methodology that Gewirtzman urges.⁷⁴ From there, we could go even further by putting together a layered image of both the substance and processes of law that our students aggregate throughout their law studies. This in turn could facilitate the more conscious, deliberate and productive legal education that Alleva and Gundlach call for.⁷⁵

Foundational courses build a complex image of law's functioning.

Naturally, there is enormous variation in how each of us teaches, what we cover, what we emphasize, how we write and grade exams, and so on. And all good teachers and courses evolve over time. So the variations among, say, a given set of civil procedure courses may be greater than that between any particular civil procedure class and one in property. Still, there are germane differences in the doctrines that lend themselves to emphasizing particular points about how law develops and works.

Here's a classic example: Scott Turow's *One L*⁷⁶ recounts his changing perception of his torts professor over the course of his first year in law school. At first, the class is puzzled and then eventually infuriated by the unanswered questions upon questions proffered by the torts teacher. But as the semester progresses, Turow's tone changes. Eventually he makes a breakthrough:

I wondered when he would cut it out. There was no answer to these questions. There never would be.

I sat still for a second. Then I repeated what I'd just thought to myself: There were no answers. That was the point. . . . Rules are declared. But the theoretical dispute is never settled. If you start out in Torts with a moral system that fixes blame on the deliberately wicked—the guy who wants to run somebody over—

74. Gewirtzman, *supra* note 65, at 783-85.

75. Alleva & Gundlach, *supra* note 3.

76. SCOTT TUROW, *ONE L* (Warner Books 1988) (1977).

what do you do when that running down is only an accident? . . . How far do basic moral notions carry you? At what point do you say, It's nobody's fault, life is tough?⁷⁷

That is, the class was slowly, methodically, teaching Turow that tort law balances a social interest in compensating injured parties for wrongs done by commission and omission with an equally compelling but competing interest in limiting liability for the myriad calamities of everyday life. Less directly, it was also teaching him that most important and difficult legal questions usually involve rules designed to reconcile (or at least draw a definitive line dividing) the inherent tensions of competing social values.

Wait—don't all law classes do this?

Yes, certainly they do. Though maybe not as much, or at least not in the same way. Turow's narrative strikes me as revealing how remarkably *well-suited* torts is for making that point. The legal rules taught in the course are not especially arcane or demanding to learn.⁷⁸ But that gives more time than may be available in some other classes to show students that the subject urgently raises irresolvable philosophical questions about the limits of personal responsibility and of the extent to which legal obligations should be imposed for the purpose of creating incentives for better behavior. Torts classes are not alone in stressing the complicated policies and rationales underlying a set of legal rules. But maybe Turow's experience shows that torts classes can be first among equals in solidifying that concept for many beginning law students.

It might similarly be true that other concepts central to understanding law are highlighted in varying ways in different courses. We already know that in raising these macro concerns and teaching the legal rules that have developed to settle them, each of these courses can shed a slightly different light on the methodology of legal thought. We take for granted that each of the required classes in a legal education teaches both the substance and process of law, and that together they produce an overlapping image of "how to think like a lawyer."

Becoming an expert in doing anything means bringing its processes to bear on new problems. To use an example from literature, Stanley Fish suggests that learning to read poetry requires the development of "poetry-seeing eyes."⁷⁹ Each time a reader who has developed those eyes encounters a new poem, all of the interpretive strategies, understanding of cadence and word choice, as well as deep knowledge of metaphor and other rhetorical devices that poetry requires, are automatically brought to bear. But the problem with expertise can be its invisibility—the expert poetry reader may use her reading strategies

77. *Id.* at 98-99.

78. I certainly don't mean to suggest that they are simple. Nonetheless, I think it is probably not so controversial to propose that the essential rules taught in most torts classes are not as complicatedly interwoven as those in a typical constitutional law or civil procedure course.

79. STANLEY FISH, IS THERE A TEXT IN THIS CLASS? THE AUTHORITY OF INTERPRETIVE COMMUNITIES 326 (1980).

so automatically that they become unconscious. That may be fine for her, but how does she then make her expertise available to novices? Only, as Alleva and Gundlach suggest, by trying to be explicit about it.⁸⁰ And by creating opportunities for beginning readers to practice their interpretive muscles while they read more poems.

What we could probably stand to do more of in law school is to be equally explicit about not just what it generically means to “think like a lawyer,” but what specifically goes into having “contracts-seeing eyes.” Or evidence-seeing eyes. Or . . . the list goes on

We can and should use different academic subjects to focus on these questions of legal methodology that we deploy intuitively, but which can be extraordinarily difficult for law students to see from their academic studies alone. The civil procedure symposium authors both implicitly and explicitly posit that the course might be uniquely important in leading students to see the role of strategy and conscious decision-making that goes into the development of common law (whether the decisions made are good ones or turn out to be poor choices). If they are right, that does not mean that civil procedure classes will be the only place in legal education where this notion is introduced or reinforced. But it could suggest that the subject of civil procedure may have a uniquely crucial role to play in teaching students to read cases critically, with an understanding that the judges who authored them may have had a multitude of paths available to them, and that to *really* grasp a case they must not simply comprehend it but also see some of the other ways it might have been decided.⁸¹

What diverging but undoubtedly overlapping concepts could be (are already?) especially emphasized in core law school subjects? To some degree, we can know only with more broad-based inquiry and experimentation. Nevertheless, at the risk of mischaracterizing these courses, and with apologies for narrowing and oversimplifying them in a way that teachers of these subjects probably would not, here are just a few examples of special emphasis on different aspects of legal methods in common required law school courses that come to my mind:

- Criminal law introduces students to the importance and function of statutes (at least, it does so more than other first-year courses tend to⁸²). Most criminal courses heavily reference either the Model Penal Code or the state or federal penal law.⁸³ Perhaps they even study and compare

80. Alleva & Gundlach, *supra* note 3.

81. For an important study of the correlation between critical reading strategies and law student success, see Leah M. Christensen, *Legal Reading and Success in Law School: An Empirical Study*, 30 SEATTLE U. L. REV. 603 (2007).

82. Except for those schools that follow the contemporary trend of including a statutory, regulatory or administrative law course as a required part of the starting curriculum. See Ethan J. Leib, *Adding Legislation Courses to the First-Year Curriculum*, 58 J. LEGAL EDUC. 166 (2008).

83. See, e.g. ANDREW E. TASLITZ, STRATEGIES AND TECHNIQUES FOR TEACHING CRIMINAL LAW 1-2

more than one of these sources. Yes, there are codes relied on in other introductory courses,⁸⁴ but criminal law courses teach students that they must always read carefully the specific language of the statutes to determine what offenses might legitimately be charged for a given set of facts.

- Contracts law is particularly intricate. It could be especially important in helping to hone students' analytical precision. Furthermore, its problems have to be approached in an unusually constant order: asking first whether a legally binding agreement was formed (mutual assent plus consideration), second, whether it was breached; assuming it was, whether there are any defenses to that breach; then finally, what if any damages the parties to the agreement may claim and receive.⁸⁵ This remains the case despite the fact that there is wide variation in the order in which these basic steps are covered in contracts courses.⁸⁶ If students grasp this "flow chart-ish" nature of analyzing contracts problems, they are often well on their way toward understanding contract law itself, and they have reinforced an organizational skill that may be helpful in other areas as well.⁸⁷
- Constitutional law is probably the only foundational law course, maybe the only class in law school altogether, in which each and every case matters for its own sake. Consequently, constitutional law as a discipline requires analogical reasoning to important cases in a way that few other introductory law courses do.⁸⁸ Beginning law students often

(2012). These comments are certainly not meant to suggest that the class's primary function is to teach students statutory interpretation. What I do mean to point out, however, is that together with civil procedure (in which the rules exist for different purposes and function quite distinctly), criminal law is probably the first class in which many law students grapple extensively with large segments of actual codes.

84. Though they are not primary authority, Restatements are also sometimes subject to comparable close reading and interpretation in some beginning law school classes.
85. And somewhere in there whether, if no binding contract was created, equitable remedies might be claimed by any party.
86. Many of the older and more established contracts casebooks open with an introductory unit on contract formation, comprising first mutual assent and then consideration (*e.g.*, CHARLES L. KNAPP ET AL. PROBLEMS IN CONTRACT LAW (7th ed. 2012)), while more recently developed texts often open with consideration first (*e.g.*, CHRISTINA L. KUNZ & CAROL L. CHOMSKY, CONTRACTS: A CONTEMPORARY APPROACH (2010)). Still others begin their study by considering remedies for breach. *See, e.g.*, DANIEL MARKOVITS, CONTRACT LAW AND LEGAL METHODS (2012).
87. An added benefit of this sequenced approach to thinking about contracts is that when students learn always to approach contracts questions with this series of steps in mind, they are not simply stronger contracts students, they are probably also one step closer to becoming successful transactional lawyers.
88. Of course, all of legal reasoning, and all law school courses, require thinking by analogy. But it is possible to conceive of a student earning an A on a host of law school exams without ever taking the time to carefully parse the points of material comparison and distinction between a given set of facts and a prior decision. It seems impossible to imagine a successful

do not use cases well, in part because they find it especially difficult to fathom why they are reading particular cases. Students frequently cannot distinguish those cases they are reading as simply being among any number of examples that might have been selected to illustrate how a particular legal rule operates, as opposed to those leading cases that are assigned because they introduce or solidify the doctrine. In contrast to most other required introductory courses, *all* cases in a constitutional law casebook are likely leading ones, while this is true of perhaps very few of them in a property casebook. Students of law should therefore learn and use those cases in different ways. A teacher in constitutional law may help students understand why the assigned cases have unique importance in this course, which could in turn help law students discern the differences between leading cases and those offered merely as examples. If so, student could learn how to use cases in a more sophisticated way in all of their classes.

- Evidence problems seem to lend themselves to meticulous specificity in the application of a set of rules that becomes thorny when argued in given situations. Some evidence professors suggest that multiple-choice testing is especially useful in that subject because of the way rules of evidence are used in the courtroom—as points for rapid and discrete debate, often handled spontaneously and settled definitively. Regardless of assessment method, it may be true that evidence courses offer exceptional opportunities for their students to hone pointed argumentation skills within rigorous application of legal rules.

These are offered only as a brief and speculative set of descriptions. It would be easy to think of other examples of methods of legal reasoning that can be highlighted especially well within specific law courses. It stands to reason that some professors of these subjects will disagree with my characterizations of the methodologies that I suggest are especially accentuated in their classes, or at least they will have different ones to add.⁸⁹ And even to the extent that these observations may hold some value in general, they could never represent precisely the ways that metacognition regarding legal methods will actually be conveyed in every individual law school class within a given subject area.

The point, though, is that just as each law school class has its own substantive doctrine, we can conceive each law school class as having something unique to contribute to the larger enterprise of teaching law students the process of law itself. Every teacher of every subject in law school probably has his or her own ideas. But if by exploring pedagogies within specific subjects we eventually

constitutional law exam that could avoid this type of careful inquiry.

89. I note with a blush, but some pride, the possibility that I have pulled off the ultimate lawyer's coup: Even if I am wrong about the details I might be able to use that fact to support my points. After all, if I am mischaracterizing the puzzle pieces that each traditional law school course adds to the overall curricular design, doesn't that suggest that we need to have more conversation within each subject to articulate its core messages and methods and seek out the best ways to teach them to bright but confused amateurs?

come to an agreed-upon constellation of methodologies that are emphasized in each subject, it may be possible to split up some of the skills teaching that is necessarily inherent in foundational law introduction rather than each of us take it all on ourselves, and to use our very teaching methods to promulgate and reinforce those skills.

At the same time, we might more clearly recognize the intersections, and so more consciously reinforce learning by connecting in a coordinated way not just what students know, but what students learn to *do* in each of our classes. Not only will we fill the students' toolboxes with more or more deeply learned methods of approaching legal questions, we will better facilitate the students' intellectual flexibility, so that they can more expertly position themselves to tackle each kind of legal question they may encounter.

**Together the foundational courses construct a “gorgeous mosaic”⁹⁰
of the law itself.**

Learning to think and work like a lawyer is hard. It has many aspects. It is almost impossible to entirely describe to new initiates, even though entire volumes are dedicated to trying.⁹¹ It may help, then, to conceive of the central doctrinal courses in law school as covering distinct but overlapping circles in the Venn diagram of teaching legal methodology (in addition, of course, to their separate spheres of substantive law). Approaching it this way, we might ask more directly what work each of the standard courses in the law school

90. Amid the identity debates of the 1980s and '90s (and the vicissitudes of the political challenges in governing a remarkably diverse city), New York Mayor David Dinkins once staked out a middle ground between the cultural absorption of the traditional American “melting pot” allegory and the anti-assimilation “patchwork quilt” notion that activist Jesse Jackson and others had been advocating. Using the metaphor of a “gorgeous mosaic,” Dinkins in his first inaugural address called for a society in which individual differences are celebrated and retained, and yet fit together to build a cohesive impression greater than each of its constitutive parts. *The Mosaic Thing*, N.Y. TIMES, Jan. 3, 1990, at A18. As imperfect a fit as that analogy may be to the components of legal education, I believe the image is apt. It seems to me that the small and differently shaded tiles of what we each impart can be assembled by the students into a pixelated view of the law in its rich complexity, and that by looking closely at the distinct pedagogies of our various disciplines we can help students comprehend that complexity more quickly and deeply.
91. As I have been suggesting, then, we might posit in addition to surveying their core legal doctrines: Torts classes have a unique methodological responsibility for showing students how profound and ultimately unanswerable philosophical questions help to shape legal rules; criminal law classes requiring students to ask what charges prosecutors might bring for certain facts, consider whether those charges seem just, and ask what legal and factual defenses there are to those charges may be especially important in helping beginning law students learn to think through legal questions from all sides. Or not. I can easily imagine professors of those courses insisting that I have gotten it wrong. Or professors of other classes suggesting that *their* courses may be especially suited to making these points. Debate on these points can only help us be more articulate about the process lessons in the required curriculum.

curriculum *does*.⁹² Following the principles of intentional design,⁹³ the more we articulate the ways each of the core academic subjects in law school adds to students' overall learning, the more we can tailor our teaching to accentuate those features. At the least, we could use that examination to help us figure out what is uniquely important or difficult to learn or teach in each subject, and thus find ways to structure our teaching more effectively.

There may be other benefits to examining both what is universal and what is different about the teaching of each of the various subjects in law school. For example, one thing that this Article has not considered is that part of what is especially difficult about teaching some law school courses may stem less from the substance studied and more from its place in the law school curriculum. Even assuming the same credit allocation and precisely the same student body, for example, teaching a civil procedure class is quite different when it takes place in the first semester of law school (which is common) rather than in the second (which is also common), or when it spans the whole first year. The doctrinal content of the course might remain constant, but the project of teaching it might feel very different to the professor, just as the challenges of learning it would be very different to the students.

This curricular "fit" in our teaching may matter far more than we acknowledge when we look only at what is important or difficult about the material itself. To use a different example: Aren't we missing something in trying to teach a better professional responsibility course if we do not honestly concede that one factor making it difficult to teach is the simple reality that students may bring to the class a resentment over the fact that it may be their only or final standardized upper-level requirement?

Of course, suggestive as the civil procedure examples so far may be, this paper has not actually answered the intriguing question of whether there truly *are* distinct subject-specific legal pedagogies. Perhaps that is only fitting, though, because the only way to know more about the ways that subject-specific examination of legal pedagogy adds value for both teachers and students will be to do even more of it. Surely those in the legal academy have already gained an enormous amount from generalized conversations about law teaching and learning. A tremendous amount of important work is being done regarding law school teaching and learning, and we are likely to keep learning so much more as the field grows and deepens. But by initiating the Teaching Methods Section's program and symposium on the specific pedagogy of civil

92. Maybe we are not even aware of the discrete methodological goals we have for some of our courses, or we assume that they are universal or coequally emphasized elsewhere. Per Alleva and Gundlach, being more conscious of them can only make us more deliberate, and therefore probably more effective, teachers. Alleva & Gundlach, *supra* note 3.

93. Intentional design uses carefully structured processes to harness creativity in constructing experiences that work for users. In educational settings, this usually means beginning from students' point of view, and creating learning modules that accomplish specific objectives. For background, see D.SCHOOL, BOOTCAMP BOOTLEG, (2013), <http://dschool.stanford.edu/wp-content/uploads/2013/10/METHODCARDS-v3-slim.pdf>.

procedure, I do hope to spur further conversations in this and every core academic subject.

Selfishly, at the very least I want to see future programs devoted to topics that I myself teach. At a minimum, by offering more specialized examinations of pedagogy for my classes I can get new ideas for the classes I teach, which will make me a better teacher of my subjects. And if we are sufficiently ambitious, a series of intradoctrinal pedagogical examinations combined with interdoctrinal conversations about the thinking processes we emphasize can make us more thoughtful teachers of our own legal processes while producing overall a richer conversation about the collective enterprise of training students to become lawyers.