2008

The Comparative and Absolute Advantages of Junior Law Faculty: Implications for Teaching and the Future of American Law Schools

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THE COMPARATIVE AND ABSOLUTE ADVANTAGES OF JUNIOR LAW FACULTY: IMPLICATIONS FOR TEACHING AND THE FUTURE OF AMERICAN LAW SCHOOLS

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ABSTRACT

In the ongoing debate about how to improve law school teaching, there is a general consensus that law schools should do more to train junior faculty members how to teach. While this may be the case, this consensus inadvertently leads to an implicit assumption that is not true—that in all facets of law teaching, junior faculty are at a disadvantage compared to senior faculty. In fact, there are aspects of law teaching for which junior faculty can be better suited than their senior colleagues. This Article reviews scholarship concerning law teaching and identifies three teaching factors that generally favor junior law faculty: generational proximity to the law school student body; recency of law practice experience as junior practitioners; and lower susceptibility to the problem of "conceptual condensation"—extreme depth of subject matter knowledge that makes it difficult to see subjects from the students' perspective.

This Article employs the economic concepts of (a) economies of scale or productive efficiency and (b) absolute and comparative advantage to suggest how these junior faculty

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advantages could be harnessed to improve law school teaching. With respect to productive efficiency, it is suggested that greater intra-faculty dialogue can increase a law faculty's output of effective teaching. Currently, senior faculty members often provide assistance or advice to junior faculty in areas of senior faculty expertise or advantage—such as depth of knowledge in a course's subject matter—but this is largely a one-way flow of information. However, if junior faculty were also to provide insight and advice to senior faculty regarding areas of junior faculty advantage, the quality of law school teaching might be significantly enhanced. Junior-senior faculty dialogue might be promoted through a variety of means, including faculty workshops and even perhaps teaching reviews of senior faculty by junior faculty.

With respect to the concepts of absolute and comparative advantage, this Article suggests that law school teaching could be improved through the specialization of teaching functions. Instead of professors individually teaching separate courses, professors might coordinate their teaching (that is, team-teach) across a number of courses in the law school curriculum, as a means to more effectively harness the respective strengths (and minimize the respective weaknesses) of junior and senior faculty in the classroom. Through the leveraging of junior faculty advantages, overall law school teaching might be significantly improved. This Article concludes by discussing the implications of these recommendations for law school culture in general and for the legal profession as a whole.

I. INTRODUCTION

Legal scholars love to write about law schools. What, we ask, is wrong with law schools, and what is right? What types of curricular reforms should we undertake?[1] What kinds of scholarship should we be engaged in?[2] What is the relationship between scholarship and teaching?[3] What is the correlation between tenure and faculty productivity?[4] What exactly should

1. *See, e.g.*, Russell Engler, *From 10 to 20: A Guide to Utilizing the MacCrate Report over the Next Decade*, 23 PACE L. REV. 519, 522 (2003) (discussing how law schools can best use assessments to improve the fostering of MacCrate report values); Melissa Harrison, *Searching for Context*: *A Critique of Legal Education by Comparison to Theological Education*, 11 TEX. J. WOMEN & L. 245, 253–58, 272 (2002) (suggesting curricular reform by requiring students to study the social and practical context of the law); Jennifer S. Holifield, *Taking Law School One Course at a Time: Making Better Lawyers by Using a Focused Curriculum in Law School*, 30 J. LEGAL PROF. 129, 139 (2005) (advocating the "one course at a time" scheduling method as a means of facilitating more skills-based courses); Suzanne E. Rowe & Susan P. Liemer, *One Small Step: Beginning the Process of Institutional Change to Integrate the Law School Curriculum*, 1 J. ASS'N LEGAL WRITING DIRECTORS 218, 218 (2002) (providing strategies for skills-based course instructors to implement small-scale curriculum reform); Jack L. Sammons, *Traditionalists, Technicians, and Legal Education*, 38 GONZ. L. REV. 237, 245 (2002) (promoting a compromise between traditional and technical curricula as a means of providing the best legal education); Alan Watson, *Legal Education Reform: Modest Suggestions*, 51 J. LEGAL EDUC. 91, 91 (2001) (arguing for the abolishment of casebooks and advocating the addition of courses on professional ethics in the first-year curriculum).

2. *See, e.g.*, Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992) (arguing for more practical, practitioner- and judiciary-focused legal scholarship); Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession: A Post-Script*, 91 MICH. L. REV. 2191, 2191–92 (1993) (discussing wide-spread, positive comment concerning arguments for more practical, practitioner- and judiciary-focused legal scholarship); David Hricik & Victoria S. Salzmann, *There Should Be Fewer Articles Like This One: Law Professors Should Write More for Legal Decision-Makers and Less for Themselves*, 38 SUFFOLK U. L. REV. 761, 787 (2005) (arguing for law professors to use their academic freedom to produce legal scholarship "that balances theory and engagement" and thus is more directly relevant to practitioners and the judiciary).

3. *See, e.g.*, Benjamin Barton, *Is There a Correlation Between Scholarly Productivity, Scholarly Influence and Teaching Effectiveness in American Schools? An Empirical Study* (July 1, 2006) (1st Annual Conference on Empirical Legal Studies Paper), *available at* http://ssrn.com/abstract=913421.

4. *See* Bernt Bratsberg et al., *Negative Returns to Seniority: New Evidence in Academic Markets*, 56 INDUS. & LAB. REL. REV. 306, 306 (2003) (looking at correlation between pay and seniority for professors and noting that senior faculty demonstrate below-average research productivity); James R. P. Ogloff et al., *More Than "Learning to Think Like a Lawyer:" The Empirical Research on Legal Education*, 34 CREIGHTON L. REV. 73, 147–48 (2000) (examining different statistical studies on all aspects of law school and finding that the number of pages of scholarly work by a given faculty member decreased as that faculty member gained seniority); Ira P. Robbins, *Exploring the Concepts of Post-Tenure Review in Law Schools*, 9 STAN. L. & POL'Y REV. 387,

we be teaching our students, and how?[5] As the debate has spilled over from legal journals to the blogosphere in recent years, the questions have become even more pointed. Some commentators suggest that law school be reduced to two years, while others suggest an expansion to four years might be more appropriate. Some extremist commentators on the Internet even question the need for law schools at all.[6]

In all this debate, there is at least one point on which there is general consensus: law schools need to do more to train their junior faculty members how to teach.[7] In fact, this is not so much an expressly agreed-upon point as it is a widespread,

387 (1998) (pushing for post-tenure evaluations in light of the fact that tenured faculty members may become unproductive for various reasons).

5. *See, e.g.*, ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION (2007); WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PRACTICE OF LAW (2007); Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 SAN DIEGO L. REV. 347 (2001).

6. Comments such as these are not uncommon on the Internet, but they nonetheless reflect a passionate and strongly held opinion of some in the American public. For representative comments along this vein, see the comments to the following articles and weblog posts: Posting of Gregory W. Bowman, *Is the Third Year of Law School a Waste of Time and Money?*, to Law Career Blog, http://law-career.blogspot.com/2006/01/is-third-year-of-law-school-waste-of.html (Jan. 5, 2006, 8:48 EST); Posting of Gregory W. Bowman, *Is Law School Itself a Waste of Time?*, to Law Career Blog, http://law-career.blogspot.com/2006/01/is-law-school-itself-waste-of-time.html (Jan. 7, 2006, 7:26 EST); Scott Jaschik, *Goofing Off in Law School*, INSIDE HIGHER ED, Jan. 3, 2006, *available at* http://insidehighered.com/news/2006/01/03/law (discussing "senior slump" for third-year law students); Dennis M. Kennedy, *Goofing Off in Law School*, CORANTE, http://betweenlawyers.corante.com/archives/2006/01/03/goofing_off_in_law_school.php (Jan. 3, 2006).

7. Ironically, there is no generally accepted definition of "junior faculty." For the purposes of this Article, the Association of American Law Schools' definition will be used, in light of the fact that the AALS is an accrediting body for law schools. The AALS defines "junior faculty" as "[t]hose who will have been full-time law teachers . . . for five years or fewer." Memorandum from Elizabeth Hayes Patterson to the Deans of Member & Fee Paid Sch. (Mar. 27, 2006), *available at* http://www.aals.org/deansmemos/06-08.html. *But see* The American Political Science Association, International Junior Faculty Conference – Harvard Law School and Stanford Law School, http://www.apsanet.org/content_48576.cfm (last visited Mar. 25, 2008) (defining junior faculty as "[a]ny scholar . . . who has held an academic position for less than seven years, as of 2008, or whose last degree was earned less than ten years earlier than 2008"). Furthermore, this Article, though recognizing that there are some exceptions, takes the position that the majority of junior faculty is younger than the majority of senior faculty. *See* Law Schools Could Face Age Discrimination Suits over Faculty Hiring, Panelists Say, http://www.law.virginia.edu/html/news/2005_fall/lawschool.htm (Nov. 28, 2005) (arguing that law schools favor younger faculty candidates with less professional experience and thus may face age discrimination suits). This assumption is based in part on the author's own experience in the law hiring market, and now as a member of a law faculty appointments committee.

implicit assumption.[8] On the one hand, this consensus is most likely correct, especially since law schools often hire new professors who have little or no teaching experience.[9] On the other hand, this consensus leads to another assumption that is also implicit: that in all facets of law teaching, junior faculty are at a disadvantage compared to senior faculty. According to this consensus, junior faculty members therefore need to be brought up to speed in their teaching, so that in terms of teaching skills and effectiveness they better match their senior colleagues.

Yet is this second assumption really correct? Are there facets or factors of classroom teaching to which junior law faculty may be better suited, at least on average, compared to their senior colleagues? Might recency of entry into the legal academy, or proximity in age to law students—or both—actually help enhance teaching effectiveness in certain respects? These are interesting questions to pose—for not only does the answer to all of these questions appear to be "yes," but there also has not been much discussion of this issue in the law literature.[10] It is therefore a subject worth exploring in some detail.

The thesis of this Article is that while many facets or factors of effective law school teaching do favor senior faculty

8. For articles that touch more directly on this subject, see Mitchell M. Simon et al., *Herding Cats: Improving Law School Teaching*, 49 J. LEGAL EDUC. 256, 257 (1999) (commenting that the few law schools that make an effort to improve teaching tend to focus on newer faculty, thus implying that most law schools assume junior faculty members require the most training) and David D. Garner, *The Continuing Vitality of the Case Method in the Twenty-First Century*, 2000 BYU EDUC. & L.J. 307, 339–40 (discussing lack of training of new faculty in teaching methods or theory).

9. This actually has changed somewhat in recent years, at least for tenure-track hires. Law school hiring has grown much more competitive in the past decade, with more candidates vying for a finite number of faculty positions. *See* Kent D. Syverud, *The Dynamic Market for Law Faculty in the United States*, 51 J. LEGAL EDUC. 423, 423–24 (2001). One result is that more candidates now begin their teaching careers as non-tenure track visiting faculty members or faculty fellows, and then segue into more permanent (and hopefully tenure-track) positions. Yet the fact remains that many new faculty members—visiting or otherwise—lack significant teaching experience when they first begin teaching at American law schools. *See* STUCKEY ET AL., *supra* note 5, at 106; Garner, *supra* note 8, at 339.

10. For an exception to this general omission, see Ronald H. Silverman, *Weak Law Teaching, Adam Smith and a New Model of Merit Pay*, 9 CORNELL J. L. & PUB. POL'Y 267, 378–82 (2000) (discussing the phenomenon of "conceptual condensation," through which professors with increasingly sophisticated knowledge of their subject matters have greater difficulty teaching the subject to students who are far less familiar with the subject).

members—such as skills that improve with practice and experience—other factors actually favor junior faculty members and therefore should be taken into consideration in any discussion of effective law school teaching. Sadly, however, internal law school discussions or reviews of teaching tend to be biased, both implicitly and expressly, toward factors that favor senior faculty, and they tend to focus on improving the teaching of junior faculty only.[11] The result is that too little attention is given to teaching factors that favor junior faculty and the ways junior faculty can contribute to improving teaching quality at U.S. law schools. This is to the detriment of law schools, both as institutions of learning and as agents of social progress. Leaving these junior faculty contributions untapped means the full potential of American law schools remains unrealized.

It is useful to restate this thesis in economic terms, so that the issue and its implications become more readily apparent. One can characterize the various facets of teaching as factors used to produce the output of "effective teaching." For factors such as depth of knowledge regarding a course, the pacing of a class, or the structure of a course, senior faculty members generally will be more efficient than their junior colleagues, based largely on experience gained over time. One might characterize such improvements as "incremental innovations through learning" or "continuous quality improvement," in much the same way the Japanese automotive industry has established a strong global position through gradual and cumulative product enhancement.[12] For those factors, senior faculty members generally will achieve greater output (effective teaching) than their junior colleagues for any given level of input (such as time spent in preparation). This makes sense, and it accords with the general view of junior faculty, who typically must spend extraordinary amounts of time for class preparation.

However, there are some teaching factors, as discussed below, for which junior faculty members can have an advantage over their more senior colleagues. For those factors,

11. *See* Simon et al., *supra* note 8, at 257.

12. *See* HIROYUKI ODAGIRI & AKIRA GOTO, TECHNOLOGY AND INDUSTRIAL DEVELOPMENT IN JAPAN: BUILDING CAPACITIES BY LEARNING, INNOVATION, AND PUBLIC POLICY 179–203 (1996); John Mixon & Gordon Otto, *Continuous Quality Improvement, Law, and Legal Education*, 43 EMORY L.J. 393, 477 (1994).

the output value ("effective teaching") of junior faculty will be higher per unit of input. That is, junior faculty will be more productively efficient regarding those factors.[13] The challenge, then, is to identify these factors, and to consider how these areas of junior faculty advantage might be harnessed to improve overall law school teaching. Stated differently, the challenge is to identify factors for which there are "diseconomies of seniority" or "economies of juniority."[14]

We also might conceptualize these teaching "factors of production" as goods or services in and of themselves, in which case we might say that junior faculty and senior faculty have absolute or comparative advantages in the production of different teaching goods or services.[15] As discussed later in the Article, this conceptualization offers intriguing possibilities for improving law school teaching, since it suggests that it might be beneficial for faculty members to specialize not only by subject matter, but also by teaching factor, and to coordinate their teaching efforts across various classes in the law school curriculum.

By restating my thesis in the language of economics, I do not mean to suggest that law teaching—or any profession, for that matter—can be neatly and numerically quantified. While it is common practice for law schools to evaluate professors annually based on a set of known criteria—sometimes even going so far as to numerically weight or score each factor—elements of subjectivity inevitably remain, and indeed should remain. After all, teaching is not a rote activity, and it is appropriately characterized (at least partly) as an art.[16]

13. *See* ROBERT COOTER & THOMAS ULEN, LAW AND ECONOMICS 12 (3d ed. 2000) ("A production process is said to be productively efficient if either of two conditions holds: 1. it is not possible to produce the same amount of output using a lower-cost combination of inputs, or 2. it is not possible to produce *more* output using the same combination of inputs."); RICHARD A. POSNER, ECONOMIC ANALYSIS OF LAW 9 (3d ed. 1986) ("[A] process is *productively efficient* if it maximizes the level of output attainable for a given level of inputs.").

14. *See infra* Part II.A.

15. *See infra* Part II.B. Although not related directly to this Article, it is worth pointing out that Adam Smith, who wrote about absolute advantage, also addressed pedagogical issues, including faculty review and compensation. *See* Silverman, *supra* note 10, at 268–69.

16. *See, e.g.*, Peter M. Cicchino, *Love and the Socratic Method*, 50 AM. U. L. REV. 533, 537–38 (2001) ("The art in question is teaching and—while it can be argued that all art is relational, an experience between an artist, the artist's creative act, and the people who come into contact with that creative act—teaching . . . is arguably the most relational of arts."); Mixon & Otto, *supra* note 12, at 477 ("Some say law teaching is an

Rather, the point is that factors that affect law teaching performance can be identified, and junior faculty often are more adept regarding certain of these factors.

This Article argues that law schools should consciously leverage the absolute or comparative advantages or economies of juniority of their junior faculty members, in order to improve the overall teaching performance of their faculties, and that law schools should undertake this effort on an institution-wide basis, rather than as an *ad hoc* exercise. As explained further below, the means for undertaking this effort might be very different from how senior faculty provide input or mentoring for junior faculty, but the end result—the improvement of law faculty teaching performance—would be the same.

This Article is organized as follows. Part II provides a brief overview of pertinent economic concepts and terminology. Part III reviews literature on law school teaching, in order to identify factors relevant to effective law teaching, as well as to identify more general principles, or "meta-factors" if you will, into which these teaching factors can be grouped. Part IV then applies this literature and seeks to identify specific teaching factors for which junior law faculty members may, in certain respects at least, have economies of juniority or enjoy an absolute or comparative advantage versus their senior faculty colleagues. Three specific factors favoring junior faculty are identified: (a) junior faculty members' overall greater familiarity with generational attitudes and mindsets of law students may assist in presenting materials in a manner more accessible to law students; (b) the recent experience of junior faculty in law practice may assist in teaching law school courses; and (c) junior faculty are less likely to be plagued by the problem of "conceptual condensation"—extreme depth of subject matter knowledge and sophistication that can make it difficult for teachers to see subjects from their students' perspectives and present course materials in an accessible manner.[17]

Part V discusses the implications of these specific factors that favor junior faculty and suggests recommendations for

art; others view it as a craft that can be learned."); *see also* Silverman, *supra* note 10, at 310 n.188 (quoting GILBERT HIGHET, THE ART OF TEACHING, at vii–viii (1950) ("[T]eaching is an art, not a science . . . .")).

17. *See* Silverman, *supra* note 10, at 378–79 (quoting WILLIAM JAMES, PRINCIPLES OF PSYCHOLOGY, 53 GREAT BOOKS OF THE MODERN WORLD 1, 692 (2d ed., 1990)).

change within law schools on the basis of these factors. This Article specifically recommends that law school faculties seek to actively and consciously learn from their junior faculty in areas of junior faculty advantage or economies of juniority. As already noted, such an approach would run counter to standard law school practices, which focus largely on improving junior law faculty performance in areas in which senior faculty enjoy economies of seniority or absolute or comparative advantages, but not the other way around. However, if we accept teaching as a core aspect of our calling as law professors—and few, if any, would disagree with that statement—then it behooves us to think of ways to better leverage junior faculty skills for the betterment of our law schools and our students.

This is a significant change in terms of classroom performance and faculty-student relations. The full implications of this approach, however, are even more profound. Seeking to actively and consciously learn from junior faculty also could transform faculty dynamics in a positive, inclusive way. Rather than junior faculty members "keeping their heads down" until achieving tenure, as many pre-tenure faculty members do, actively including and consulting them in efforts to enhance faculty teaching could improve the internal tone and tenor of a school and raise morale.[18] In fact, it even might aid in faculty recruiting and improve faculty retention rates.

Finally, this Article will close with some thoughts about the implications of this change for the practice of law as a whole. Law schools often view themselves as agents of social change.[19]

18. For example, junior faculty could help their senior colleagues better understand the mindsets of current students and the modern practice of law from the junior practitioner perspective (as opposed to the perspective of lawyers or law clerks two decades ago).

19. *Professional Schools, Not Radical Groups, Are Our Social Change Incubators Now*, http://www.radicalmiddle.com/x_profl_schools.htm (last visited Apr. 1, 2008); *see also* Charlie Savage, *Scandal Puts Spotlight on Christian Law School: Grads Influential in Justice Dept.*, BOSTON GLOBE, Apr. 8, 2007, *available at* http://www.boston.com/news/education/higher/articles/2007/04/08/scandal_puts_spotlight_on_christian_law_school/ (quoting a Regent University School of Law administrator as saying, "We anticipate that many of our graduates are going to go and be change agents in society"); HG.org, Wisconsin Law Schools, http://www.hg.org/law-schools-wisconsin.asp (last visited Apr. 1, 2008) (An advertisement for Marquette University Law School states, "Part of the Jesuit tradition of education is encouraging students to become agents for positive change in society. This is especially important in a law school."); SIU School of Law, The Lawyering Skills Program, http://www.law.siu.edu/academics/lawyering.asp (last visited Apr. 1, 2008) ("At

In the current world of law practice, with its decreased emphasis on training, higher standards for law partnership, and decreasing morale,[20] law schools can consciously seek to adopt a different model that not only seeks to mentor junior members of the organization (as law schools generally do), but also to actively learn from junior faculty and adjust their institutional course in light of the knowledge gained. This is an empowering approach, and it can be hoped that the model might be emulated outside the legal academy. In this manner, junior faculty can serve as vital catalysts for law school change—and indeed societal betterment—in a dynamic world.

II. RELEVANT ECONOMIC CONCEPTS: ECONOMIES OF SCALE AND PRODUCTIVE EFFICIENCY AND ABSOLUTE AND COMPARATIVE ADVANTAGE

In order to meaningfully discuss law school teaching in the context of economic theory and the implications of this theory for effective law teaching, it is necessary to first define and explain the concepts being used. The concepts being applied are economies of scale and productive efficiency, and absolute and comparative advantage.

A. Economies of Scale and Productive Efficiency

The concepts of economies of scale and productive efficiency are relatively straightforward. Concisely stated, economies of scale occur when increased production of a product results in a reduction of average unit cost.[21] In law teaching, as opposed to

Southern Illinois University School of Law, our goal is to train lawyers who will be equipped to be active agents for change and improvement of the law, who are highly skilled and reflective, and will be able to serve the needs of a wide range of clients."); Posting of Orrin Judd, *Free Agents (via Tom Corcoran)*, to Brothers Judd Blog, http://brothersjuddblog.com/archives/2006/01/free_agents_via.html (Jan. 11, 2006) (stating that "[law school] [c]linics came to embody a radical new conception that emerged in the 1960s—the lawyer as social-change agent").

20. *See* Alan Mark, *In the Face of Profit, Law Firm Partnership Ain't What It Used to Be*, BALTIMORE BUS. J., Mar. 26, 2004, *available at* http://www.bizjournals.com/baltimore/stories/2004/03/29/focus5.html (discussing increased requirements for law firm partnership); Katheryn Hayes Tucker, *Firm Lawyers Jump Ship for Quality of Life In-House*, FULTON COUNTY DAILY REP., July 27, 2007, *available at* http://www.law.com/jsp/ihc/PubArticleIHC.jsp?id=1185482031458 (discussing increasing private practitioner dissatisfaction with billing requirements).

21. K. ALEC CHRYSTAL & RICHARD G. LIPSEY, ECONOMICS FOR BUSINESS AND MANAGEMENT 143 (1997).

legal scholarship, one might say that the level of output remains steady among faculty members with equal teaching loads, so that strictly speaking, the concept of economies of scale is not relevant.[22] It is important to define this concept, however, for it is the thematic source of the terms "(dis)economies of seniority" and "(dis)economies of juniority" employed in this Article. That is, with respect to certain aspects of law teaching, greater seniority can result in a reduction of the input required to obtain a particular output of teaching. In other words, the result is an improvement in productive efficiency.[23] For example, all other things being equal, junior faculty members generally must spend a great deal more time on class preparation than their senior colleagues in order to achieve the same level of effectiveness in the classroom (the output or "product" of effective teaching). By the same token, this Article argues that seniority also results in certain diseconomies or inefficiencies in the classroom.

B. Absolute and Comparative Advantage

David Ricardo's law of comparative advantage from the field of economics demonstrates how countries, or individuals, benefit from trade with one another when they have comparative advantages in the production of different goods.[24] Ricardo's work builds on Adam Smith's more intuitively accessible work regarding *absolute* advantage.[25] The traditional model used to illustrate absolute or comparative advantage is that of two economic parties (two countries, or two individuals) producing only two goods. Under absolute advantage, a party enjoys an absolute advantage in the production of a particular good "if it can produce the good at lower cost or with higher productivity" than the other party.[26] In the two-party model, therefore, mutually beneficial trade occurs if one party (Party 1) enjoys an absolute advantage in

22. It might be relevant in situations where a faculty member teaches two sections of a single course, thus reducing the preparation time (average unit cost) for the output of teaching. That, however, is not the focus of this Article and is therefore not discussed.

23. *See* COOTER & ULEN, *supra* note 13, at 12.

24. STEVEN M. SURANOVIC, INTERNATIONAL TRADE THEORY AND POLICY, ch. 40-4 (2006), http://internationalecon.com/Trade/Tch40/T40-4.php#CA.

25. L. ALAN WINTERS, INTERNATIONAL ECONOMICS 15–16 (1992).

26. SURANOVIC, *supra* note 24, at ch. 40-4.

the production of good "A," and the other party (Party 2) enjoys an absolute advantage in the production of good "B." This presumes, of course, that the transaction costs of trade (transport, tariffs, etc.) do not exceed the benefits of trade.[27]

Comparative advantage is similar to absolute advantage, except that one party (Party 1) has an absolute advantage in the production of both goods. Yet trade can still be beneficial if each party concentrates on producing the good that it is relatively more efficient at producing. The key to the analysis is the opportunity cost of producing one good instead of the other. A party enjoys a comparative advantage in producing a good if it is able to produce that good "at a lower opportunity cost relative to another [party]."[28] As Steven Suranovic has aptly described it, the party with the absolute advantage in both goods "should specialize and trade the good in which it is 'most best' at producing," while the other party "should specialize and trade the good in which it is 'least worse' at producing."[29] Focusing production in this manner results in greater overall production by both parties, and they can engage in trade and both be better off. Of course, if the opportunity costs are equal between the two actors, then there is no comparative advantage, and no benefit to trade.[30]

A traditional example of comparative advantage is the attorney who is both a skilled lawyer and a better typist than her executive assistant. While the lawyer can do both tasks better than the assistant, the lawyer is better off if she focuses primarily on what she does *comparatively* better (practicing law) and lets her assistant do the task at which the lawyer is comparatively worse (typing). The assistant also benefits, since if the lawyer did all of the typing, the assistant would not have a job. Both parties therefore benefit from the lawyer's specializing in favor of practicing law, even though one party is better at both tasks.[31]

It is beyond the scope of this Article to delve into the

27. Transaction costs are defined, quite literally, as "costs associated with transactions." CHRYSTAL & LIPSEY, *supra* note 21, at 128. While there is a good deal more nuance to the concept, this basic working definition is sufficient for purposes of this Article.

28. SURANOVIC, *supra* note 24, at ch. 40-4; *see also* JACOB VINER, STUDIES IN THE THEORY OF INTERNATIONAL TRADE 438 (1960).

29. SURANOVIC, *supra* note 24, at ch. 40-0.

30. *Id.* at ch. 40-4.

31. *See* COOTER & ULEN, *supra* note 13, at 30.

nuances of absolute and comparative advantage. For present purposes, there are several key points to bear in mind. First, while absolute and comparative advantage are typically illustrated using simplistic two-party, two-good models,[32] their implications remain relevant in more complex scenarios involving multiple goods and parties. Second, absolute and comparative advantage, while often thought of as international economic concepts, apply to exchanges between private actors too. In fact, Adam Smith himself, elaborating on the subject of absolute advantage, presented it in the context of individuals, namely a shoemaker, tailor, and farmer.[33]

Third, the implications of absolute and comparative advantage are relevant in the context of both goods and services. Fourth, and perhaps most important for purposes of this Article, absolute and comparative advantages can change over time. The presumption of Smith, and also of Ricardo, was that the shoemaker would remain a shoemaker, instead of trying to learn how to hem his own slacks. Yet other scholars have discussed how comparative advantage can equalize or shift, as countries develop expertise and efficiency in industries in which they previously had comparatively less expertise and efficiency.[34] In fact, the impetus for such change can be trade itself, as countries or parties interact with one another. This too holds important implications for the subject of this Article.

III. FACTORS AFFECTING CLASSROOM TEACHING PERFORMANCE AND EFFECTIVENESS

Any discussion of teaching effectiveness and specific factors

32. Ricardo's two-country example was the example of England and Portugal, each of which produced two goods, wine and cloth, using labor as a single input. *See* SURANOVIC, s*upra* note 24, at ch. 40-0.

33. "It is the maxim of every prudent master of a family never to attempt to make at home what it will cost him more to make than to buy. The tailor does not attempt to make his own shoes, but buys them of the shoemaker. The shoemaker does not attempt to make his own clothes but employs a tailor. . . . What is prudence in the conduct of every private family can scarce be folly in that of a great kingdom." ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 194 (Edwin Cannan ed., 1952) (1776).

34. *See, e.g.*, Meir Khon, *Value and Exchange*, 24 CATO J. 1 (2004); Richard Nelson, *How New Is New Growth Theory?*, 40 CHALLENGE 1 (1997); *see also* VINER, *supra* note 28, at 552 (noting that goods "may shift from the export to the import status, or may cease to be exported or imported," and that "terms of trade" (the ratio of export prices to import prices) is not always the sole driver of changes in comparative advantage).

that favor or disfavor junior law faculty in the classroom first requires a review of general principles of effective teaching in higher education. This section of the Article therefore seeks to identify and discuss these principles by surveying recent academic literature relevant to law school teaching. As Gerald Hess has noted, this literature is "vast,"[35] and a comprehensive survey is beyond the scope of this Article. Rather, this Article seeks to stand on the shoulders of several recent commentators, in order to provide a view of the subject from several different perspectives. Doing so illustrates that these various approaches to the subject of effective law teaching are indeed complementary, for they highlight common principles and factors of effective teaching.

Accordingly, this Part first summarizes several different approaches of previous commentators. While not all aspects of these approaches are relevant to this Article, the approaches are summarized in their entirety in the interest of providing complete context. Each approach identifies specific teaching factors that, when viewed broadly, coalesce into three primary principles or "meta-factors" of law school teaching: (a) substantive knowledge of course material, (b) effective engagement of students in the classroom, and (c) creation of an engaging and responsive learning environment for students. The teaching factors that can be grouped under each principle or meta-factor are discussed further in Part IV (including the aforementioned factors that favor junior faculty).

A. Chickering and Gamson's *Seven Principles for Good Practice in Undergraduate Education*

In the 1980s, higher education professors Arthur Chickering and Zelda Gamson helped identify a set of teaching principles called the *Seven Principles for Good Practice in Undergraduate Education*.[36] Since that time, their work has spawned a large volume of higher education literature.[37] More

35. Gerald F. Hess, *Listening to Our Students: Obstructing and Enhancing Learning in Law School*, 31 U.S.F. L. REV. 941, 941 (1997).

36. Arthur W. Chickering & Zelda F. Gamson, *Seven Principles for Good Practice in Undergraduate Education*, 39 AM. ASS'N HIGHER EDUC. BULL. 3 (1987), *available at* http://honolulu.hawaii.edu/intranet/committees/FacDevCom/guidebk/teachtip/7princip.htm.

37. *See, e.g.*, APPLYING THE SEVEN PRINCIPLES FOR GOOD PRACTICE IN UNDERGRADUATE EDUCATION: NEW DIRECTIONS FOR TEACHING AND LEARNING (Arthur

recently, these seven principles (or "factors," to use the terminology employed in this Article for sake of clarity) have had an impact on discussions of legal education, especially clinical education.[38] While the seven principles (factors) are styled as principles for undergraduate education, as opposed to graduate education, they translate well to American law schools, which are generalist in nature and require no particular prerequisite course of study for admission.[39] These seven principles (factors) are set forth below.

As Chickering and Gamson make clear, their seven principles concern "the teacher's how, not the subject-matter what, of good practice" in higher education.[40] It is also worth noting that these principles jibe nicely with Maslow's classic hierarchy of needs, in that application of these seven principles can help further the satisfaction of certain lower needs in the educational setting—such as safety needs (absence of fear in

W. Chickering & Zelda F. Gamson eds., 1991); ARTHUR W. CHICKERING ET AL., INVENTORIES OF GOOD PRACTICE IN UNDERGRADUATE EDUCATION (1989); PETER T. EWELL & DENNIS P. JONES, INDICATORS OF "GOOD PRACTICE" IN UNDERGRADUATE EDUCATION: A HANDBOOK FOR DEVELOPMENT AND IMPLEMENTATION (1996); THE SEVEN PRINCIPLES IN ACTION: IMPROVING UNDERGRADUATE EDUCATION (Susan R. Hatfield ed., 1995); Arthur W. Chickering & Zelda F. Gamson, *Development and Adaptations of the Seven Principles for Good Practice in Undergraduate Education*, 80 NEW DIRECTIONS TEACHING & LEARNING 75 (1999) (discussing the background and origins of the seven principles); Arthur W. Chickering & Stephen C. Ehrmann, *Implementing the Seven Principles: Technology as Lever*, 49 AM. ASS'N HIGHER EDUC. BULL. 3 (1996).

38. *See* Gerald F. Hess, *Seven Principles for Good Practice in Legal Education*, 49 J. LEGAL EDUC. 367 (1999); Susan B. Apel, *Seven Principles for Good Practice in Legal Education: Principle 1: Good Practice Encourages Student-Faculty Contact*, 49 J. LEGAL EDUC. 371 (1999); David Dominguez, *Seven Principles for Good Practice in Legal Education: Principle 2: Good Practice Encourages Cooperation Among Students*, 49 J. LEGAL EDUC. 386 (1999); Gerald F. Hess, *Seven Principles for Good Practice in Legal Education: Principle 3: Good Practice Encourages Active Learning*, 49 J. LEGAL EDUC. 401 (1999); Terri LeClercq, *Seven Principles for Good Practice in Legal Education: Principle 4: Good Practice Gives Prompt Feedback*, 49 J. LEGAL EDUC. 418 (1999); R. Lawrence Dessem, *Seven Principles for Good Practice in Legal Education: Principle 5: Good Practice Emphasizes Time on Task*, 49 J. LEGAL EDUC. 430 (1999); Okianer Christian Dark, *Seven Principles for Good Practice in Legal Education: Principle 6: Good Practice Communicates High Expectations*, 49 J. LEGAL EDUC. 441 (1999); Paula Lustbader, *Seven Principles for Good Practice in Legal Education: Principle 7: Good Practice Respects Diverse Talents and Ways of Learning*, 49 J. LEGAL EDUC. 448 (1999); *see also* Paul L. Caron & Rafael Gely, *Taking Back the Law School Classroom: Using Technology to Foster Active Student Learning*, 54 J. LEGAL EDUC. 551 (2004) (discussing application of technology in the classroom in the context of the seven principles).

39. For a prescient discussion of the increased specialization and theoretical focus of law schools, see George L. Priest, *Social Science Theory and Legal Education: The Law School as University*, 33 J. LEGAL EDUC. 437 (1983).

40. Chickering & Gamson, *supra* note 36, at 4.

the classroom), needs of belonging, and needs of esteem—so that higher level self-actualization processes such as synthesis and critical thinking can take place.[41] This Article asserts that these seven principles (factors) in turn rest on two underlying principles or meta-factors: the importance of faculty engagement of students in the classroom, and the creation of an engaging and responsive learning environment for students. As will become clear in the following discussion, these broader principles or meta-factors also appear in other recent scholarship on effective law teaching.

1. Encouragement of faculty-student interaction

Chickering and Gamson state that student contact with faculty inside and outside the classroom—even with only a few faculty members—helps to "enhance[] students' intellectual commitment and encourages them to think about their own values."[42] Placing one's education in the context of values makes the educational process more meaningful and comprehensible, and thus hopefully more effective.

2. Encouragement of interaction and cooperation among students

Parallel to the importance of faculty-student interaction is the critical nature of student-to-student interaction. According to Chickering and Gamson, learning is "collaborative and social," and interaction among students enhances learning.[43] An effective learning environment, therefore, encourages and facilitates such interaction.

3. Encouragement of "active learning"

This principle or factor dovetails well with the previous two, and goes further in the sense that it encourages opportunities for students to apply what they learn in the classroom to their lives and surroundings. In a nutshell (or perhaps in a sound

41. For a discussion of Maslow's hierarchy of needs and its application in the law school setting, see Lawrence S. Krieger, *What We're Not Telling Law Students—and Lawyers—That They Really Need to Know: Some Thoughts-in-Action Toward Revitalizing the Profession from Its Roots*, 13 J.L. & HEALTH 1 (1998).

42. Chickering & Gamson, *supra* note 36, at 5.

43. *Id.*

bite), the point is that "learning is not a spectator sport."[44] Paul Caron and Rafael Gely have applied this active learning principle or factor further in the law school context in an article discussing how active learning can be applied in the law school classroom to maximize law student participation and learning.[45]

4. Provision of prompt feedback to students

There has been a plethora of scholarship on the benefits of frequent and timely feedback to law students, much of it critical of the still-prevalent practice of single, semester-end final examinations.[46] As Chickering and Gamson explain, "[k]nowing what you know and don't know" through teacher feedback to students helps to focus learning and make it more effective.[47]

44. *Id.*; *see also* STUCKEY ET AL., *supra* note 5, at 123 (explaining the need for teaching that stimulates active learning in law schools).

45. Caron & Gely, *supra* note 38, at 552 ("Active learning recognizes that, during classroom time, students should be engaged in behavior and activities other than listening. Active learning requires students to undertake higher-order thinking, forcing them to engage in analysis, synthesis, and evaluation.").

46. *See, e.g.*, B. Glesner Fines, *The Impact of Expectations on Teaching and Learning*, 38 GONZ. L. REV. 89, 115 (2002) (discussing achieving high academic expectations through written and in-class feedback, and noting that "[i]t is in the language of assessment that teachers can create a climate supporting high expectations through the availability and tenor of feedback"); Robert P. Schuwerk, *The Law Professor as Fiduciary: What Duties Do We Owe to Our Students?*, 45 S. TEX. L. REV. 753, 778–79 (2004) (suggesting that professors create stress among students by giving law school examinations vastly different in nature from undergraduate examinations, and doing so without giving meaningful advance feedback or advice to students prior to the examinations); *see also* Ron M. Aizen, *Four Ways to Better 1L Assessments,* 54 DUKE L.J. 765, 794 (2004) ("The continuing use of single end-of-course exams to account for all, or nearly all, of law students' first-year course grades produces an assessment system that is invalid, unreliable, and of little pedagogical value. Law schools should increase the number, variety, and quality of first-year assessments.").

One possible justification for having a single final examination in law school courses is that this approach actually simulates the practice of law in a number of ways. Students, like lawyers, are engaged in multiple large projects at a given time, must learn to come up to speed quickly on their own, must learn to manage their time well, and must put in months of preparation for a distant event (such as a trial, negotiation, deal closing or the like). Much like the practice of law, this system is stressful and perhaps not always fair, but the similarities between the two are striking. Having said that, such justifications seem less compelling in the first-year law school environment, during which students are being exposed to new materials and new ways of learning without the benefit of any benchmark or any way to correct their mistakes (without teacher feedback) until the second term of law school, by which time it is too late to remedy these errors.

47. Chickering & Gamson, *supra* note 36, at 5; *see also* STUCKEY ET AL., *supra*

5. Emphasis on "time on task"

The essence of "time on task" is twofold: first, time management is an essential tool for higher education learning and for professional success; and second, students need to be taught how to effectively manage their time.[48] "Time on task" also stands for the proposition that *teachers* need to effectively allocate and use their classroom time in order to maximize student learning.

6. Communication of high expectations

Effective learning requires that students have goals and standards—that they know what is expected of them in a course and that they be expected to work toward those goals. Students, as utility maximizers, are likely to exert less effort if less is demanded of them, and as a result their education will suffer.[49]

7. Respect for diverse talents and methods of learning

This principle or factor is somewhat different from, and yet complementary to, the other six. In essence, the assertion is that people have diverse talents, backgrounds, and interests, and that recognition of this will improve the educational experience. Chickering and Gamson assert that "[s]tudents need the opportunity to show their talents and learn in ways that work for them," and that when this occurs, "they can be pushed to learn in new ways that do not come so easily."[50]

B. Principles of Adult Education

Law school is by definition a graduate course of study, and students entering law school have previous experience in higher education, and often in the work force as well. In 2006, the average age of law students at graduation was twenty-eight, which means many students did not come to law school

note 5, at 125–26 (discussing the importance of prompt, yet not necessarily graded, feedback).

48. *See* Chickering & Gamson, *supra* note 36, at 5.

49. *Id.* at 6; *see also* STUCKEY ET AL., *supra* note 5, at 116–18; Robert Lloyd, *Consumerism in Legal Education*, 45 J. LEGAL EDUC. 551, 551–53 (1995).

50. Chickering & Gamson, *supra* note 36, at 7.

straight from college at age twenty-two.[51] Hess and others therefore have sought to use adult education principles (or factors, in the terminology of this Article) to recommend improvements to the law school teaching environment.[52] Hess's six adult education principles—context, voluntariness, respect, activity, evaluation, and collaboration[53]—are summarized below.

Much of what underlies these six principles or factors of adult education is the notion that student perceptions significantly affect the law school teaching and learning environment, for good or for ill. A learning environment perceived by students as positive encourages learning; an environment perceived as negative or fearful hinders learning.[54] Thus, in a very large sense, what matters is not so much whether the environment is objectively an effective one (i.e., as judged by an informed, third-party observer), but rather whether the environment is perceived by its student inhabitants to be effective and conducive to their learning. This distinction in fact can result in significant differences between faculty and student views on what constitutes an effective learning environment.[55]

1. Context

Education is a journey of exploration, and it "does not take place in a vacuum."[56] Adult learners place new ideas and concepts into a matrix of their previous experiences, and they assign meaning to these ideas and concepts within the context of their prior experiences.[57] It follows that a teacher who is more familiar with students' experiential or cultural matrices

51. Annelena Lobb, *Getting to the Bar a Little Late in Life*, WORLD-JOB.NET, Aug. 24, 2006, http://www.world-job.net/en/new_76.html.

52. Hess, *supra* note 35, at 941–44.

53. *Id.*

54. *Id.* at 946–54.

55. Hess expressly asserts that assessing the law school teaching environment from the students' subjective perspective, and making adjustments necessary to improve the perceived quality of the teaching and learning environment, is "consistent with basic principles of adult education from the literature on teaching and learning in higher education." *Id.* at 941.

56. *Id.* at 943; *see also* Stephen D. Brookfield, *Adult Learners: Motives for Learning and Implications for Practice*, *in* TEACHING AND LEARNING IN THE COLLEGE CLASSROOM 144 (Kenneth Feldman & Michael B. Paulsen eds., 1994).

57. Hess, *supra* note 35, at 943.

is likely to be more effective in presenting new ideas and concepts in a manner that is accessible to students.

2. Voluntariness

Hess also points out that adult student "[p]articipation in learning is voluntary; adults engage in learning of their own volition."[58] Law school is by definition not a mandatory course of study, and students attend law school largely by choice.[59] On the one hand, a classroom filled with voluntary (as opposed to reluctant or recalcitrant) learners might improve the educational environment of law schools. On the other hand, voluntary adult learners might withhold their participation in class—or even withdraw from law school entirely—if the law school classroom experience does "not meet[] their needs, does not connect with their past experiences, or is conducted at a level they find incomprehensible."[60] In other words, if law students feel engaged and encouraged in the classroom—if they understand what is going on in class, and if they do not feel entirely overwhelmed or intimidated—then they are far more likely to participate meaningfully in their own educational process, which likely will improve their educational experience and the educational climate of their law school.

3. Respect

Closely tied to voluntariness is the principle or factor of respect. As pointed out by Hess, "[o]ne of the central features of good teaching is that the students feel that instructors value them as individuals."[61] Teachers who respect their students, but still challenge them to learn and think critically, foster a classroom environment that is conducive to learning. As with Chickering and Gamson's seven principles of undergraduate

58. *Id.* at 942. It certainly can be argued that all students voluntarily choose whether to learn; children may tune out in class, and teenagers may drop out of school. Adult learners, however, give up the opportunity to earn wages in the workplace in exchange for an education. The existence of viable alternatives to the pursuit of further education thus renders the adult learner's participation voluntary to a greater degree.

59. This is not to say that students never feel compelled to attend due to economic or familial pressures; rather, the point is that law school is not a strictly mandatory course of study, so in that sense the members of a law school class are not legally obligated to attend class or stay in law school.

60. Hess, *supra* note 35, at 942.

61. *Id.*; *see also* STUCKEY ET AL., *supra* note 5, at 111–16.

education, this aspect of adult education theory is consistent with Maslow's hierarchy of needs.[62]

4. Activity

Active learning theory posits that learning is an active rather than passive process, and that people have different styles of learning.[63] As Paul Caron has pointed out, "active learning produces more lasting value to students who are better equipped to process new information and solve new problems."[64] The implications for law school classroom teaching are enormous. First, it is hard to argue that lectures are anything but passive presentation of material. While lectures do have their place in the classroom, a course consisting of nothing but lectures discourages active learning.[65] Second, Caron and Gely have argued persuasively that the Socratic method of teaching, while superficially "active," actually does little to encourage active learning.[66] While one student at a time is engaged in Socratic dialogue, others in the classroom are left to "play along" and (it is hoped) learn on their own.[67] Michael Hunter Schwartz has aptly characterized this as the "Vicarious/Self-Teaching Model" of law school teaching.[68] Third, and closely related to the first two points, is the notion that students learn "by doing more than listening," through such activities as "discussion, problem solving, simulation, writing, . . . work in the field,"[69] and reflecting on information received.

5. Evaluation

Evaluation is much more than the handing out of grades. It is an integral part of the educational process. Effective

62. *See supra* text accompanying note 41.

63. Hess, *supra* note 35, at 943 (citing CHARLES C. BONWELL & JAMES A. EISON, ACTIVE LEARNING: CREATING EXCITEMENT IN THE CLASSROOM 2 (1991)).

64. Paul L. Caron, *Back to the Future: Teaching Law Through Stories*, 71 U. CIN. L. REV. 405, 406 (2002).

65. *See* Caron & Gely, *supra* note 38, at 552–53.

66. *Id.* at 554.

67. *Id.* at 554–55.

68. Schwartz, *supra* note 5, at 351.

69. Hess, *supra* note 35, at 943 (citing CHARLES C. BONWELL & JAMES A. EISON, ACTIVE LEARNING: CREATING EXCITEMENT IN THE CLASSROOM 2 (1991)); *see also* CHET MYERS & THOMAS B. JONES, PROMOTING ACTIVE LEARNING: STRATEGIES FOR THE COLLEGE CLASSROOM 20–21 (1993); Caron & Gely, *supra* note 38, at 552–54.

evaluation of adult students helps to motivate them, and thus improve performance and enhance learning. Hess has identified three characteristics of effective adult education evaluation schemes: multiplicity or frequency, variety, and fairness.[70] *Multiple* evaluations test student knowledge and progress throughout the duration of a course.[71] *Varied* evaluational tools assess student progress and comprehension using different formats and approaches, such as written examinations, multiple choice examinations, research papers, student journals or diaries for the course, group projects, and practical skills exercises.[72] *Fairness* concerns how well an evaluation scheme tests expressly stated or presented goals of the course. In a fair evaluation scheme, students know the expectations of the teacher and the grading criteria, and they are able to practice and obtain feedback on examination performance prior to the actual examination(s).[73] In this respect, this principle or factor is consistent with the provision of prompt feedback to students recommended by Chickering and Gamson.[74]

6. Collaboration

The presumption or default organization of traditional law school classes is that of a single teacher who either conveys information through lectures or who, through Socratic dialogue, guides one student at a time to discover information.[75] Whether this is achieved through group projects, student discussion leaders, or student participation in the

70. Hess, *supra* note 35, at 944 (citing LUCY CHESER JACOBS & CLINTON I. CHASE, DEVELOPING AND USING TESTS EFFECTIVELY: A GUIDE FOR FACULTY 1–31 (1992)); *see also* BARBARA GROSS DAVIS, TOOLS FOR TEACHING 239–47, 252–54 (1993).

71. Hess, *supra* note 35, at 944. Most law school courses of course do not feature multiplicity of evaluation. Despite strong and sustained criticism of courses with a single final examination at the end of the semester, this evaluation approach remains predominant in law schools. Phillip Kissam observed that this is due, in part, to the demands of time-intensive legal scholarship and other pursuits. *See* Philip C. Kissam, *Law School Examinations*, 42 VAND. L. REV. 433, 436 (1989) (noting that single, end-of-course examinations "free[] law professors to pursue their nonteaching interests as scholars, consultants, or professional experts without giving much consideration to the provision of effective and democratic legal education").

72. Caron & Gely, *supra* note 38, at 560–68; Hess, *supra* note 35, at 944.

73. Hess, *supra* note 35, at 944.

74. *See supra* text accompanying notes 46–47.

75. *See* Hess, *supra* note 35, at 943; *see also* STUCKEY ET AL., *supra* note 5, at 119–20.

charting of a course's direction throughout the semester or year, collaboration can result in greater student participation and comprehension, and thus improved learning.

C. Law Student and Law Teacher Surveys Regarding Effective Teaching

An underlying theme of Chickering and Gamson's seven principles of good practice in undergraduate education and the adult education principles or factors discussed above is that student perceptions have a significant effect on the law school teaching environment, and thus on the effectiveness of law school teaching. Other academic commentators on law school teaching have explored this point further by conducting surveys of law students and law teachers regarding what they see as the traits of effective law school teaching. Specifically, James Levy conducted surveys of students at two U.S. law schools in 2002 in order to gain insight into what students believe are the traits of effective law teachers.[76] Judith Fischer took a slightly different tack by surveying legal writing teachers in order to obtain their views on what types of teaching techniques or skills lead to higher student ratings in legal writing courses.[77] While Fischer's survey focused on the narrow question of how legal writing teachers might improve their teaching evaluations, and thus their career prospects[78]—a sort of gaming of the system, if you will—her work does offer useful insights into what teachers think students value in the classroom. Unlike the seven principles set forth by Chickering and Gamson or the adult education principles or factors relied on by Hess, the surveys by Fischer and Levy focus both on matters of form or presentation of materials and on substantive teaching considerations. Because the results of the Levy and Fischer surveys are complementary and overlapping, the factors identified in their surveys are summarized together below.

76. James B. Levy, *As a Last Resort, Ask the Students: What They Say Makes Someone an Effective Law Teacher*, 58 ME. L. REV. 49, 50–51 (2006).

77. Judith D. Fischer, *How to Improve Student Ratings in Legal Writing Courses: Views from the Trenches*, 34 U. BALT. L. REV. 199, 199 (2004).

78. *Id.*

1. Law teacher expertise in the subject being taught

In 2002, Levy surveyed students at the University of Colorado School of Law and the William S. Boyd School of Law at the University of Nevada, Las Vegas, regarding what teaching characteristics or factors they valued in the law school classroom.[79] Of the factors covered by Levy's survey, having teachers who "are experts in their fields" was ranked "as one of the most important traits of effective teachers" among student respondents.[80] Levy reasons that this is because students are more likely to pay attention (and thus are more likely to learn) if they believe their law professors are extremely knowledgeable about the subject matter at hand.[81] Some of Levy's student respondents further expressed a desire for professors who had law practice experience in the subjects they teach.[82]

On a related note, students responding to Levy's surveys identified teacher confidence in their subject matter as perhaps even more important than actual expertise.[83] Any student rating of teacher confidence is ultimately a student's subjective judgment of a teacher's subjective state, but this dual-layer subjectivity, however, further illustrates the point that student perceptions, rather than objective measures of teacher competence (or confidence for that matter), very much influence how effective classroom instruction actually turns out to be.

2. Communication of high academic expectations

The students Levy surveyed generally rated high academic expectations as an important factor in effective classroom teaching. Levy notes that such a positive correlation between high academic standards and perceptions of effective teaching are consistent with previous research regarding undergraduate teaching.[84] This finding is also consistent with Fischer's survey

79. Levy, *supra* note 76, at 50–51.

80. *Id.* at 76–77.

81. *Id.* at 77.

82. *Id.*

83. *Id.* at 78–79.

84. *See id.* at 75 (citing KEN BAIN, WHAT THE BEST COLLEGE TEACHERS DO 73 (2004)); *see also* STUCKEY ET AL., *supra* note 5, at 116.

of legal writing teachers,[85] as well as with Chickering and Gamson's seven principles of good practice in undergraduate education.[86]

3. Organized and effective presentation of material

Fischer's survey of legal writing teachers illustrates the importance of organized and effective presentation of material in the classroom. Relying on earlier studies, Fischer notes that students and teachers both generally value these factors.[87] Consistent with these earlier studies, respondents to Fischer's survey emphasized the importance of preparing for class, mastering the course material, and clearly presenting course material in an engaging fashion.[88]

Levy's survey of law students approached the subject of effective classroom teaching from a somewhat different connotative angle, in that his survey of law students asked the following question: "How important is it to you that your teachers are *entertaining* in class?"[89] His survey respondents ranked entertainment as important, but not as important as teacher expertise or confidence.[90] Perhaps this difference is the result of how Levy's question was phrased: the notion of "entertainment" carries a possibly negative connotation regarding classroom performance, in that it suggests an emphasis on style over substance, along the lines of the neologisms "edutainment"[91] and "infotainment."[92] By contrast, Fischer's phrase "effective presentation of materials" carries no such connotation.

Regardless, the notion of "entertaining presentation" is

85. Fischer, *supra* note 77, at 205.

86. *See supra* text accompanying note 49.

87. Fischer, *supra* note 77, at 200; *see also* THOMAS A. ANGELO & K. PATRICIA CROSS, CLASSROOM ASSESSMENT TECHNIQUES: A HANDBOOK FOR COLLEGE TEACHERS 318 (2d ed. 1993).

88. Fischer, *supra* note 77, at 205.

89. Levy, *supra* note 76, at 81 (emphasis added).

90. *Id.* at 82 ("Interestingly, students did not rate this teacher trait as highly as the anecdotal evidence [regarding Generation X students] suggests.").

91. *See* Zühal Okan, *Edutainment: Is Learning at Risk?*, 34 BRIT. J. EDUC. TECH. 255 (2003) (discussing educational software); Whatis.com, Edutainment, http://whatis.techtarget.com/definition/0,,sid9_gci538402,00.html (last visited Aug. 6, 2007).

92. *See* Whatis.com, Infotainment, http://whatis.techtarget.com/definition/0,,sid9_gci538342,00.html (last visited Aug. 6, 2007).

relevant, in that if students are entertained, they are more likely to pay attention, and thus more likely to learn. It is therefore important for law teachers to understand the mindsets of their students, so that class material can be presented in an effective and engaging manner. As discussed below, this has implications for the role of junior faculty in law teaching.

4. Concern for student learning

Both Fischer and Levy identified concern for student learning as an important factor for effective law teaching. Fischer's survey garnered responses that emphasized the importance of respecting and showing concern for students.[93] These responses are consistent with previous research on the importance of teacher empathy and concern for students.[94] Levy's survey approached the subject from two angles—namely, the importance of teacher respect for students and teacher accessibility to students inside and outside the classroom—and found that students highly value each factor.[95]

IV. DISCUSSION OF CLASSROOM TEACHING PERFORMANCE FACTORS FAVORING SENIOR VERSUS JUNIOR FACULTY

The previous section provided an overview of several lines of inquiry regarding effective teaching principles or factors. As already noted, this Article asserts that the teaching factors identified by those commentators can be grouped into three broad, primary principles or meta-factors of effective law school teaching. This section therefore seeks to re-group the teaching factors relevant to this discussion according to these meta-factors, and to discuss how senior or junior faculty may enjoy absolute or comparative advantages, or economies of seniority or juniority, for these factors. These three meta-factors are as follows:

- *Principle One: Substantive faculty knowledge of course material*, which includes the projection of teacher confidence in course subject matter.
- *Principle Two: Effective faculty engagement of students in*

93. Fischer, *supra* note 77, at 205.
94. ANGELO & CROSS, *supra* note 87, at 317–19.
95. Levy, *supra* note 76, at 79–81, 84–88.

the classroom, which includes effective preparation, organization and pacing of course materials, communication of high expectations for students, evaluation of students (that is, testing), and presentation of course materials in a student-accessible manner.

- *Principle Three: Creation of a responsive learning environment for students*, which includes teacher concern and respect for students and teacher accessibility to students.

Of the factors grouped under these primary principles, some, such as respect and concern for students and the communication of high expectations for students, are seniority- and juniority-neutral. For the other factors identified, a clear pattern emerges. Senior faculty tend to have an absolute or comparative advantage or economies of seniority for factors such as subject matter knowledge, course design, and student evaluation. Junior faculty, by contrast, appear to have an absolute or comparative advantage or economies of juniority in factors that concern student-faculty relations and the understanding of law student mindsets.

In other words, under the three primary principles laid out above, the significant teaching advantages of junior faculty fall under primary principles two and three. Specifically, within principle two—"effective faculty engagement of students in the classroom"— junior faculty members' absolute or comparative advantages or economies of juniority fall under the factor of "presentation of course materials in a student-accessible manner." Within principle three—"creation of an engaging and responsive learning environment for students"—the advantage of junior faculty boils down to accessibility.

A. Principle One: Substantive Faculty Knowledge of Course Material

The first broad principle or meta-factor of effective law school teaching—"substantive faculty knowledge of course material"—favors senior faculty to a fairly strong degree. Senior faculty generally will have more experience in teaching a course and therefore will have a better understanding of the course materials. Senior faculty additionally project greater confidence in their knowledge. This is not to say that junior faculty never have deep and substantive knowledge of a course's materials or confidence in the classroom. In fact, in

today's extremely competitive law school hiring environment, most new faculty hires have experience (in practice, in teaching, or both) in the areas for which they are hired to teach, and are likely to project confidence as well.[96] Certainly, senior faculty who teach a course for the first time are in the same position, in many respects, as junior faculty who are teaching a new course. However, on average, senior faculty will have fewer new courses and more years of teaching experience in a course, which translates into greater substantive knowledge and conveyance of confidence in the classroom.

In addition, greater knowledge and confidence allow senior faculty to enjoy an absolute or comparative advantage or economies of seniority in class preparation. All other things being equal, senior faculty will be able to prepare for class more efficiently—and perhaps more effectively—than their junior counterparts, who will find a far greater portion of their time taken by class preparation.

B. Principle Two: Effective Faculty Engagement of Students in the Classroom

1. Factors that favor senior faculty or that are seniority-neutral

Effective engagement of students in the classroom consists of various teaching factors, such as experience in the classroom, organized presentation of course materials, deft course pacing and structure, and effective evaluation techniques, all of which can result in a more interesting and beneficial educational experience for students. These factors clearly favor more seasoned faculty members. For example, experience allows senior faculty members to better implement "active learning" techniques by refining their classroom approaches, rather than simply concentrating on the basics of conveying the primary subject matter information to students. Senior faculty also may be better at "reading" their students, in order to gauge how well students are reacting in the course, and adjust their teaching accordingly.[97] This is not to say that

96. For a discussion of the contemporary U.S. law school hiring market, see generally Syverud, *supra* note 9.

97. *See* Howard E. Katz & Kevin Francis O'Neill, *Strategies and Techniques of Law School Teaching: A Primer for New (and Not so New) Professors* 50–51, (Cleveland-Marshall College of Law, Research Paper No. 07-144, 2007), *available at*

junior faculty cannot do these things well, but it is to say that in terms of time spent (input) to achieve a similar result in the classroom (output), senior faculty are likely at significant advantage.

As for communicating high expectations to students, and thus improving the classroom experience, that relatively straightforward factor seems to be seniority-neutral.

2. Factors that favor junior faculty: presentation of course materials in a student-accessible manner

Junior faculty members may have an absolute or comparative advantage, at least to an extent, concerning the presentation of course materials in a student-accessible manner. On the one hand, senior faculty will have had the opportunity to hone their instructional craft and, as discussed in the previous section, will have an advantage in terms of organizing and pacing a law school course. On the other hand, junior law faculty often will have other advantages concerning the engagement of students in the classroom—namely their generational proximity to their students, the recency of their experience practicing law as *junior* practitioners, and a lesser risk of engaging in "conceptual condensation" of the course materials.

a. Generational proximity to students. The rate of cultural and technological change in the United States, and indeed the entire developed world, has increased significantly in recent decades.[98] Generational attitudes and mindsets shift more rapidly, and some observers have commented that the increasingly rapid pace of technological developments and the explosion of communications via the Internet since the 1990s are largely responsible for this acceleration.[99] Generation gaps have been an established pattern in American culture for decades, and yet, with the increased pace of change, it is

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=982234.

98. *See* Stephen D. Houck, *Antitrust Enforcement in High Tech Industries,* 9 CORNELL J.L. & PUB. POL'Y 1, 4 (1999) ("[T]he rate of technological change and innovation is so great today, and perhaps distinguishes our industrial era from earlier ones, because the technology itself—such as computing, word processing, fax machines and e-mail—facilitates the aggregation, analysis, dissemination and communication of information and ideas.").

99. *See*, *e.g.*, Emily Nussbaum, *Say Everything*, N.Y. MAG., Feb. 12, 2007, *available at* http://nymag.com/news/features/27341/ (discussing change in generational attitudes toward privacy).

possible, and indeed likely, that senior faculty will become more removed from the attitudes and mindsets of their students—and more removed at an increasingly rapid pace. Such removal means it can be harder for senior faculty to readily understand their students' mindsets, and thus can be harder for them to connect with and effectively teach these students.[100]

In this sense, then, junior faculty can enjoy absolute or comparative advantages or economies of juniority versus their more senior colleagues. Junior faculty members often, although certainly not always, will be closer in age to their students, and this generational proximity may help them better understand how their students will react to certain materials, and thus present course materials in a student-accessible manner. This might play out in different ways. First, junior faculty members, due to their generational proximity to their students, may be more readily able to understand the average mindset of their students, including what some observe as a tendency for modern students to view higher education primarily as a process of credentialization, not of education.[101] Senior faculty certainly can gain the same level of understanding, but greater information costs will be involved.[102]

Second, junior law professors who are closer in age to their students are more likely to be naturally in tune with—and more likely to share—learning styles of their students, which can differ dramatically from the learning styles of previous generations. Junior faculty members also are more likely to be familiar with the pros and cons (from the students' perspective)

100. *See* Silverman, *supra* note 10, at 379.

101. *See* Lloyd, *supra* note 49, at 553 ("Like any economic actor, our rational law student wants to get the best credential she can with the least effort. She chooses teachers who are undemanding or who give high grades, not those who would force her to learn the most. She spends time lobbying the administration for grade inflation because she believes that this is a better use of her time than studying to improve her class rank. Unfortunately, she's often right.").

In response to this, one might argue that most law professors were top students at national law schools, and thus may not be well attuned to the average U.S. law student. Yet these junior professors typically will have been in primary, secondary, and higher education with their peers, and if there is generational proximity between these junior faculty and students, these junior faculty members will be more likely to have an understanding of the mindset, even if they do not share it themselves. For a counterargument based on generational theory, see *Rethinking Teaching Assignments: Should Senior Faculty Teach More Introductory Courses?*, ACAD. LEADER, Apr. 2005, at 7.

102. Silverman, *supra* note 10, at 379.

of the use of technology in class, such as video, the Internet, and laptop computers for note-taking and class participation. Recent research (and even casual observation) reveals that the current generation of higher education students is far more technologically savvy than students of even five years ago, and that current students expect education to be not just informative, but entertaining as well.[103] This may affect how junior faculty organize and teach class materials, and may make course materials more accessible to students.

Third, to the extent junior faculty members are of the same (or a similar) generation as their students, they are more likely to have commonalities of experience and cultural reference with their students, on which they can draw to make their teaching more effective. Education "does not take place in a vacuum," and adult learners generally place new ideas and concepts into the matrix of their own experiences.[104] Shared generational and cultural mindsets of junior faculty and students therefore may give junior faculty a sort of inherent advantage in this regard, such as in the development of useful examples or hypotheticals for illustrating difficult points in the classroom in a manner accessible and relevant to students. Consistent with the concepts of absolute advantage, comparative advantage, and economies of juniority, the point is not that senior faculty cannot do this just as well, but rather that on average, junior faculty can do this with less effort (that is, input or time spent in preparation for such interaction) than their more senior colleagues.

For example, in discussing medical malpractice in a Torts class, a reference to Hugh Laurie's character in the current television show *House*[105] or to *Dr. 90210*[106] will be more accessible to the current generation of students than a reference to *Marcus Welby, M.D.*,[107] a show that during its

103. *See, e.g.,* Levy, *supra* note 76, at 81–82.

104. Hess, *supra* note 35, at 943; *see also* STUCKEY ET AL., *supra* note 5, at 141–46; Brookfield, *supra* note 56, at 144.

105. *See* Internet Movie Database, *House, M.D.*, http://www.imdb.com/title/tt0412142/ (last visited Aug. 7, 2007) (giving an overview of the television show *House*).

106. *See* E! Online, *Dr. 90210*, http://www.eonline.com/on/shows/dr90210/ (last visited Aug. 7, 2007) (giving an overview of the television show *Dr. 90210*).

107. *See* Museum of Broadcast Communications, *Marcus Welby, M.D.*, http://www.museum.tv/archives/etv/M/htmlM/marcuswelby/marcuswelby.htm (last visited Aug. 7, 2007) (giving an overview of the television show *Marcus Welby, M.D.*).

time was far more popular and well-known than *House* and *Dr. 90210* are today, but which has since faded from the national consciousness. Law faculty at any level of seniority can bring these shows (or any other current television show, website, computer game, or technological innovation for that matter) into the classroom, but for junior faculty this may on average be easier to do.

In a sense, *Marcus Welby, M.D.* is an extreme example, given that it is a television show from the 1960s and 1970s. Yet, it is an appropriate example for several reasons. First, and most importantly, it illustrates the point. Second, use of poor Dr. Welby is justified because it is an actual example, not a hypothetical one. A U.S. law professor (who shall remain anonymous) actually used Dr. Welby as an example in classes, beginning in the 1980s and ending in the 1990s. During that time period, Dr. Welby went from being a relevant and appropriate pop culture reference to being largely unknown to law students in those classes.

b. Recency of experience practicing law as junior practitioners. To the extent the relevant context for the law classroom is that of the junior lawyer—which all graduating law students will be—junior faculty are more naturally positioned to provide such context in their teaching.[108] They are far more likely to have been in full-time law practice (in private practice, government service, or otherwise) more recently than their senior faculty colleagues, who have been teaching full-time for years, and whose law practice experience (aside from any *pro bono* activities, law school clinical projects, or consulting while teaching)[109] will be from some years past.

108. Based on my own anecdotal experience, people on the law school tenure-track job market are often advised to practice law for no more than five years or so. The general rationale for this advice is that practicing law for several years will give faculty candidates practical legal experience and demonstrate that they could pursue a career practicing law if they so chose, but that practicing for longer than five years can raise concerns that they are not seeking to teach so much as they are seeking to flee practice. *See, e.g.*, Ethan S. Burger & Douglas R. Richmond, *The Future of Law School Faculty Hiring in Light of* Smith v. City of Jackson, 13 VA. J. SOC. POL'Y & L. 1, 21 (2005) (discussing law schools' reluctance to hire faculty candidates with significant practical experience).

The point of this Article is not to enter into a debate over this relatively common advice to faculty candidates. Rather, the point is that there is at least anecdotal evidence that there are pressures within the law school faculty hiring process that result in many new faculty hires being relatively junior (and often young) lawyers.

109. This is not to say that such recent law practice-related experience while

Such non-contemporary practice experience may be of less contextual usefulness than the more recent, albeit limited, practice experience of junior faculty members.[110]

The broad point to bear in mind is that law students, as adult learners, are voluntary learners, and as such may withhold their participation if the class does not connect to their past experiences.[111] Engaging law students in ways that appeal to them, and to which they can relate, will improve their classroom involvement, and thus the educational experience for both them and their classmates. Junior faculty are often more readily able to present class materials in ways that "connect with their [students'] past experiences,"[112] which means that in this respect, junior faculty members can enjoy absolute or comparative advantages or economies of juniority in the classroom. Moreover, as previously noted, the accelerating rates of change in U.S. culture, technology, and indeed in the practice of law itself further accentuate these advantages or economies of juniority for law teaching. The implications of this increased rate of change for law schools are discussed further in Part V of this Article.

c. Avoidance of conceptual condensation. Junior faculty are generally less likely than their senior colleagues to suffer from the problem of "conceptual condensation" that can interfere with effective teaching.[113] That is, typically there are basic, foundational steps or principles that students need to explicitly recognize and apply in order to understand and master a subject area. However, teachers who are experts in a subject area may be so used to taking these steps implicitly or automatically in their own reasoning that they have to work harder to consciously see the subject from their students' perspectives. Stated differently, senior faculty members who have been teaching a subject longer, and who understand the subject with greater depth, may have trouble unpacking and distilling their rich knowledge of the subject and presenting it

teaching is not substantial and beneficial. Such activities that relate to a faculty member's area of teaching and research can be enormously beneficial in the classroom. Rather, the point is that while some senior faculty members may have recent law practice experience, nearly all junior faculty members do have such experience.

110. *See* Silverman, *supra* note 10, at 378–79.

111. Hess, *supra* note 35, at 942.

112. *Id.*

113. Silverman, *supra* note 10, at 378–79.

to students in an effective and accessible manner.[114]

On average, junior faculty will be less prone to this problem, at least in their very early years of teaching. It is also true, virtually by definition, that junior faculty members are likely to have been student neophytes themselves more recently than their senior faculty colleagues, thus providing junior faculty with greater natural insight into student perspectives on the subjects they teach. In these ways, senior faculty may be at a disadvantage vis à vis their junior colleagues in the classroom.

There are disturbing implications to any suggestion that less knowledge makes one a more effective teacher, so let me be clear: I am not saying that less theory or complexity is *per se* better in the law school classroom. The law is a complex and evolving system, and over-simplification is an ever-present danger in the law classroom. The teaching of doctrine without theory can reduce student understanding and leave students ill-equipped for effective legal advocacy. I am also certainly not saying that senior faculty generally do not effectively teach. Rather, the point is merely this: junior faculty generally are inherently closer to the perspectives of their students, and thus might more easily—that is, quickly, intuitively, and with less conscious effort—understand how students view the material. It is difficult to argue with the general proposition that teachers who better understand their students' perspectives on a subject can have a significant advantage in the classroom.[115]

114. Relying on the work of psychologist William James, Silverman explains that "a teacher's increasing 'intellectual cultivation' may lead to the habit of 'conceptual condensation,'" which is described by James as a process by which the expert teacher condenses a subject and skips basic steps of reasoning that, while self-evident and intuitive to the teacher, are not so to the students. As a result, efforts by the teacher to teach these materials become ineffective. As noted by James, "[a]n advanced thinker sees the relations of his topics in such masses and so instantaneously that when he comes to explain [the material] to younger minds" he is at somewhat of a loss to do so effectively. *Id.* (quoting WILLIAM JAMES, PRINCIPLES OF PSYCHOLOGY, 53 GREAT BOOKS OF THE MODERN WORLD 1, 692 (2d ed., 1990)).

115. It is important to note that commentators have pointed out other problems senior faculty members may face and which can impair their teaching and scholarly effectiveness. Silverman has discussed the problem of senior faculty who experience "functional decay" or "fade" over time, as they lose interest in teaching or scholarship and are not spurred to greater productivity by incentives such as tenure (since they already have it). *See id.* at 378–82. These are significant concerns, to be sure, and yet for purposes of this Article they are not the focus of discussion. Rather, this Article proceeds on the working assumption that a faculty desiring to maximize the effectiveness of its teaching—by, among other things, harnessing the absolute or comparative advantages or economies of its junior faculty—will also be a faculty on

It can be argued, therefore, that aside from considerations of generational proximity or recency of law practice experience, junior faculty members on average can more readily see their subjects from the more basic, foundational perspectives of their students, instead of only from the perspective of scholars discoursing among themselves. Certainly there must be some sort of bell curve in operation here: minimal knowledge and experience are clearly desirable and indeed necessary in the classroom, but at some point the interconnections and nuances of theory and doctrine can work to cloud the larger, more basic picture that is beneficial to students being introduced to the subject.[116] Again, this is a matter of absolute or comparative disadvantages or diseconomies of seniority, as increased seniority brings with it the need to put greater effort into connecting with students at their level of knowledge and comprehension, rather than the level of an increasingly sophisticated and knowledgeable scholar and teacher.

C. Principle Three: Creation of an Engaging and Responsive Learning Environment for Students

In many ways this principle overlaps with the principle of effective faculty engagement of students in the classroom, and yet it is fundamentally different in important respects. At its core, the concerns of this principle revolve around the subjective perceptions, and indeed the emotional reactions, of students to their law professors. Do the students feel

which senior faculty members generally do not suffer from fade or functional decay. While this may be an optimistic assumption, for purposes of effecting meaningful change in law school teaching, the accuracy of this assumption is ultimately of little importance. Implementation of the changes recommended in this Article will not hurt teaching if this assumption is wrong; rather, the impact of the changes will merely be lessened.

It is also worth pointing out that if one accepts scholarly production as a proxy for sufficient depth of knowledge of one's subject matter, then perhaps depth of knowledge, at least beyond a certain minimal point, does not always, or even consistently, improve the classroom experience for law students. Some, however, might reject use of scholarship as such a proxy, or at least take the position that there are diminishing returns to depth of knowledge. For more on this particular line of inquiry, see generally Barton, *supra* note 3 (conducting an empirical study of scholarly production and student evaluations of teaching, and finding no statistical link between the two).

116. Speaking purely from anecdotal experience, it is not uncommon to hear law students say that certain professors are brilliant but "have trouble getting down to the level of the students." Generally, this criticism of classroom performance is leveled at more senior law faculty and not at junior faculty.

encouraged to participate in their own learning? Do they find their professors engaging and responsive? Do they feel that the classroom and their relationships with their professors are supportive? Or is there an element of fear, and do they find their professors difficult to approach or communicate with inside and outside the classroom?

In short, one might characterize this concern as being about the emotional temperature of the law school, or at least of individual professors. Levy discusses the well-established connection between cognition and emotion, and states that socio-emotional considerations play a significant role, perhaps even "the greatest role[,] in determining whether, and how much, our students learn."[117] Emotions and cognition are "inexorably linked," and teacher characteristics such as warmth and supportiveness can boost student performance and comprehension.[118] Levy's conclusion, and the conclusion of other scholars, is that law school teachers often can better facilitate learning by creating an engaging and responsive learning environment for students.[119] This includes both a positive environment within the classroom and a supportive and interactive one outside the classroom.[120]

In what ways might law faculty contribute to a comfortable emotional temperature for students inside and outside the classroom? And what absolute or comparative advantages or economies of juniority might exist for factors within this principle? In large part, the factors identified previously for this principle—teacher concern and respect for students, and teacher accessibility to students—are seniority-neutral. All faculty members, regardless of their level of experience and years of teaching, can show concern and respect for students and can make themselves accessible to students within the

117. Levy, *supra* note 76, at 51.

118. *Id.* at 52 n.8 (citing RENATE NUMMELA CAINE & GEOFFREY CAINE, MAKING CONNECTIONS: TEACHING AND THE HUMAN BRAIN 90 (1994)); *see also* Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. LEGAL EDUC. 75, 77 (2002). For a list of additional scholarship on the dynamics of the professor-student relationship and how these dynamics affect student learning, see Levy, *supra* note 76, at 52 n.8.

119. Levy, *supra* note 76, at 52.

120. *Id.* at 51 n.7 (citing David J. Walsh & Mary Jo Maffei, *Never in a Class by Themselves: An Examination of Behaviors Affecting the Professor-Student Relationship*, 51 EXCELLENCE C. TEACHING 23, 24 (1994)); *see also* STUCKEY ET AL., *supra* note 5, at 121–22.

classroom and without. Yet there are ways in which junior faculty members are at an absolute or comparative advantage in their efforts to create an engaging and responsive learning environment for students.

First, generational proximity may help facilitate professor-student contact in some cases. Students may feel that a junior professor is more of a social peer, and thus be more accessible and approachable than other faculty members who are two, three, or four decades older than many of their students. Students may be more willing to ask questions in class and also may be more willing to interact with junior law teachers outside the classroom. Also, as the surveys of Levy and Fischer and the work of Gamson and Chickering make clear, such faculty-student interaction is a critically important component of effective law school teaching.[121] As Levy's surveys demonstrate, "students want their teachers to be friendly and approachable."[122] Junior law faculty are also more likely to be recent practicing attorneys, and this too may facilitate approachability.

Second, Silverman has suggested that junior faculty on average might have higher levels of enthusiasm for teaching than senior faculty who have taught for many years. In a sense this is the converse of the concept of "fade" among senior faculty who, for one reason or another, have lost part of their fire for teaching.[123] Enthusiasm is an important aspect of teaching effectively and creating an engaging educational environment[124]—and junior faculty, with their energy and the incentive of promotion and tenure, may be more apt to provide it in some cases. This assumes, of course, that their law schools support and reward such classroom efforts in the promotion and tenure process—something that is not a given.

121. *See supra* Parts III.A., C.
122. Levy, *supra* note 76, at 87.
123. Silverman, *supra* note 10, at 378–82.
124. *See* Fischer, *supra* note 77, at 200.

V. DISCUSSION: IMPLICATIONS AND RECOMMENDATIONS FOR CHANGE

A. What This Article Is Not *Suggesting*

The three factors identified above in which junior faculty can have absolute or comparative advantages or economies of juniority—generational proximity, recency of law practice experience, and avoidance of conceptual condensation—carry important implications for law schools and law teaching. Yet, while stating my thesis in economic terms provides useful perspective on the subject, it also raises the risk of being rather seriously misconstrued. Therefore, before getting to any discussion of implications of junior faculty absolute or comparative advantages or economies of juniority, let me clarify what is not being asserted in this Article.

First, this Article certainly does not assert that junior faculty members are always better teachers in their areas of absolute or comparative advantage or economies of juniority, or that all junior faculty members have these advantages. The thesis is not one of academic determinism, or a variant on the saying that "old dogs can't learn new tricks." In fact, as discussed above in Part II and in this Part below, absolute or comparative advantages can shift, and the playing field can be leveled (or rendered further unequal) regarding the balance of advantages.[125] This has important implications for law school teaching and the leveraging of junior law faculty.

Second, it is not suggested here that tenure should be eliminated or curtailed, although others have suggested this.[126] Such a discussion is beyond the scope of this Article. Third, and along similar lines, this Article does not advocate, implicitly or expressly, for an "up and out" policy, pursuant to which faculty members could only teach for a finite number of years, and then would be required to leave (either to become pure researchers or leave law faculties entirely) and make way for new junior faculty in the classroom. This sort of *Logan's Run*[127]approach would be disastrous, as the many absolute or

125. *See supra* Part II.

126. *See generally* Robbins, *supra* note 4; Silverman, *supra* note 10.

127. *Logan's Run* was a novel of the 1960s that was made into a movie in the 1970s. The basic premise is that in the future, human society prevents over-population

comparative advantages or economies of seniority enjoyed by senior faculty in the classroom would be lost. The maximization of effective teaching—making teaching productively efficient—requires that the advantages of both senior and junior faculty be harnessed.

Fourth, this Article is not intended to suggest that law schools only hire new faculty under a certain age, in some sort of odd variant on Abbie Hoffman's famous quip, "Never trust anyone under thirty."[128] Not only would that approach clearly raise serious legal age discrimination concerns, but it also would be counter-productive to the maximization of teaching effectiveness, since it would eliminate non-traditional, older candidates who could bring enormously beneficial alternative perspectives and experiences into the classroom.

Perhaps most importantly, however—and along the lines of the previous point—this Article should not be taken as suggesting that law schools should seek to predominantly hire new faculty who are culturally, ethnically, or racially similar to their law school student bodies. It is my view, shared by many in the legal academy, that students benefit from the exchange of ideas in the law school setting, and that having diverse student bodies and faculties facilitates such exchanges and improves the quality of law school education. This is also consistent with Chickering and Gamson's seventh principle or factor discussed above.[129] "Hiring for the majority" not only prevents such benefits from occurring, but also by definition largely would exclude minority elements of law school student bodies from the benefits of having faculty who more strongly share their backgrounds and similar experiences.[130]

Rather, this Article simply contends that, fully apart from the law school hiring context, existing junior faculty at law schools can offer enormous strengths and opportunities for law schools in the area of teaching, and even beyond teaching. At

by mandating a maximum age of all persons, after which they are euthanized. *See* WILLIAM F. NOLAN & GEORGE CLAYTON JOHNSON, LOGAN'S RUN (1967) (depicting society with a maximum mandated age of 21); Internet Movie Database, *Logan's Run*, http://www.imdb.com/title/tt0074812/ (last visited Aug. 10, 2007) (depicting society with a maximum mandated age of 30).

128. *See* Stephen J. Whitfield, *The Stunt Man: Abbie Hoffman (1936–1989)*, 66 VA. Q. REV. 565, 580 (Autumn 1990).

129. *See supra* Part III.A.7.

130. In this regard, see Hess, *supra* note 35, at 948–53 (relating student comments regarding minority student exclusion in the classroom).

its heart this is a rather modest contention, but its implications for law schools are significant, and possibly even transformative.

B. What This Article Is *Suggesting*

The advantages of junior faculty, or economies of juniority, have interesting and significant ramifications for law schools. Certainly these advantages and economies of junior faculty can be harnessed to improve law teaching, which in and of itself is a considerable benefit. Yet because of the aforementioned advantages and economies, junior faculty also can be catalysts for change within law schools in other, even more dramatic ways.

1. Ramification one: tapping the absolute or comparative advantages or economies of juniority of junior faculty to improve law school teaching

a. Current disincentives for junior faculty involvement. As things stand currently, many junior faculty members play "meek and mild" prior to achieving tenure and promotion to full professor. Senior faculty members hold the keys to junior faculty members' futures, in the form of votes on promotion and tenure. While there may be significant upsides for junior faculty members who speak out on faculty matters—such as burnishing one's reputation or improving one's law school—there are also potentially huge downsides—not the least of which is angering other members of the faculty who vote on promotion and tenure matters. By contrast, while little may be gained by not speaking out, little is lost. Such a conservative strategy is entirely in line with Thomas Jones's observation that "[f]riends may come and go, but enemies accumulate."[131]

This modern variant on the Victorian maxim that children should be seen and not heard does not benefit law schools. Junior faculty members are on average energetic and eager to make their mark on their profession. It is the very height of rhetoric to ask why such energy should not be tapped in the name of pedagogy.

131. QuotationsBook, *Jones, Thomas*, http://www.quotationsbook.com/author/3877/ (last visited Aug. 11, 2007).

b. Methods for tapping the absolute or comparative advantages or economies of juniority or junior faculty. How, then, can junior faculty members' absolute or comparative advantages or economies of juniority be tapped for the benefit of law schools? Given junior faculty members' frequent generational proximity to students and the recency of their law practice experience, this Article suggests that junior faculty should be encouraged by senior faculty to speak up and provide their insights into rapidly evolving and changing student mindsets and views on education. With the pace of cultural change (and change in student mindsets) increasing,[132] this becomes ever more important, as faculty run the risk of growing further removed from student perspectives on education and society, on the use of technology and computers in the classroom, and on other subjects as well.

This Article therefore recommends that the current, predominantly one-way conveyance of pedagogical information from senior faculty to junior faculty be transformed into a two-way dialogue. There are three ways to achieve this: junior faculty evaluation of senior faculty teaching; intra-faculty workshops; and the more *ad hoc* approach of one-on-one or small group discussions.

First, junior faculty could formally or informally evaluate senior faculty teaching. This approach is fraught with potential problems, however, especially if the number of junior faculty is small, as is often the case. Yet if a law school has a sufficient number of junior faculty members, multiple reviews could be merged into composite and anonymous teaching reviews of senior faculty (either of individual senior faculty members or of the senior faculty as a whole), which might reduce the likelihood of contentiousness or ill will. The success of this approach of course will depend on the receptiveness of senior faculty.

A second and perhaps preferable approach would be to hold a series of intra-faculty teaching workshops, at which junior faculty make presentations relating to those factors in which

132. *See, e.g.*, Alex M. Johnson, Jr., *Think Like a Lawyer, Work Like a Machine: The Dissonance Between Law School and Law Practice*, 64 S. CAL. L. REV. 1231, 1231–32 (1991) (discussing his experience, after having been out of law practice less than a decade, of not fully understanding or appreciating the mindset of his former students toward law practice, and positing that perhaps something had "radically changed" during that interval).

junior faculty may have absolute or comparative advantages or economies of juniority. In contrast to teaching reviews, which are inherently and unavoidably a judgment on the teaching of others, workshops are more collaborative. The same approach could be taken in reverse: senior faculty could hold internal teaching workshops for junior faculty. The Association of American Law Schools holds an annual conference for new law teachers,[133] but a smaller, school-specific workshop in which senior faculty provide guidance and training to junior faculty might be equally or even more beneficial, since these workshops could be tailored to the particular law school in question.

Ideally, these two approaches could be combined into a full two-way dialogue among the senior and junior faculty. This could be a highly effective means for senior faculty to obtain input from junior faculty, and also to provide guidance to junior faculty in a concerted, conscious way, as opposed to *ad hoc* guidance or providing guidance primarily through the "emotionally charged" promotion and tenure process.[134] This approach would also help counter the broad-based concern that teaching takes a backseat to scholarship at U.S. law schools.[135]

Third, more informal, *ad hoc* discussions between senior and junior faculty members could be facilitated by a variety of means, such as encouraging senior faculty members to choose junior faculty "mentors" and *vice versa.* This could be in lieu of more formalized approaches, but might be more beneficial as a complement to more formal workshops.

Ultimately, what is important is that there is some sort of dialogue among faculty on the subject of junior faculty perspectives. The precise strategies or approaches of faculties will vary from school to school.[136] Examples of the types of

133. *See* The Association of American Law Schools, *AALS Workshop for New Teachers*, http://www.aals.org/events_nlt.php (last visited Aug. 11, 2007).

134. Simon et al., *supra* note 8, at 257.

135. Barbara Bennett Woodhouse has insightfully compared this concern to the demise of pro bono work at large law firms. *See* Barbara Bennett Woodhouse, *Mad Midwifery: Bringing Theory, Doctrine and Practice to Life*, 91 MICH. L. REV. 1977, 1993 (1993) ("[T]ime spent on developing pedagogy is fast becoming the professor's *pro bono* work—something extra, done for love, and in the face of formidable institutional disincentives.").

136. This is consistent with Gary Lawson's suggestion that faculty workshops be flexible in their formats in order to provide the most benefit to the presenter and to the audience. *See* Gary Lawson, *Making Workshops Work*, 54 J. LEGAL EDUC. 302, 309 (2004).

questions and issues on which junior faculty could comment and provide meaningful input for senior faculty include the following:

- In what senses do current law school graduates feel woefully unprepared or under-prepared when they enter practice? How might law faculties structure specific classes and the overall law school curriculum to address some of these issues?
- Are there certain doctrinal elements in core law school classes that are essential in the practice of law from the junior practitioner's perspective, and that therefore perhaps should be emphasized more heavily in law school?
- Does law school encourage "inside the box" thinking about subjects—that is, Contracts versus Torts versus Property—that is counter-productive for the new attorney-at-law? How might this be rectified, at least in part?
- Do current law students believe there are certain professorial teaching styles or behaviors in law school that more effectively model or teach professional behavior that is beneficial once students graduate and begin the practice of law?

The point is not that all junior faculty members need to have answers to these questions, or even have had these experiences. Rather, the point is that these questions should be asked and discussed, as a means to solicit potentially useful junior faculty input that might otherwise never be provided. Moreover, it is ultimately incumbent upon senior faculty and law school administrators to encourage junior faculty to enter into this dialogue. A groundswell of junior faculty insisting on being heard might happen, but even if it does it likely will be less effective than if such dialogue is encouraged, and indeed rewarded, from the top down.

The point is also not that all senior faculty members need to make major pedagogical adjustments in the classroom. Even modest or minor adjustments can be beneficial. Through the sharing of junior faculty insights, opinions, and expertise, the hope is that disadvantages and diseconomies of seniority can be reduced or even eliminated, much in the same way that the disadvantages or diseconomies of junior faculty are reduced through input and advice received from senior faculty. In this

manner, the quality and effectiveness of each faculty member's teaching, and teaching of the faculty as a whole, can be improved. Regardless, there certainly is little harm in dialogue, other than the opportunity cost of the time needed for faculty to talk with one another. With potentially large benefits and little or no harm, these are approaches worth considering.

2. Ramification two: specialization

As discussed in Part II above, the primary thrust of the concepts of absolute advantage and comparative advantage is that parties should specialize in the production of those products (or services) in which they have an advantage, and then trade with one another in order to maximize overall welfare. Thinking of teaching as a single product or service with multiple factors of production (inputs) suggests that the parties involved (faculty members) will not engage in trade, and that overall production of quality teaching is best (or perhaps only) achieved through cross-fertilization of ideas from junior to senior faculty (and *vice versa*). Such cross-fertilization could help mitigate against productive inefficiencies—diseconomies of juniority or seniority—and lead to "continuous quality improvement" or "incremental innovations through learning" that, in ways large and small, improve the quality of the service being provided—in this case, each faculty member's teaching.

This is all well and good, and as argued in the previous section, greater intra-faculty dialogue can have these positive effects. Yet the implications of absolute and comparative advantage for law teaching become far more intriguing if teaching is conceptualized as the provision of multiple products or services—namely, the teaching factors discussed previously. Under this conceptualization of law school teaching, members of the faculty can be thought of as both the producers of the services in question—the various factors of law teaching—and the consumers thereof. That is, while it is the students who are being taught, the faculty members are the ones who desire to maximize the efficiency of their output of the various factors, and thus maximize their teaching effectiveness. Such a multi-product "market" for law teaching is factually more complex than the two-party, two-good model typically used to illustrate absolute and comparative advantage, but, as with any market, the implications of absolute and comparative advantage remain

the same—just more difficult to track and quantify.

The implication of this conceptualization of law school teaching is that when conditions are right, specialization of teaching functions across the law school curriculum could be beneficial for improving overall law school teaching. That is, instead of faculty members teaching their courses separately, with each professor as a producer of all teaching factor "services" within her own individual courses, it might be beneficial to the overall quality of teaching for faculty members to team-teach courses in coordinated fashion. Under this approach, faculty members could concentrate on providing those factors of teaching in which they currently enjoy absolute or comparative advantages to a number of courses across the curriculum. Senior faculty, for example, could be responsible for determining course structure, pacing, and content for those subjects in which they have depth of knowledge, and junior faculty could be responsible for identifying aspects of these courses that could be improved by applying their factors of absolute or comparative advantage, such as generational proximity or recency of practice experience. Senior faculty could design the evaluational structure of courses; junior faculty could be especially accessible for student questions inside and outside of class.

The extent to which this approach of coordinated teaching across the curriculum is desirable will depend on several factors. First, there is the matter of transaction costs, which are likely to be substantial in many cases. Teaching styles vary widely, and coordinating faculty approaches to the same material is a transaction cost that could well exceed the benefits of this approach. Different faculty may want to use different casebooks or other materials, and they also may disagree about course content. There may be personality conflicts as well. Transaction costs therefore might quickly erode or completely outstrip the gains to be achieved through coordinated teaching.

In addition, even if transaction costs do not outweigh the benefits, there is also the difficulty that unless law schools reward faculty for their coordinated teaching efforts, faculty members will directly bear all transaction costs for coordinated teaching but receive little or no direct benefit for it. That is, aside from the sheer pleasure and joy of effective teaching (or, in economic terms, the non-monetary utility received from

teaching), coordinated teaching would not benefit faculty members unless their compensation structures were formulated to so reward them. Direct costs and few benefits are not incentives to engage in coordinated teaching efforts.[137] That said, this practical difficulty is not an insurmountable bar. While there are challenges involved in designing a reward structure that incentivizes coordinated teaching activity—including the challenge of quantifying the value of this teaching, as well as how to measure the effectiveness of coordinated teaching (i.e., whether it should be based on faculty reviews, student reviews, and/or other factors)—it does seem possible to design an incentive and reward structure to encourage coordinated teaching that could improve the overall quality of instruction.[138]

The approach of coordinated teaching across the curriculum might strike some as undesirable hyper-specialization. Yet George Priest observed two decades ago that specialization was occurring within law school faculties, much along the lines of universities with multiple departments,[139] and today most law professors are specialists.[140] Specialization by subject matter is generally considered a positive development, and law schools typically want their faculty to teach in their areas of expertise (although that ideal is not always met). It is not all that outlandish to suggest that if specialization by subject matter is beneficial, then perhaps specialization by other skill sets is also worth considering. At the very least it could be tried in similar subjects, such as two professors who co-teach two sections of criminal law, or in dual-subject classes such as a bankruptcy negotiations seminar. It also might be tried in legal writing courses: professors with expertise or experience in particular subject matters relevant to legal writing assignments might assist with those segments of the course. These examples certainly are not the limits of what coordinated teaching might accomplish, but they might be a reasonable and conservative place to start.

It is appropriate to close this discussion with two final

137. *See* Woodhouse, *supra* note 135, at 1993.

138. Such incentives might include, for example, pay raises, bonuses, faculty chairs or professorships, increased travel budgets, or reduced teaching and faculty committee responsibilities.

139. Priest, *supra* note 39, at 440–41.

140. *See* Lawson, *supra* note 136, at 304.

observations concerning the risks of hyper-specialization. First, viewing law teaching factors as separate products or services could be objected to on the ground that it will prevent broad skills development by faculty members, as they concentrate on specific subjects and on specific teaching factors in which they enjoy absolute or comparative advantages or economies of juniority or seniority. This, it might be argued, would be detrimental to law teaching and scholarship in the long term. Yet, if coordinated teaching across the curriculum institutionalizes greater communication and cooperation among faculty members, and especially between senior and junior faculty members, it actually might help achieve the goal of cross-fertilization of knowledge advocated by this Article.

Second, one also might object to junior faculty members being treated as apprentices of sorts, who work at the behest of senior faculty in a variety of courses. This is a legitimate concern—and yet depending on the precise relationships involved, such coordination of efforts might in fact be very beneficial for junior faculty. Instead of being turned loose to stand or fall on their own in class, junior faculty members would have the support of senior faculty and be able to experience more directly how senior faculty members teach their courses. This should not be treated as a teaching assistant program, but rather as an opportunity to more effectively insert junior faculty into a law school's teaching schedule. Ironically, then, coordinated teaching across the curriculum could be a way to both harness absolute or comparative advantages and economies of juniority and seniority, and at the same time facilitate, through coordination and interaction, the improvement of both senior and junior faculty members in their areas of teaching disadvantage.

VI. CONCLUSION

This Article has sought to identify and discuss common advantages or benefits of junior faculty in the law school classroom through the application of economic concepts—namely, economies of scale (or economies of juniority), productive efficiency, and absolute and comparative advantage. Primary junior faculty advantages identified are junior faculty members' generational proximity to law students, their recency of experience practicing law as junior practitioners, and their

lower susceptibility to the problem of conceptual condensation of difficult course materials. This Article recommends that greater intra-faculty dialogue be encouraged through a variety of formal and informal means, so that senior faculty can receive input from junior faculty in these areas of junior faculty advantage, and thus hopefully improve overall law school teaching. This input would mirror the input junior faculty already regularly receive from senior faculty (often through the promotion and tenure process) in areas of senior faculty advantage such as subject matter knowledge, course structure, and the like. This Article further suggests that, in addition to such intra-faculty dialogue, coordinated team teaching of law school classes by junior and senior faculty might be beneficial for law school teaching. Such an approach might be a way for law schools to more effectively harness the respective strengths (and minimize the respective weaknesses) of both senior and junior faculty in the classroom. Under this approach, faculty members could teach to their strengths across a number of courses, instead of confining their strengths to a single class at a time.

It is important to emphasize that the observations and recommendations contained in this Article are generalizations. Pains have been taken to avoid hubris regarding the subject or any suggestion that junior faculty members have all the answers, or at least the best ones. Moreover, it is absolutely true that any specific faculty member's strengths and weaknesses cannot be predicted solely based on seniority or juniority. Yet broad patterns can be detected, and it is at this level of generality that this Article has sought to address the subject of junior faculty contributions to the improvement of law school teaching.

In closing, it is worth briefly considering the implications of greater junior-senior faculty dialogue beyond the realm of the classroom. It is possible that increased junior faculty involvement as recommended in this Article could have profound effects on law school culture in general, and on law schools' efforts to serve as agents of change within the legal profession as a whole. As previously noted, junior faculty (like law firm associates) rely in large part on the goodwill and support of their senior colleagues for their future career success, and their general tendency is to avoid actions that might engender senior faculty resentment or opposition to their

promotion. Yet if senior faculty members encourage dialogue, this not only could improve teaching, but also could foster a feeling of buy-in among junior faculty. This, in turn, could improve the quantity and quality of junior faculty members' institutional support efforts and activities.

At regional law schools, which regularly lose junior faculty to national law schools, such involvement also might be a means for improving junior faculty retention, and for improving new faculty recruitment as well. An important generational change in the past twenty years is increased focus by young professionals on "quality of life" considerations, and this certainly is true for lawyers.[141] Accordingly, an open, collegial teaching environment in which new faculty members are actively encouraged to participate and help chart the future course of their law schools may be even more attractive to the current generation of new law teachers than to previous generations of junior faculty.[142]

141. *See* Debra Bruce, *Toward the Humane and Ethical Treatment of Lawyers*, TEX. L. REP., Feb. 2003, *available at* http://www.lawyer-coach.com/articles-by-debra-bruce/2004/07/toward-humane-and-ethical-treatment-of.php (discussing epidemic of dissatisfaction among young attorneys); Mark Donald, *Every Pay Raise Has Its Price*, TEX. LAW., Aug. 2, 2007, *available at* http://www.law.com/jsp/law/careercenter/lawArticleCareerCenter.jsp?id=1185959202928 (discussing how quality of life concerns for new associate attorneys outweigh salary concerns); Hindi Greenberg, *Career Satisfaction: Assessing the Options*, 72 WIS. LAW. 6 (1999), *available at* www.wisbar.org/AM/TemplateRedirect.cfm?template=/CM/ContentDisplay.cfm&ContentID=33976 (discussing the large number of lawyers seeking alternative career paths).

142. Although law school hiring is competitive and there is less mobility in law schools than law firms, law schools still have a strong interest in improving faculty recruitment and retention. *See* Rebecca Thomas, *Academia Meets Free Agency: Columbia Law School's Success in Recruiting Junior Faculty*, *available at* http://www.law.columbia.edu/law_school/communications/reports/winter06/jr_faculty (noting that "[o]ther schools seem determined to hire away our junior faculty—so far without success" and that "[m]embers of Columbia's junior faculty have turned down offers from a number of schools in recent years") (internal quotations omitted). *But see* Paul M. Secunda, *Tales of a Law Professor Lateral Nothing*, 39 U. MEM. L. REV. (forthcoming 2008) (manuscript at 5, *available at* http://ssrn.com/abstract=1105933) (noting that "the overall number of professors lateraling to a new law school in any given year is still relatively small").

The use of faculty collegiality as a recruiting pitch may be particularly important for regional law schools, which are generally less able to promote themselves to potential faculty hires based on name or reputation. Regardless of this or the rate of lateral mobility, however, law schools still have an interest in creating positive work environments so that law professors *choose* to stay, rather than simply remaining because of a lack of other options.

In turn, improved faculty interaction and improved teaching could have a beneficial impact on the law school student body. Not only should a more collegial and cooperative faculty help foster a more positive learning environment, but faculty relations are also a means to teach students, by example, about how law colleagues should work together and treat one another. Having constant and constructive faculty interaction and cooperation, with visible and active junior faculty input and participation, could set a positive, professional example that students might internalize and carry with them into law practice.

With respect to this last point, then, the encouragement and formalization of junior-senior faculty dialogue could serve as a noteworthy model for the legal profession as a whole. Much like law school faculties, junior associates at law firms may enjoy certain economies of juniority, or absolute or comparative advantages, in the practice of law compared to their senior colleagues. Might improved junior-senior colleague dialogue therefore be beneficial—monetarily and otherwise—to law firms? In fact, might such dialogue be even more directly and immediately beneficial to law firms than to law schools, since firms by their very nature have a greater and more direct emphasis on profit and revenue? Might lawyers who observed such junior-senior interaction among faculty members while in law school be more receptive to, and encouraging of, similar interaction among junior and senior lawyers at their law firms? At law schools, junior-senior dialogue and coordination on teaching matters might have many benefits, but this approach does not (at least directly) bring in greater revenue. But depending on law firm junior associates' advantages or economies of juniority, such junior-senior dialogue and coordination of effort within law firms may do just that.

Also, while law schools certainly seek to attract and retain junior faculty, there is far less mobility among law school faculties than there is among law firms. Mid-level associate retention is a critical problem for law firms nationwide,[143] and any steps that could stem the tide might be favorably received. Greater junior associate engagement very well could be such a

143. *See* David B. Wilkins & G. Mitu Gulati, *Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Law Firms*, 84 VA. L. REV. 1581, 1606 (1998) (discussing how achievement of partnership is no longer a widely-held goal among associates or even law students).

step. It would be ironic, but in a sense justly fitting, that proposals for greater junior associate involvement and retention might come from law schools, which so often are criticized for focusing their efforts on matters that do not benefit the legal community as a whole.

These thoughts certainly are idealistic, but they are unapologetically so. If law schools are to live up to their full potential, we must think about what they do well, and what they do not do well. Because it is so often said that law faculties are the hearts and souls of their law schools, it is important to analyze more rigorously our individual strengths and weaknesses as faculty members, and to seek ways to better harness our strengths and improve upon our shortcomings. The economic concepts of absolute advantage, comparative advantage, and economies of juniority or seniority offer a meaningful way to examine this subject, and they offer ways to leverage junior law faculty members as catalysts for positive change.