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Curriculum Development at a New Law School: Dismantling the Walls of Separation

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Curriculum Development at a New Law School: Dismantling the Walls of Separation

By Professor Jeffrey C. Tuomala, Liberty University School of Law

Liberty University School of Law enrolled an inaugural class of sixty students from twenty-two states at its Lynchburg, Virginia, campus for fall semester 2004. Curriculum design is arguably the central task in the startup and development of a law school. Devising a curriculum for a new law school may be compared to writing *tabula rasa*. It provides the one best shot at dismantling the walls of separation standing between the various components of the law school curriculum and between the study and practice of law.

The Liberty curriculum has three related but distinct components: foundations of law, substantive law courses, and lawyering skills. Many law schools have developed a course of study that gives expression to a particular perspective, be it law and economics, legal realism, or policy-oriented jurisprudence. We intend to do the same, infusing the principles taught in the foundations of law component into the substantive law courses and lawyering skills. We have structured a relationship between substantive law courses and lawyering skills to ensure that

they are mutually reinforcing rather than hermetically sealed compartments.

Our lawyering skills component is probably unique among American law schools, and to it I will give the most attention. It is our chief engine for dismantling the wall of separation that divides the study of law from the practice of law.

Foundations of Law

In no small measure, Harold Berman's depiction of the birth and development of the Western legal tradition has fueled and guided our vision to reestablish the foundations of law. Berman's *Law and Revolution* (1983), winner of the ABA's 1984 Scribes Book Award for the best new book on a legal subject, provides an account of the origins and characteristics of that tradition. The essential characteristic of the Western legal tradition is the premise that positive law derives its authority from, and its legitimacy is measured by, its conformity to a higher law. This truth is captured in Bracton's famous maxim that the king ought to be "under God, and under law, because the law makes the king."

This belief has animated the development and study of law as a *corpus juris*, a body of law in which courses are related to one another as a logically consistent, comprehensive whole. Without this belief, courses studied in law school increasingly become viewed as a mass of unmanageable, inconsis-

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tent, and unrelated particulars, spawning a culture of cynicism in which law becomes little more than a highly stylized instrument of political power rather than an instrument of justice. We believe that the Christian worldview that gave use to the Western legal tradition provides the only intellectually honest foundation for a belief in the rule of law. Consequently, we require two semesters of Foundations of Law in the first year of study and an advanced course in jurisprudence or legal history in the third year.

Substantive Law Courses

Liberty law students take a traditional range of required courses and are afforded a significant number of electives. In terms of credit hours, substantive law courses comprise the bulk of the curriculum. In many ways these courses look much as they do in other law schools – same course names, same subject matter coverage, same casebooks, same teaching methods. There are, however, two important differences, and these are found in the linkage of the substantive law courses to the foundations of law and to lawyering skills.

Generally speaking, substantive law courses are designed with two ends in mind: to teach a body of law and to teach students to think like lawyers. To think like lawyers students must learn to operate at the high end of Bloom's taxonomy, which requires analysis, synthesis, and evaluation. Although most law students today are adept at analysis, they are given little reason to hope that synthesis is possible and have no position, other than personal opin-

ion, from which to evaluate anything. The Western legal tradition's operating premise, namely that "the validity of an enacted law depends on its conformity to the body of human law as a whole, which in turn [is] to conform to both natural and divine law," provides the intellectual apparatus to synthesize and evaluate. (Berman at p. 146.)

While the linkage of the substantive courses to the foundations of law leans toward the philosophical, the linkage to lawyering skills leads to the intensely practical. That linkage is described in the next section.

Lawyering Skills

Students must take Lawyering Skills all six semesters at Liberty. The first five semesters have a set course of study required of all students. The sixth-semester requirement may be satisfied by selecting from a number of electives. A comprehensive lawyering skills curriculum is necessary for developing the full range of skills in which every lawyer should be well-versed, and it provides the context in which the traits of good lawyering can best be taught.

Lawyering Skills has two threads, a litigation thread and a planning thread. These two threads signal the reality that there is a fundamental difference between using law as a standard for adjudication and as an instrument for planning. The distinction between law as a standard for adjudication and law as an instrument of planning reflects the fundamentally distinct ways in which God rules the world as Judge and Governor. All authority that mankind, created in the image of God, has is delegated authority. Lawyers, judges, and other office holders are more specifically agents of justice and, as such,

should conduct their limited and delegated authority in accordance with the same principles as their Principal.

The Litigation Thread. Students must leave law school with more than a vague notion of how to interview a client, draft pleadings, conduct pre-trial discovery, and try a case. They must be able to move a case from initial interview to verdict. It makes little sense to thrust upon first-year students an assignment to write an appellate brief, the last step in the litigation process, when they have barely a clue of what it takes to get there. Over the course of three years, each law student at Liberty will work a simulated lawsuit from beginning to end, from soup to nuts. Along the way, each student must draft pleadings, motions, requests for discovery, litigation plans, memos, and jury instructions. Each must orally interview a client, brief a partner, conduct a deposition, argue a motion, and examine witnesses.

The Planning Thread. Law is used not only as an instrument of adjudicating disputes, but it is also used more quietly as an instrument of planning and governing in both the private and public sectors. Students must appreciate the importance of law in the context of ordering a client's affairs and not simply in the process of resolving disputes. The contract is the most basic document used for ordering one's affairs. Students must study and draft contracts with a view toward achieving their clients' goals and avoiding litigation. Documents drafted for real estate transactions, business associations, and government regulation reflect the increased complexity of the social arrangements and clients' goals involved.

Students who decide by the

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third year that their interests and gifts lie more in planning than adjudication may take business planning, estate planning, and real estate development courses to satisfy the Lawyering Skills VI requirement.

Creating a Culture and a Structure that Advance Lawyering Skills. Implementation of the lawyering skills component of the curriculum requires cooperation and interaction of all professors to ensure that

lawyering skills and substantive courses track with one another. There is mutual reinforcement. The substantive law courses make the most sense, and are best learned, if their practical significance is made apparent.

Professors teaching substantive courses support lawyering skills in ways other than mere coordination, such as evaluating live-client interviews and preparing drafting assignments. Teamwork is added to teaching, scholarship, and service as faculty performance criteria. Two of the initial six tenure-track faculty hires are devoted full time

to teaching and developing the lawyering skills component of the curriculum. There is no place on the faculty for those who may be fearful or disdainful of training students in the practice of law.

Our charge? "Tear down those walls of separation!" ♦

Institute of Bill of Rights Law hosted the 17th Annual Supreme Court Preview at William & Mary School of Law

On Friday and Saturday, October 22 & 23, 2004, the Institute of Bill of Rights Law at the College of William & Mary School of Law held the 17th annual Supreme Court Preview conference at which leading legal scholars, lawyers, and Supreme Court journalists discussed and analyzed the Court's 2004-2005 term.

On Friday, a special briefing on human rights and national security law was presented by Professor Linda A. Malone and General Charles Dunlap, Jr., co-directors of the newly established program in human rights and national security law at Marshall-Wythe Law School.

The conference began on Friday night with a moot court argument of one of the Court's most important pending cases, *Roper v Simmons*. In this case, the Court will rule on the constitutionality of the death penalty for those defendants under the age of 18 at the time of their crime. In 2003, the Missouri Supreme Court determined that juvenile executions violated the Eighth Amendment's prohibition against cruel and unusual punishment under the evolving "standards of decency" test. Two seasoned Supreme Court advocates participated in the moot court. William Hurd, former Solicitor of Virginia, represented

the state of Missouri. John Blume of Cornell University represented Christopher Simmons, who was 17 when he was arrested for the murder of Shirley Crook. A "Court" of nine distinguished legal scholars and journalists were assembled to hear the argument and render a decision.

Following the moot court argument, legal developments under George W. Bush were examined, including administration efforts to redefine presidential power as part of the War on Terror, the president's support of a constitutional amendment to ban gay marriage, Bush appointments to the federal judiciary, and the possible role of the Supreme Court in 2004 election politics. On Saturday, a series of panels discussed the leading cases on the Court's docket for the 2004 term, from restrictions on the out-of-state purchase of wine, to medical marijuana legislation, and to a law mandating cattle producers to fund an advertising campaign they do not support. Also considered was whether the Supreme Court should look to laws and court decisions from foreign countries. ♦

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