The Values of an Old Crank: A Response to Professor Taylor's Critique of the Case Method

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I appreciate the opportunity to be here and to comment on this extremely important and interesting topic. One of the great challenges of changing the way we train lawyers is the existing law school culture. The media and lawyers both tend to talk about law school as a fiercely competitive, grueling experience in which success is measured by the student's ability to outwit and out-argue his or her colleagues. To the extent that law schools live up to this reputation—fostering a culture of isolation and competitivism—it is no wonder that new lawyers tend to be overly litigious and narrowly focused on winners and losers.

The strength of the method proposed by Professor Taylor is its emphasis on the role of lawyers as problem-solvers. If lawyers thought of themselves more as problem-solvers—rather than as elite advocates-for-hire—then perhaps they would be better at finding solutions to the problems faced by their clients and their communities.

I agree that the traditional model of legal education is inadequate. I also agree that the case method—particularly when narrowly defined and rigidly applied—fails to give students the skills and values they need to be effective and ethical lawyers. However, I think we should be careful not to throw out the Langdellian baby with the bathwater. While it may be convenient to attack the case method as the source of everything that is wrong with legal education, this complaint is, by itself, too vague and overbroad to guide us in overhauling the way we train lawyers.

I often focus on cases when I am teaching Torts. I doubt, however, that if Christopher Columbus Langdell sat in on my Torts class he would say I

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1 Scott Taylor, Phoenix School of Law, Ruth McGregor Distinguished Chair of Teaching Excellence & Visiting Professor, Inaugural Address at the Phoenix School of Law McGregor Lecture: Bang Goes the Theory—Debunking Traditional Legal Education (Nov. 5, 2009) (transcript available from Phoenix School of Law).

2 See generally 2 CHARLES WARREN, HISTORY OF HARVARD LAW SCHOOL (1908) (Christopher Columbus Langdell is considered the founder of the classical teaching method in law schools); W. Burlette Carter, Reconstructing Langdell, 32 GA. L. REV. 1 (1997).
use his cherished "case method." I do not demand formulaic recitations or engage in hostile, Socratic dialog. My students rarely stamp on the floor in disapproval, drop my classes in droves, or (openly) accuse me of being an "old crank." Is this because law students have become more docile since Langdell taught Contracts? Perhaps, but it is more likely that law professors have modified and, occasionally, even improved the delivery of the case method.

Cases are, essentially, problems. There are a number of ways to use cases to introduce a wide array of skills and values. The factual background of cases can be expanded and questioned; practical and ethical issues can be raised; and students can be challenged to develop alternative solutions. Cases can also be used to develop "case studies," wherein students go through the process of gathering evidence, interviewing witnesses, reviewing documents, and developing strategies to resolve a conflict. This latter approach has the benefit of teaching students that in the practice of law, clients do not typically arrive with neatly packaged hypotheticals (or "problems") for you to analyze.

I do not mean to suggest that the case method should remain the dominant method of teaching law. Certainly, there are problems in traditional legal education, not the least of which is an overemphasis on analyzing appellate cases. But we should not jump from method to method without determining what is actually being done, and what is and is not working.

Students come to law school with a diversity of backgrounds, abilities, and learning styles. We should not assume that all of these students will learn best through a single teaching method. Some students learn by doing. Other students learn better if they are first provided with an analytical framework. In some areas of law practice, case law plays a very important role. In other areas, statutes and regulations are the controlling texts. Moreover, there are many extra-legal factors—like business models, financial limits, and psychological and social influences—that play varying roles in legal practice. The diversity of students and practice areas calls for a diversity of approaches to legal education.

In recent years, many scholars have called for better skills teaching in law school; but few have addressed the problems that arise from our failure to teach law students professional values. This is where reforms in legal education have the furthest to go. As we learn from the MacCrate Report and other studies, the crisis in legal education does not derive solely from a
lack of skills training. It also comes from a failure to teach students how to integrate ethical and professional values into the practice of law. Which would we prefer: to have new lawyers ready to practice law but devoid of morals, or to have lawyers less skilled but grounded in professional values? New lawyers will certainly learn skills as they practice law; it is much less likely that new lawyers will sprout fresh, ethical wings under the pressures of the practice if those values are not encouraged during law school.

We must more effectively teach not only how to practice law but why we practice law. Whether we use the case method, the problem method, case studies, or some other approach, we must find ways to teach students the value of integrity and consistency. This does not flow inevitably from skills-based teaching methods any more than it does from the case method.

I agree with Professor Taylor that we must avoid emulating the failures of the "Old Crank." But the problems with legal education cannot be solved by simply boosting skills training. We must also find ways to change the culture of legal education so that new lawyers enter the practice with a rich appreciation of the positive role lawyers can—and should—play in society.

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