Legal Communication & Rhetoric: JALWD

Fall 2018 / Volume 15

BOOK REVIEW

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The Doctrine-Skills Divide:
Legal Education's Self-Inflicted Wound
Linda H. Edwards

David Thomson, reviewer

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The Doctrine–Skills Divide: Legal Education's Self-Inflicted Wound
Linda H. Edwards (Carolina Academic Press 2017), 357 pages

David Thomson, rev'r*

Increasingly, it seems, we are at a chasm in legal education, not a crossroads.[1] The latter image suggests a choice, a waypoint, beyond which a better place exists. A chasm suggests an insurmountable leap, and danger in the leaping. Naturally, one blanches and looks for alternatives. Despite significant progress, from capped programs to examples of unitary tenure, most of the legal writing professorate stands staring across a void. This will either continue to be the case, or it will eventually change, and the void will be filled and disappear. We are making some incremental progress,[2] usually using end-run approaches: the "three yards and a cloud of dust" strategies,[3] common to many law schools yet specific to each one. So there are reasons to think the wound will be healed at some uncertain day off in the future. But it remains difficult to draw a reliable map of how we get there.

One aspect—even prerequisite—of the map does seem fairly obvious: we all need a deep understanding of the terrain. This is a necessary step without which we make only dusty and uncertain progress over the long

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1 Many commentators in recent years have used the term "crossroads" to describe the current position of legal education. *See, e.g.*, DAVID M. MOSS & DEBRA MOSS CURTIS, REFORMING LEGAL EDUCATION: LAW SCHOOLS AT THE CROSSROADS, 1-9, (D. M. Moss & D. M. Curtis eds., 2012); Lauren Carasik, *Renaissance or Retrenchment: Legal Education at a Crossroads,* 44 IND. L. REV. 735 (2011); Praveen Kosuri, *Clinical Legal Education at a Generational Crossroads: X Marks the Spot* , 17 CLINICAL L. REV. 205 (2010); Adam Lamparello, *Legal Education at a Crossroads: A Response to Measuring Merit: The Shultz-Zedeck Research on Law School Admissions,* 61 LOY. L. REV. 235 (2015); Karla Mari McKanders, *Clinical Legal Education at a Generational Crossroads: Shades of Gray* , 17 CLINICAL L. REV. 223 (2010); Ellen Suni, *Academic Support at the Crossroads: From Minority Retention to Bar Prep and Beyond—Will Academic Support Change Legal Education or Itself Be Fundamentally Changed?* 73 UMKC L. REV. 497 (2004).

2 Catherine Martin Christopher, *Putting Legal Writing on the Tenure Track: One School's Experience*, 31 COLUM. J. GENDER & L. 65, 74–79 (2015).

3 A phrase made famous by Woody Hayes, the longtime coach of the Ohio State football team, which referred to his preference for a methodical, determined, and unbending ground game.

term. Professor Linda Edwards's book aims to address this need and does so in an unblinkered and utterly direct fashion.

For at least twenty-five years—and certainly since the publication of the MacCrate[4] report—the pressure on legal education has been focused on increasing skills courses. This led to the creation and expansion of the legal writing foundational course, as well as additional clinical offerings and externships. All of these have required hiring and resources that might otherwise have gone to expanding the status quo in legal education, and so we should hardly be surprised when there has been resistance. When we have gone so far as to suggest the former status quo should also relinquish its own course objectives to advance the skills agenda—and the power to vote about it—this is often where the resistance has become stiff, and occasionally unmovable.

Professor Edwards suggests that we have been going at this all wrong, and that both sides of the chasm need to understand and accept a fundamental problem in legal education, one which has been there virtually from the beginning but which has now reached the level of a "self-inflicted wound," causing injury to all, not least our students.[5] The problem: that we have created and let grow an artificial divide between "doctrine" and "skills," when in fact they are both essential elements of the *same* equally desired outcome.[6]

The curriculum at any given law school is a fairly complex and ornate structure, founded on several essential beliefs. This book dismantles that structure, element by element, leaving little room for doubt about the fundamental bankruptcy of much of the categorical thinking upon which the structure was built. In doing so, Professor Edwards has relied on many of our clearest voices in the legal writing and skills academy and integrated those voices in her text through excerpts from seminal law-review articles on each topic.

The book is divided into five parts, and a total of fifteen chapters. In Part I, which forms an introduction, she asks the question, Why should we accept that Doctrine and Skills are two objectively different categories? She concludes that they are not and that we make a fundamental error when we assume they are.[7] In Part II, the book analyzes the divide from the perspective of jurisprudence, theories of meaning, rhetoric, and the

4 Am. Bar Ass'n, Section of Legal Educ. & Admissions to the Bar, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap (1992), known colloquially as "The MacCrate Report," after the Chair of the Committee, who wrote it, Robert MacCrate.

5 Linda H. Edwards, The Doctrine–Skills Divide: Legal Education's Self-Inflicted Wound 163–175 (2017).

6 *Id.* at 268–76.

7 *Id.* at 5–9.

scholarship of learning theory.[8] In this section, Professor Harold Lloyd debunks the theory–practice divide, showing it to be illusory and arguing that "theory without practice is empty while practice without theory is blind."[9]

Part III addresses the many negative consequences that the divided categories have produced and caused, such as the continued effect of the gendering of the legal writing profession.[10] Another negative consequence has been discouraging the spread of some of the more promising innovations in legal education of the last decade. Those include Carnegie integration of doctrine, skills, and professional formation,[11] and expanded use of formative assessment in all courses across the curriculum.

It is in this part of the book that Professor Linda Berger is excerpted, presenting her Ideological Rhetorical analysis of the "seven-tenths" terminology in the ABA Standards when counting non–tenure-track faculty at American Law Schools.[12] This is, in some senses now like shooting fish in a barrel, but it was not always thus. Further, that language—so obviously unfair, exclusionary, and impolitic—served to both capture the fact of the dichotomy and to affirm its going forward. This is all painfully familiar and deeply understood by those of us who labor in this framework and its aftermath. But it is a worthy exercise to watch Professor Berger dissect and dismember with such rigor and precision the standards that govern many of our professional lives in large and small ways every day.

Also in Part III, in Chapter 10, Professor Ann McGinley details the gendering of the legal writing professorate—statistically undeniable—and explains the differences in what is expected of us but that is not typically expected of tenure-line faculty, such as tissues in the office and broad topic counseling of our students, always with the phone number of the counseling office at the ready.[13] In Chapter 11, Professors Terry Pollman and Elaine Shoben discuss the disadvantage we suffer when our scholarship is subjected to categorization. They explain that articles in the "devalued" scholarship categories often exhibit all the hallmarks of

8 *Id.* at 13–160.

9 *Id.* at 89.

10 *Id.* at 163–263.

11 WILLIAM SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007). This book, known as the "Carnegie Report," argues for integration of the three "apprenticeships" required for legal education: Doctrine, Skills, and Professional Formation.

12 EDWARDS, *supra* note 5, at 209–27. Professor Berger provides a rhetorical analysis of provisions in Chapters 3 and 4 of the ABA Standards for Approval of Law Schools, focusing on its form in July of 2014. In that form, in Interpretation 402-1 about student faculty ratios, tenure-track faculty were to be counted as "one," while "additional teaching resources" were to be counted as less than one.

13 *Id.* at 229–54.

otherwise acceptable scholarship, yet they get lesser placements and are valued less by the academy.[14]

Part IV addresses how we got where we are now—in the author's own article about the doctrine–skills divide,[15] and through a historical piece by Professors Jeffrey Jackson and David Cleveland—with particular focus on why we cannot seem to work as mixed faculties to achieve the Carnegie integrated model. In short, both history and the "category" way of thinking that permeates legal education have limited our ability to see another way of operating.[16]

The last part of the book, Part V, offers a few strategies for repairing the self-inflicted wound in legal education. In this section, Professor Edwards returns to the possibilities offered by integration of the Carnegie apprenticeships, in as many courses as possible.[17] Professor Jessica Erickson argues for the integration of experiential learning in the large lecture courses,[18] and Professor Gerald Hess explains the progress in this direction made at Gonzaga Law School with their integrated curriculum.[19] Unfortunately, that newly revised 1L curriculum merely shortened the traditional courses from one year to one semester and added a "Perspectives on the Law" course and two-credit Litigation and Transactional Skills courses, with Professionalism components. While significant changes were made, this falls short of true Carnegie integration, which Professor Edwards describes briefly in this book as a possible "third category." If there is a flaw in this important book it would be that more could have been said about the possibilities of true integration across the curriculum and the contribution a new third category might have going forward.

Professor Deborah Merritt is perhaps our best example of how the chasm might one day be filled—with colleagues like her, who started as a doctrinal professor and transitioned to skills, and obviously learned a lot along the way. In the closing chapter, Chapter 15, she describes her transition and how it changed her thinking.[20] In her transition, Professor Merritt learned to look at the curriculum in a different way—from the perspective of the six elements of lawyering, which she defines as Facts,

14 *Id.* at 255–63.

15 Linda H. Edwards, *The Trouble with Categories: What Theory Can Teach Us About the Doctrine–Skills Divide*, 64 J. LEGAL EDUC. 181 (2014).

16 EDWARDS, *supra* note 5, at 267–91.

17 *Id.* at 295–357.

18 *Id.* at 319–24.

19 *Id.* at 325–36.

20 *Id.* at 347–57.

Doctrine, Client Goals, Legal Culture, Personalities, and Attorney Constraints. Although an understanding of doctrine is important to conduct the necessary legal research on the client's problem, skills, she learned, "are the muscles that animate legal representation."[21]

She further suggests that, if we are to have new categories, we distinguish courses that "explore" doctrine with those that "engage" doctrine. She does not denigrate the importance of courses that explore doctrine in any way, but explains that courses that *engage* doctrine require a "sustained interaction with doctrinal principles in the context of a realistic problem."[22] She explains that these interactions must span more than a single class and include some ambiguity or a change in circumstances (just as in practice). If we were to think of the curriculum in this way, we would come to recognize that all courses in law school teach skills, but there is value in *naming* the skills they teach. Some will be doctrine-centered, and some will be client-centered, and a balanced curriculum needs many of both types of courses.

Ultimately, this book argues for us to all be partners, not winners and losers. Which is admirable, of course. But in some ways, the situation we have now was not exactly a self-inflicted wound. Legal Education as it was fifty years ago was one thing, and skills courses and faculty have been wedged in and resisted, and the resistance is what has caused a wound, a break. But the wound is suffered by our students, and by us, but barely felt by some of our partners. It is hard to be a partner in solving a problem with someone who does not understand the problem to begin with.

The solution will likely be found in a collective desire to put it all on the table and start over. This means creating measurable learning outcomes for each course and developing a new curriculum map with assessments of all types throughout, with intentional work on the formation of professional identity in our classes, all for the benefit of our students and their preparation for practice. And, critically, this means that all faculty treat each other fairly, equally, and respectfully. But these seemingly small things all require a willingness to start over and create a system quite different from what we currently have. This book provides a map of the terrain for this intractable problem in legal education, one that festers in one way or another every day in most law schools in the country.

What Professor Edwards has done here is quite brilliant. She has taken her original article about what categories have done to create, contribute to, and support the doctrine–skills divide[23]—and the damage

21 *Id.* at 353.

22 *Id.* at 354.

23 *See* Edwards, *supra* note 15.

that has resulted to legal education from this—and expanded it with the work of others, many of whom she cited to in the original article. She has thus created a book-length treatment addressing the entire problem in full. But not just any book, a valuable compendium of scholarship—her own and others—on the subject of the chasm that exists in many law schools between the traditional "doctrinal"[24] faculty and "other" faculty, exposing, once and for all, its fundamental intellectual bankruptcy. It is a book that, after suggesting that our library should purchase a copy, we all should buy two copies of our own. One to keep for those days when we need to reference the scholarship around these issues—for a committee report on one of these subjects, for example. And the other to give to a sympathetic colleague on our "doctrinal" faculty, perhaps the Curriculum Committee chair, with a personal note inviting that person to lunch a few weeks hence to discuss it.

Why? Because many (or all) of us have had the experience, perhaps multiple times, with colleagues who—when faced with the facts about the gendering of the legal writing faculty, our lower salaries, our devalued scholarship, or the nature of our workload, respond with something like, "I didn't know." (Well, you might think, they did *sort of* know, but they might not have *really* known.) No member of the "doctrinal" faculty at any law school could not know after reading this book. *Really* know. It's all here.

24 Of course, "doctrinal" is an imperfect term itself and resisted by some faculty who primarily teach those courses, providing further proof that these categories—from both sides of the divide—are not workable. However, for a reference point that most readers understand to describe the current situation, it is used in this review, albeit in quotation marks.