

International Journal of Law, Language & Discourse

Volume 1.2 2011

CONTENTS

Craig Hoffman

Using Discourse Analysis Methodology to Teach "Legal English" 1-19

Wei-quan Yu

Weaving Experiential Law Teaching Elements into an Intellectual Property Management Course 20-52

Maria Francisca Carneiro

Heterodox Logic and Law: Topics for a report on philosophy and hermeneutics 53-76

Volume 1.2 2011

ISSN 1839 8308

International Journal of

Law, Language & Discourse

CHIEF EDITOR

LE CHENG



INTERNATIONAL JOURNAL OF
LAW, LANGUAGE & DISCOURSE

**International Journal
of
Law, Language & Discourse**

**Issue 2, Volume 1
September 2011**

Editors

**Le Cheng
Paul Robertson**

International Journal of Law, Language & Discourse is an interdisciplinary and cross-cultural peer-reviewed scholarly journal.

The International Journal of Law, Language & Discourse is published quarterly and presents articles related to legal issues, review of cases, comments and opinions on legal cases. The Journal integrates academic areas of law, discourse analysis, linguistic analysis, combined with psycho-legal-linguistics.

The Journal serves as both a practical resource for lawyers, judges, and legislators and those academics who teach the future legal generations.

For electronic submission

Chief Editor: Le Cheng (ijlldchief@gmail.com)

Copy Editor: Jian Li (ijlldcopy@gmail.com)

Production Editor: Paul Robertson (editor@ijlld.com)

For subscription and hard copy regular mail submission

Publisher: publisher@ijlld.com

Asian EFL Group

International Journal Law Language Discourse

11 Crozier Ave

Daw Park 5041

South Australia

Published by the International Journal of Law, Language & Discourse
Press

Distributed by TESOL Asia

Australia, Hong Kong, South Korea

<http://www.ijlld.com>

© International Journal of Law, Language & Discourse (IJLLD) 2011

This book is in copyright. Subject to statutory exception
no reproduction of any part may take place without
the written permission of the IJLLD Press.

No unauthorized photocopying

All rights reserved. No part of this book may be reproduced, stored
in a retrieval system or transmitted in any form or by any means,
electronic, mechanical, photocopying or otherwise, without the prior
written permission of the IJLLD Press.

ISSN 1839 8308

EDITORIAL BOARD

PUBLISHER

Paul Robertson *TESOL Asia, Founder Asian EFL Journal Group of Academic Journals*

CHIEF EDITOR

Le Cheng *The Hong Kong Polytechnic University, Hong Kong*

SENIOR ASSOCIATE EDITORS

Sebastian McEvoy *University Paris Ouest Nanterre La Défense, France*

Lijin Sha *China University of Political Science and Law, China*

King Kui Sin *City University of Hong Kong, Hong Kong*

HONORARY ADVISORS

John Adamson *Nigature Prefecture University, Japan*

Roger Nunn *Petroleum University, UAE*

Z.N. Patil *The English & Foreign Languages University, India*

ADVISORY BOARD

Janet Ainsworth *Seattle University, USA*

Susan Berk-Seligson *Vanderbilt University, USA*

Vijay Bhatia *City University of Hong Kong, Hong Kong*

Deborah Cao *Griffith University, Australia*

Winnie Cheng *The Hong Kong Polytechnic University, Hong Kong*
Malcolm Coulthard *Aston University, UK*
Marcel Danesi *University of Toronto, Canada*
Jan Engberg *University of Aarhus, Denmark*
Maurizio Gotti *University of Bergamo, Italy*
Craig Hoffman *Georgetown University, USA*
Christopher Hutton *The University of Hong Kong, Hong Kong*
Kyo Kageura *The University of Tokyo, Japan*
Li Li *China University of Political Science and Law, China*
Jixian Pang *Zhejiang University, China*
Gary Prideaux *University of Alberta, Canada*
Susan Sarcevic *University of Rijeka, Croatia*
Joseph-G Turi *International Academy of Linguistic Law, Canada*
Anne Wagner *Université du Littoral Côte d'Opale, France*
Catherine Way *University of Granada, Spain*

ARTICLE EDITORS

Phil Cameron *Rowan-Cabarrus Community College, USA*
Maria Francisca Carneiro *Federal University of Paraná, Brazil*
Clara Chan *City University of Hong Kong, Hong Kong*
Stanislaw Gozdz-Roszkowski *University of Lodz, Poland*
Pi-chan Hu *Ching Yun University, Taiwan*
Karen McAuliffe *University of Exeter, UK*
Tatiana Tkačuková *Masaryk University, Czech*
Ning Ye *Zhejiang Police College, China*

BOOK REVIEW EDITORS

Uladzislau Belavusau *Vrije Universiteit Amsterdam, Netherlands*

Qing Zhang *China University of Political Science and Law, China*

COPY EDITOR

Jian Li *City University of Hong Kong, Hong Kong*

Contents

1. Craig Hoffman
Using Discourse Analysis Methodology to Teach “Legal English” 1-19
2. Wei-quan Yu
Weaving Experiential Law Teaching Elements into an Intellectual Property Management Course 20-52
3. Maria Francisca Carneiro
Heterodox Logic and Law: Topics for a report on philosophy and hermeneutics 53-76

Using Discourse Analysis Methodology to Teach “Legal English”

Craig Hoffman

In this study, I propose a curriculum focused on raising students’ linguistic awareness through rigorous discourse analysis and reflective writing in a legal context. Students analyze authentic, full-text legal documents using discourse analysis methodology. By carefully analyzing the language in legal opinions, appellate briefs, law review articles, law school exams, typical commercial contracts, and statutes, students become experts in analyzing and evaluating legal texts. Students learn to manipulate legal language to achieve various desired linguistic and legal effects. This approach has three primary advantages. First, it forces the students to carefully read authentic legal texts. Second, it gives students the linguistic tools to talk about the effectiveness of texts. Third, it empowers students to criticize legal texts and concomitantly enables them to purposefully craft language to achieve a desired discourse message. These skills are wholly portable – both in law school and in law practice.

Keywords: discourse analysis, curriculum design, LL.M., legal English

In the emerging discipline of Law, Language, and Discourse, scholars have focused on several different aspects of how the disciplines of linguistics and law can work together in academic and professional contexts. My contribution to this conversation focuses on law pedagogy. This paper describes how I use

discourse analysis methodology to teach law in a required class in our LL.M. program at Georgetown University Law Center that I call United States Legal Discourse (USLD). USLD is a one-semester class in a one-year LL.M. program at Georgetown. Because it is based on principles and methodology used in discourse analysis, USLD intentionally helps students to acculturate to the legal discourse community that they are trying to enter. In this past academic year, I taught USLD at Georgetown to 180 students from 65 different countries. Most students had a law degree from a non-common law country, and they were primarily non-native speakers of English.

Although, at first, it seemed that their being non-native speakers of English was the most salient feature of this group of students, it became clear to me that their unfamiliarity with the English language was much less problematic than their unfamiliarity with our federal common law legal system and the conventions of U.S. Legal Discourse.¹ As the students learn to become discourse analysis experts, they look at U.S. law as a network of integrated texts. Textual analysis enriches and hastens their understanding of U.S. law and U.S. legal culture.

In this text, I will explain the goals that drove the design of the USLD curriculum at Georgetown. I will also contrast this discourse analysis approach to the more commonly used Legal English approach, which is based on first-year Legal Writing classes commonly taught in most U.S. law schools.

About seven years ago, I was asked to design a class for our foreign LL.M.s at Georgetown. The class was supposed to replace a Legal Writing class that had not been successful. That class had been taught in much the same way that we teach Legal Writing classes to our first-year American J.D. students. This is not uncommon in U.S. law schools that offer Legal Writing classes to foreign LL.M. students. The thinking has been this: we

¹ Having taught the USLD classes for several years, I am convinced that the same approach would be equally successful with another group of students that is equally unfamiliar with U.S. Legal Discourse: American J.D. students in their first year of law school in the U.S., but that will have to wait for another paper.

would like to teach the American J.D. students how to write well in a legal context, and we would like to teach the foreign LL.M. students to write well in a legal context. Why not just use the same class? Of course, it's not that simple. Instead of simply transporting a Legal Writing class to the LL.M. audience, I decided to rethink the whole concept. Since then, I have been trying to design a wide range of classes for LL.M. students and lawyers that will help them not only to write better in English but also to acculturate to their target legal discourse communities and to communicate about them in English.²

When I first started looking around for something that might already exist to address this foreign audience, I found a number of models for classes called Legal English. That sounded right. Legal English classes, however, look disquietingly similar to the standard J.D. Legal Writing class that had proved to be so unsuccessful for us before. These Legal English classes generally focus on how to produce various types of legal documents in English. In these classes, teaching writing is the stated focus – teaching writing, however, had always been thought of as teaching a basket of skills that students simply need to master. The basket includes a mix of rudimentary legal reasoning and analysis and things that one would often find in an introductory English composition class at an American undergraduate university: large-scale organization; small-scale organization; citation form; and some basic English grammar. Sometimes these classes are taught by lawyers, who know very little about language or discourse, and sometimes they are taught by applied linguists, who often know very little about the law.

Typically, Legal English teachers try to teach this basket of skills in a number of ways: mostly by showing models of good (and sometimes bad) examples of writing; by teaching explicit lessons about grammar and citation form, and, post facto, by putting comments on students' papers. They are, in a sense,

² In addition to the USLD curriculum for Georgetown, I have also designed a four-semester curriculum based on similar principles for the Peking University School of Transnational Law in Shenzhen, China.

template-production classes. The goal is for the students to produce legal texts that will appear to be authentic to members the target legal culture.

This pedagogy has become entrenched in law schools in the U.S. – mostly in LL.M. programs, and it is being exported throughout the world. Because these classes focus on the production tasks in writing -- and on the basket of writing skills that they are trying to teach, the curriculum designs that constitute Legal English classes often fail.

I think that they fail because they simply assume too much knowledge on the part of students about the social practices in the target legal discourse community. That is, students must infer what it means to participate in legal discourse. Students try to produce formally authentic documents, but they are missing much of the background knowledge that would let them produce documents that would seem substantively authentic to members of the target discourse community.

It should not be a surprise, then, that students often report that they are unsure what to do or how to evaluate for themselves whether they have created successful texts. They feel like Legal English faculty are “hiding the ball” somehow. Students feel that they are simply guessing about what they should write. In fact, they are doing just that. To be more concrete, the cadence of the typical Legal English class is something like the following:

1. The Legal English teacher makes up a very simple set of facts that pose a very simple legal question.
2. Students then do some very simple legal research to find legal sources, usually cases, that address the legal issue.
3. The Legal English teacher then gives students some examples of the document that he wants the students to draft: usually a simple and idealized office legal memorandum. Unfortunately, this form is wholly idealized, and it is rarely, if ever, used in law practice.
4. Often there is a lot of discussion of the formal features of the document: there should be a Facts section; there should be something called a Question Presented and a Brief

Answer; and there should be a Discussion section, where the student will analyze the law.

5. With this background, the student tries to produce an example of this target text, using the facts that he has been given and the research that he has done.

6. The Legal English teacher then makes comments on the student's draft, and the student re-writes the text. The comments are typically on various aspects of the basket of skills: legal reasoning; structural organization; grammar and citation form.

The idea here appears to be that, by simply behaving like a lawyer in this simplified context and getting written feedback on their texts, students will be able to pick up what it means to be a member of the discourse community. Unfortunately, it doesn't work that way – even in these overly simplified contexts. This design has many problems. The biggest problem seems to be that law faculty who are teaching writing at law schools are assuming that their students share with them an enormous number of assumptions about the social practices surrounding U.S. legal culture. Because students are new to the discourse, they do not share these insights, and they cannot quickly infer what the faculty members want them to do.

Legal English faculty seem to believe that the simplicity of the tasks that they ask the students to perform will lower the need for the students to be fully acculturated in legal discourse in order to produce authentic texts. That simply does not seem to be true.

I have designed a curriculum that focuses initially not on teaching students to master the basket of skills but, rather, on helping the students to understand the social practices that dictate what will be considered authentic writing in their discourse community. I am convinced that students need to be ushered into the discourse of law intentionally and immediately, and they need consistent reinforcement of their learning. Because I base my approach on discourse analysis theory and methodology, and because my approach is quite different from the typical Legal

English class, I call my class U.S. Legal Discourse (USLD).³ I believe that before students can effectively produce authentic legal texts, as they are required to do in Legal English classes, they should be explicitly taught what U.S. lawyers know about the role of legal texts in the discourse. The idea is to get students to critically analyze primary legal texts so that they can efficiently acculturate to the legal system that they are working in.

In designing this Legal Discourse curriculum to prepare students to acculturate to a given legal discourse community, I am primarily relying on the approach to discourse analysis used by Fairclough (2003) in his book *Analyzing Discourse*.⁴ The framework that Fairclough sets out highlights three interwoven constructs: social structures; social practices; and social events.⁵ Social structures set up the possibilities of social events: a language is a social structure in that a grammar sets up the possibilities of potential utterances. The actual utterances that occur (speech events) are brought forth through the work of social practices.

Before law students can even begin to participate in legal discourse by producing texts of their own, they must learn about what is important to the current members of the discourse community, and they must learn about the social practices that will constrain social events. Essentially, they must be told explicitly what lawyers in their target discourse are assuming and how these assumptions are manifested in the production and interpretation of typical legal texts. Fairclough makes the claim that two significant aspects of this are Intertextuality and Assumption.⁶ In fact, these two concepts are critical to understanding how the social practices of lawyers constrain

³ I have written a text, *United States Legal Discourse: An Introduction to Legal English for Foreign LL.M. Students* (West 2007) with a co-author, Andrea Tyler, a member of Georgetown's linguistics faculty. We used the term Legal English in the title because it is the most commonly understood phrase describing these classes.

⁴ Fairclough, Norman, *Analyzing Discourse* (Routledge 2003).

⁵ *Id.* at 22.

⁶ *Id.* at 40.

meaning and thus constrain the interpretations and designs of legal texts.

Intertextuality, of course, refers to the presence of actual elements of another text in a text: e.g., quotations and attributed summaries. Quotations are direct speech and attributed summaries are indirect speech: both are intertextual forces on a text. In the law, we use citations to flag intertextual influences. This is true in all writing in the law. Its influences are different and subtle in different types of writing: e.g., scholarly writing; cases; and briefs. It is important signaling. Writers get various voices into their texts through citation and quotation. Students need to understand the force of this. Often when U.S. students learn about this type of signaling, they are taught only (or primarily) the formal aspects of the signaling. The formal aspects of the signaling, however, are trivial. The semiotics of signaling in legal texts is fascinating: what do the signs mean; how do you use them; what messages are you giving by using one sign or another?

It is important for lawyers to think about the function of citation and signaling in their writing. In a common law system, citation signals to the reader that the arguments are in fact supported by other texts. When a new case comes along, the lawyers must repaint the landscape of law including these new facts. The common law is a huge and complex text that is wholly rewritten with the decision of each new case. Citation is the way that lawyers signal what the thinking is that supports the new text. The text of the law must “hold together” and the citation signals the lawyer’s infrastructure.

Assumption includes the external relations of a text to another text or texts that are external to it but in some way brought into it⁷. Assumptions are, of course, different from intertextuality in that assumptions (what is unsaid) are not attributed or directly attributable⁸. It is the background knowledge that lawyers gain over their experience as members of

⁷ *Id.* at 55.

⁸ *Id.*

the USLD. We need to hasten that. Looking for assumptions in legal texts is the essence of legal discourse analysis.

Although the USLD class that I teach is explicitly targeted to students who are entering the U.S. legal discourse community, the methodology is equally applicable to any legal system. In fact, I always tell the students that it would be very helpful for them to make similar inquiries about texts in their own legal systems. Like the typical Legal English classes, the ultimate goal for this class is to have the students produce authentic legal texts that would be valued by members of the U.S. legal discourse community. But, even more important, I want students to become intentional and critical users of language in a legal context.

For the first several USLD classes, students act as participants/observers throughout the representation of a client. As opposed to the standard Legal English class, the subject matter of the representation is quite complex. Before introducing the students to their subject, however, it is important to carefully explain to the students what their role will be. In this segment of the class, they are explicitly acting as discourse analysts. I explain to them what a discourse analyst is and what a discourse analyst does. My presentation is based primarily on John Gee's twin texts: *An Introduction to Discourse Analysis: Theory and Method* and *Discourse Analysis: a Toolkit*.⁹

For both Gee¹⁰ and Fairclough, it is crucial that new entrants into a discourse community are introduced to the background knowledge that all full members of the community share. It is these shared assumptions that do not appear explicitly in the community's texts. Without a thorough understanding of this

⁹ Gee, John, *An Introduction to Discourse Analysis: Theory and Method* (Routledge 2010) and Gee, John, *Discourse Analysis: a Toolkit* (Routledge 2010).

¹⁰ I just met with Professor Gee at Arizona State University, and he was very interested in this model of using discourse analysis in teaching law. In fact, we discussed how this somewhat anthropological look at legal discourse is reminiscent of some of Kenneth Pike's work in tagmemic theory. For example, *Language in Relation to a Unified Theory of the Structure of Human Behavior*. Janua Linguarum, series maior, 24. The Hague: Mouton. 1967 (2nd revised edition).

background knowledge, students cannot begin to produce complex and authentic texts of their own.

For novice members of the U.S. legal discourse community, one of the most puzzling aspects of this shared knowledge is the interaction between the federal and state legal systems. Where did the federal courts come from? How do they differ from State courts? How do state courts differ from each other? When can a court hear a state law issue and when can it hear a federal court issue? U.S. lawyers have internalized all of this information and it rarely appears in legal texts. That is, it is assumed. Nonetheless, understanding all of this is crucial to a student's successful acculturation into the U.S. legal discourse community.

Knowing this, I have created a complex commercial law problem that involves international parties and common law doctrines under New York state law: I have chosen to situate the legal representation as a transactional matter: it involves the application of the common law doctrine of good faith and fair dealing to a plan to restructure sovereign bonds, which are governed by New York commercial law. Although the New York state courts would commonly make law in the area of New York commercial law, often it is the Federal Courts that sit in New York that hear complex international law cases. Again, this background knowledge is part of what all practicing commercial lawyers know. This knowledge is commonly assumed, however, in all of the case law that students would read on their subject.

The texts that students read to learn about the law – mostly appellate court cases, are not written with them in mind. That is, students are not really part of the intended audience of a judge's opinion. The intended audience – lawyers and other judges, have all internalized the background knowledge that the judges are assuming. Novice members of the discourse community will not even notice that they are not fully understanding these impoverished texts. That is, law teachers must first identify the background knowledge that students need, and then they must find a way to help students to gain that knowledge.

Of course, there are many ways to introduce students to these complex issues in U.S. legal discourse. For example, one could give them a text about the U.S. legal system and assign them to read it. First of all, it's very difficult to find a good text – they are all either too general or too specific. Further, because students need to acculturate quickly in order to become successful law students, reading a long decontextualized text might be inefficient.

I teach the U.S. legal system by taking students through a discourse analysis of a famous case decided by the United States Supreme Court, *Erie v Tompkins*.¹¹ *Erie* is a relevant case. In it, the U.S. Supreme Court decided to overturn a doctrine that the Court had historically used to in the application of a federal statute. In particular, the Court ruled that, when federal courts are deciding a case that is a matter of state law, the federal courts should apply the law of the appropriate state, whether that law is common law or statutory law.¹² Before *Erie*, although federal courts always applied appropriate state statutory law, they had often applied a generalized common law to state law issues, disregarding the common law of the state.

Again, this case is quite complex; however, I ask the students to read it as a legal discourse analyst: Where are the parties to the case from? What court is the case filed in? What law is the court applying? How does the majority opinion differ from the dissent? How has the majority structured his arguments? How does the language that the majority uses to tell the facts of the case differ from the dissent? In addition to these fairly basic first year law school questions about the text, I also try to get the students to focus on the other voices in the text: other judges; legal scholars; policy advocates.

We also discuss the discourse parameters of a federal court case: who is the intended audience? What is the function of this genre -- the legal opinion -- in U.S. discourse? What sort of

¹¹ *Erie v. Tompkins*, 304 US 64 (1938)

¹² 304 US at 71.

language does the judge use – objective; inflammatory; persuasive? What constitutes a well-structured legal argument?

This initial close reading of the *Erie* case accomplishes two important goals. First, a thorough discussion of the *Erie* case gives the students confidence about their understanding of the U.S. federal court system, and, second, they are beginning to become comfortable with their roles as discourse analysts. Students have learned about some of the basic knowledge shared by members of the U.S. legal discourse community, and they have flexed their muscles as discourse analysts: they are learning to read texts critically.

For the remainder of this acculturation phase of the class, students participate in and observe the representation of the sovereign client in its debt restructuring plan. Throughout this representation, the lawyers involved use a variety of legal texts: cases; statutes; law journal articles. For each text, the students go through the same inquiries – not only looking for legal content, but also looking for Assumptions and evaluating the explicit intertextual cues in the texts. They are, in essence, behaving like discourse analysts.

Following this acculturation phase of the class, they spend several weeks designing their own documents in a class that I call USLD 2. The goal for USLD was to give the students enough background so that they could gain the confidence to produce their own legal texts in USLD 2. By focusing on the discourse role of each of the texts that we analyzed in USLD, USLD also introduced the students to the writer's role in the discourse. In USLD 2, the students are then able to take what they learned in USLD and apply it to an actual writing project.

For some students, USLD 2 will give them the opportunity to produce a suitable writing sample that demonstrates their ability to communicate effectively in Legal English. This goal makes the students work very hard. In fact, I grade both USLD and USLD 2 on an Honors, Pass, Fail scale. Although such a grading system can have a negative impact on students' motivation in Legal Writing classes for American J.D. students, I

have not encountered similar problems with the foreign LL.M. students. The students are supremely interested in improving their writing in English, and they work diligently.

During USLD 2, I meet with the students for two hours, once a week. Over the remaining weeks of the semester, the students produce a couple of short writing assignments and two drafts of a legal memorandum. One could certainly choose to use any topic for this segment of the class. Because the students have had an intensive introduction to U.S. Legal Discourse, they can actually produce writing quickly and confidently. I have found that students really don't need other textbooks for USLD 2. They are ready to construct legal documents using common law argumentation based on their experiences during USLD.

Because the students tend to be interested in international topics, I generally use a fact pattern that involves the CISG: the U.N. Convention on Contracts for the International Sale of Goods. Because of its status as a treaty, it constitutes federal law and also the law of the states. In essence, the New York UCC is the law that governs contracts between New York parties or between domestic parties who choose to be governed by New York law. If a New York party enters into a contract for the sale of goods with a foreign entity, and that entity is domiciled in a country that is also a signatory of the CISG treaty, the law governing their contract is the CISG.

Pace University Law School has an excellent website with very helpful materials about the CISG. www.cisg.law.pace.edu. In addition to having the complete text of the treaty, the Pace website has explanatory guides and links to cases that have been decided under the treaty. It also has links to scholarly articles that give helpful overviews of the treaty and its application. With relatively little investment, you can learn quite a bit about the CISG using the Pace site.

The particular legal issue that I have used focuses on the classic "battle of the forms." I use this topic because I have used a similar problem under the New York commercial code. The basic issue is something like this: Company A and Company B

enter into an oral contract. Company B then sends Company A some sort of confirmation letter that includes not only the agreed provisions about price, quantity and delivery dates, but it also includes some additional provisions that were not discussed by the parties in their negotiations. This confirmation serves as the writing between the parties. The question becomes whether the additional provisions will become part of the contract if Company A does not object to them and the parties both perform under the contract.

Under both the CISG and the UCC, the answer is that the additional provisions do become part of the contract if the additional provisions are not “material.” As it turns out, the UCC and the CISG differ as to what is a material alteration for the purposes of the law. In most years, I have used the CISG as the law of the problem in USLD 2. The problem involves a Chilean shoe manufacturer who enters into an oral contract with a New York retailer. The parties agree on the essentials of price, quantity, and delivery; however, they do not discuss dispute resolution. The New York retailer sends a confirmation letter to the Chilean manufacturer that includes some additional provisions on the back. One of these is a standard arbitration clause. The issue is whether the arbitration clause becomes part of the contract.

I introduce the problem with a video showing my interview with the client, who is the CEO of the Chilean shoe manufacturer, cleverly called The Chilean Shoe Factory. I show the video in the first class of USLD 2. The students take notes, and their first writing assignment is to write the Client Intake Memo for the case. We have a conversation in class based on their experience with the Client Intake Memo from USLD. We talk about the purpose and intended audience for this document, and then they write the Client Intake Memo for this problem. The Client Intake Memo is due in the second week of class.

The pace of USLD 2 is quite efficient. Each week, the students have a writing assignment. The students write two drafts of their memos. I comment on both of the students’ drafts, and I

have individual conferences with students about both drafts as well. I also try to incorporate some sort of “oral presentation” component into the class. Generally, the students sign up for ten to fifteen minute individual meetings with me. Each student comes to have a conversation about the law of the problem. The foreign LL.M. students prepare extremely well for these conversations, and they always appreciate the opportunity to speak English in a legal context.

The beauty of the USLD/USLD 2 format is its simplicity and its discourse analysis approach. Students learn about U.S. Legal Discourse and improve their Legal English both by thinking about writing in the role of the discourse analyst in USLD and by actually doing writing and creating authentic texts in USLD 2. In the Appendix, I have put the syllabus for USLD and USLD 2 for the fall of 2011.

In closing, I would like to highlight what I think is the major difference between the standard Legal English class and my Legal Discourse approach: In current Legal English classes, students begin immediately to try to produce authentic texts. They do so by learning a basket of skills in a simplified legal context. The idea is that if they can do this, they can generalize to other types of texts later. The students are told that they are behaving like lawyers.

In my Legal Discourse model, I focus first in the USLD class on the analysis of the authentic texts. Through their participant/observer role in a complex legal representation, the students are not only behaving like lawyers, but they are also behaving like discourse analysts – evaluating intertextual connections among related texts in a genre chain and assessing tacit assumptions lurking in those texts. I believe that this discourse analysis approach has truly hastened the students’ acculturation into the legal discourse community, and it gives them the experience to produce authentic texts that satisfy the discourse expectations of the legal discourse community.

Only after they have been exposed to the discourse and after they analyzed authentic legal texts in USLD do they create their

own authentic texts in USLD 2. In fact, they use the same criteria to create authentic texts in USLD 2 as they used to evaluate authentic legal texts in USLD. This congruence of evaluation criteria and production criteria based on principles of discourse analysis gives the course coherence, and it gives the students confidence to create their own authentic legal texts.

Appendix

United States Legal Discourse 1 Syllabus

WEEK 1

Tuesday, August 30:

Topics: Introduction to the U.S. Legal System

Assignment Due: None

Assignment for Sept. 1: Read *United States Legal Discourse: An Introduction to Legal English for Foreign LL.M. Students* (USLD), Preface, Chapter 1 and Chapter 2, including the following accompanying texts, which are indicated in the Chapters:

Erie v. Tompkins, 304 U.S. 64 (1938)

(Law Review Article) *Exit Consents in Sovereign Bond Exchanges*

U.S. Constitution, Article III

28 U.S.C.A. 1652

Thursday, September 1:

Topics: Legal English vs Legal Discourse; Common Law Argumentation; Relationship between Federal and State Courts; Analyzing and Creating a Client Intake Memo

Assignment Due: Read USLD Preface, Chapter 1, and Chapter 2 with accompanying texts.

Assignment for Sept. 4: Draft Client Intake Memo and Post it to the Assignment Drop Box on the TWEN site by 9:00 PM on Sunday, September 4.

Read USLD Chapter 3.

Review (Law Review Article) *Exit Consents in Sovereign Bond Exchanges*

WEEK 2

Tuesday, September 6:

Topics: Scholarly Discourse about the Law

Assignment Due: Submit your Client Intake Memo to the TWEN site.

Read USLD Chapter 3.

Review (Law Review Article) *Exit Consents in Sovereign Bond Exchanges*

Assignment for Sept. 8: Read USLD Chapter 4, including the following accompanying texts, which are indicated in the Chapter: *Geren v. Quantum Chemical Corp.*; *Van Gemert v. Boeing Inc.*; *Metropolitan Life Insurance Co. v. RJR Nabisco*

Thursday, September 8:

Topics: Judicial Discourse as the Law

Assignment Due: Read USLD Chapter 4, including the following accompanying texts, which are indicated in the Chapter: *Geren v. Quantum Chemical Corp.*; *Van Gemert v. Boeing Inc.*; *Metropolitan Life Insurance Co. v. RJR Nabisco*

Assignment for Sept. 13: Close Reading of Cases

WEEK 3

Tuesday, September 13:

Topics: Making Legal Arguments Using Prior Cases as Support

Assignment Due: Close Reading of Cases

Assignment for Sept. 18: Read Chapter 5 and accompanying texts.

Comment on Section 2 of the Discussion Section of Close Reading Exercise 1.

Submit your Comments to the TWEN site Assignment Drop Box by 9:00 PM on Sunday, September 18.

Thursday, September 15:

Topics: Introduction to Online Legal Research

Assignment Due: Read Chapter 5 and accompanying texts.

Comment on Section 2 of the Discussion Section of Close Reading Exercise 1.

Submit your Comments to the TWEN site Assignment Drop Box by 9:00 PM on Sunday, September 18.

WEEK 4

Tuesday, September 20:

Topics: Review.

Final Assignment: Draft an Advice Letter to Peter Cramer, the Finance Minister of Urbania about the Urbania case. Submit your Letter to the Assignment Drop Box by 9:00 PM on Sunday, September 25.

United States Legal Discourse 2

Syllabus

WEEK 1: Writing an Executive Summary; Beginning Research

Assignment Due for Today: None

Assignment Due for Next Week:

Write a Client Intake Memo and post it to the TWEN Assignment Drop Box by 9:00 PM on Sunday, October 16, 2011.

Submit two case descriptions to the TWEN Assignment Drop Box by 11:00 AM on Tuesday, October 18, 2011.

Read *United States Legal Discourse*: Chapter 4

WEEK 2: Understanding the Law: Writing a Preliminary Draft

Assignment Due for Today:

Write a Client Intake Memo and post it to the TWEN Assignment Drop Box by 9:00 PM on Sunday, October 16, 2011.

Submit two case descriptions to the TWEN Assignment Drop Box by 11:00 AM on Sunday, October 18, 2011.

Read *United States Legal Discourse*: Chapter 4

Assignment Due for Next Week:

Write a Preliminary Draft of your memorandum and post it to the TWEN Assignment Drop Box by 9:00 PM on Sunday, October 23, 2011.

Read *United States Legal Discourse*: Chapter 5

WEEK 3: Organizing your Arguments: Writing a First Draft of your Discussion Section

Assignment Due for Today:

Write a Preliminary Draft of your memorandum and post it to the TWEN Assignment Drop Box by 9:00 PM on Sunday, October 23, 2011.

Read *United States Legal Discourse*: Chapter 5

Assignment Due for Next Week:

Write a First Draft of your Discussion Section of your memorandum and post it to the TWEN Assignment Drop Box by 9:00 PM on Sunday, October 30, 2011.

WEEK 4: Writing Conferences on Friday, November 4 – Sign up on TWEN

Assignment for Today:

Write a First Draft of your Discussion Section of your memorandum and post it to the TWEN Assignment Drop Box by 9:00 PM on Sunday, October 30, 2011.

Assignment for Next Week:

Based on our conference and my comments on your Discussion Section, re-write the Discussion Section of your memorandum and post it to the TWEN Assignment Drop Box by 9:00 PM on Sunday, November 6, 2011.

WEEK 5: Writing the Final Draft of the Memorandum

Assignment for Today:

Based on our conference and my comments on your Discussion Section, re-write the Discussion Section of your memorandum and post it to the TWEN Assignment Drop Box by 9:00 PM on Sunday, November 6, 2011.

Bring a hard copy of your Discussion Section to class today.

Assignment for Next Week:

Submit the Final Draft of your Memorandum to the TWEN Assignment Drop Box by 9:00 PM on Sunday, November 20, 2011.

WEEK 6: Continue Writing; Extended Office Hours

Sign up for Writing Conferences on Friday, November 18, 2011

WEEK 7: Sign up for Final Writing Conferences on Friday,
December 2, 2011

Craig Hoffman B.A., William & Mary; Ph.D., University of Connecticut; J.D., University of Texas. Professor Hoffman is a linguist and a lawyer who has specialized in transactional writing and negotiating during his nine years of practice in Austin, Texas and Washington, D.C. Professor Hoffman is currently the Professor of United States Legal Discourse at Georgetown. He is also the Director of the Graduate Writing Program. Professor Hoffman focuses on acculturating Georgetown's foreign LL.M. students into United States Legal Discourse by teaching courses that introduce students to the ways that U.S. lawyers use language to communicate about the law. Professor Hoffman teaches classes and consults with law schools around the world on issues of language and the law. He also consults with law firms on the interpretation of statutes and contracts. Professor Hoffman has received several fellowships in linguistics, cognitive science, business, and writing. His areas of scholarship include forensic linguistics, statutory and contract interpretation, discourse analysis, and genre analysis. Email: hoffmanc@law.georgetown.edu.

Weaving Experiential Law Teaching Elements into an Intellectual Property Management Course

Wei-quan Yu

This study outlines an Intellectual Property Management (IPM) Course incorporating experiential law teaching methods based on the author's experience of experiential law teaching at McGeorge Law School of the University of the Pacific. Firstly, it paints the legal education in China and introduces the experiential law teaching methods in the United States. Then it describes the traditional way of teaching the IPM Course in China, taking Zhejiang Gongshang University as an example. The paper focuses on redesigning the IPM Course by adopting Experiential Law Teaching methods widely used in the U.S.A such as seminar sessions, role play, mini-clinic, crafting legal documents, critique, and reflective journals.

Keywords: legal education, problem-solving skills, experiential teaching methods, intellectual property management, course design

1 Introduction

Skill-based legal education does not mean developing only Advocacy and Clinic Courses. Many traditional academic courses also need to be reformed to incorporate experiential elements so as to meet the social needs of skill-based legal education. The public needs more professionals possessing problem-solving skills rather than those law graduates with only knowledge of legal principles and theories. Law graduates with

problem-solving skills may be better prepared to competently serve clients even if without further training after graduation afresh. Most recently, especially in the United States, there has been a move toward experiential learning.¹ However, they are under-developed and seldom used efficiently in China.

Undoubtedly, legal education before 1949 in China used some advanced teaching methods. Deng Xiaoping's early 1992 "Southern Talks" provided an impetus for new growth in legal education.² Today, the Chinese are devoting themselves to improve their legal education. The experiential law teaching methods taught at Pacific/McGeorge are of great significance and should be incorporated into China's legal education. Redesigning doctrinal courses is an important way, as well as creating advocacy and legal clinics, to incorporate experiential law teaching into China's legal education.

This study is intended to discuss how to develop an Intellectual Property Management (hereinafter, "IPM") course in China by adopting experiential law teaching methods widely used in U.S. law schools. It is an effort to improve legal education in China by focusing on training the students' problem-solving skills even in doctrinal courses. It will also try to answer Pacific/McGeorge's distinguished Professor and Scholar Landsberg's challenging question: To what extent is the American skill-based legal education experience transferable?

This study will not fully develop a syllabus for an IPM course that includes experiential elements. Rather, it is a general introduction to an ideal course adopting experiential law teaching methods with a tentative syllabus attached for reference in the Appendix. It is almost meaningless to establish a fixed ideal class model to be followed. What really counts is that through this study law educators can become aware of the new ideas and instructive methodology, which are important for the pursuit of

¹ See Deborah Maranville, *Infusing Passion and Context into the Traditional Law Curriculum Through Experiential Learning*, 51 *J. Legal Educ.* 51, 72 (2001).

² See *China's Journal Toward the Rule of Law Legal Reform*, 258 (1978-2008) (edited by Cai Dingjian & Wang Chenguang).

skill-based legal education. It is meaningful to provide for reference a much more integrated picture of a redesigned IPM course with experiential elements incorporated. For comparative reasons, it is also meaningful to offer at the outset an explanation of the legal education today in China. I will then briefly explain the experiential law teaching methods in America, of which Pacific/McGeorge School of Law is a shining example. Next, I will discuss the traditional way of teaching the IPM course in China at Zhejiang Gongshang University as an example. Finally, the paper will focus on redesigning the course by adopting experiential law teaching methods.

2 Legal education in China

Modern legal education in China has been practiced over one hundred years since the “law reform” during the last years of the Qing Dynasty. Since then, China has imported rules from civil law countries especially from Germany and Japan. Generally speaking, China has established a legal system closer to the civil law system. The rule of law has been set as a goal for many years but China is still on its way to achieve it. Many laws have been established or modified since 1992 when China decided to develop a socialist market economy instead of a centrally planned economy. Legal education thus became more and more important. Many new law schools were established and more students became law majors. Unfortunately, in recent years many law school graduates have found it difficult to find employment practicing their legal knowledge.

There are at least two basic issues: whether China needs so many graduates from law schools at present and whether the law school graduates are competent enough to serve the public right after their graduation. The answer to the first question is both yes and no. Theoretically, China needs more legal professionals to support the developing market economy. But for some reasons, many corporations, especially small and medium enterprises, do not wish to employ law graduates as regular employees. The

concern is either that the laws are useless or that the law graduates are not competent enough to meet the needs of the business. As to the second question, the answer is definitely no. It remains difficult to convince the public in China that laws are becoming more useful than they used to be. There are many factors contributing to such an embarrassment and one of them may be that many lawyers lack problem-solving skills.

It is therefore the time for Chinese legal education to progress in teaching and learning quality rather than just in quantity. After all, practical skill training in China is underdeveloped. The list of core and elective courses taught in China consists almost entirely of knowledge courses rather than skills courses. Further, Chinese legal educators do know how many of those courses could also have an analytical component, such as the case discussion method. Although Chinese educators frequently talk about the elicitation method, which is quite similar to the Socratic dialogue method, lectures dominate China's classrooms in law schools. Unlike in the United States, where professors ask students questions about their opinions and analysis, getting everyone to join in a discussion, professors in China usually stand at the podium and lecture. Simply put, traditional Chinese legal education focuses on providing legal information to law students. Skill training in China remains an extracurricular activity in most law schools.

Do legal educators not know that it is already the time to reconsider the goal of legal education and reassess its outcome? Do they not know that the purpose of law school education should aim at cultivating the students' overall abilities? Our modern society needs lawyers not only with a good command of legal knowledge but also with a healthy mentality, good communication skills, a spirit of team-work, creative and innovative ability, as well as other problem-solving skills. Are the legal educators not aware that traditional Chinese legal education only focuses on the "learned half" of education for a "learned profession" and pays insufficient attention to the "professional part"? While its goal is to produce professionals,

theory and doctrine alone are not sufficient to produce complete professional lawyers prepared to practice law competently. Undoubtedly, if law schools can provide such professional “products” with high quality to society, society would greatly benefit from those “products” and would therefore be willing to employ more law graduates, which would constitute a virtuous circle.

To develop the students’ critical thinking like a lawyer as well as other practical skills, professors need more specific training using experiential law teaching methods. Incorporating experiential elements into doctrinal courses is an indispensable way, perhaps even the most important way to achieve such goals.

3 Experiential law teaching methods in the United States

What are experiential law teaching methods and how do American professors apply them in their courses? After experiencing, both as an observer and participant, the different experiential law teaching methods taught at Pacific/McGeorge for nearly one year, I have developed an understanding of those methods. Experiential law teaching methods are based on the learning theory that students “learn by doing”. Professors are trying to train students’ problem-solving skills by having them do many tasks. The professors are trying to make sure that students are not only learning knowledge but also learning by their experience.

Experiential law teaching method is closely linked to Problem-Based Learning (hereinafter, “PBL”). PBL is an approach reflecting the way people learn in real life, which was developed in the 1960s in Australia, Canada and the United States in medical schools and gradually spread to other disciplines.³ Students solve the problems life presents them, as Boud put it: “The starting point for learning with PBL is a problem, query or puzzle that the learner wishes to solve”.⁴ I

3 <http://www.ukcle.ac.uk/learning-in-law-annual-conference/2004/papers/bailey/>.

4 See *supra* note 1.

believe using experiential teaching methods to help develop PBL is undoubtedly the ideal mode that we should practice in legal education.

Experiential law teaching method is a comprehensive teaching method. It consists of lecture, demonstration, simulation, practice and critique.⁵ The lecture part providing the theoretical and knowledge base is not so different from that in China. Demonstration is very instructive and makes the lecture more vivid and impressive in a classic skill-based course such as Negotiation or Alternative Dispute Resolution (ADR). Undoubtedly, the Experiential Law Teaching Method Course is the most classic course that demonstrates all the experiential law teaching methods.⁶

Students in China are familiar with demonstrations in the early stages of their education. It is a pity that demonstrations are rare in law schools. However, demonstrations are effective and very much needed, if Chinese legal educators are aiming at training law students' problem-solving skill, not only in those typical skill-based courses such as Negotiation, but also in doctrinal courses. Simulation is to practice with factual information to use. It is perhaps the most important part of the experiential law teaching. While generally applauding this method, I will point out its downside later. Practice means engaging in a skills exercise and then revising and improving performance over time. What is the use of practice without critique? One of Confucius's main worries was not correcting what is wrong.⁷ That is the important role played by critique. The

⁵ See Professor Brian K. Landsberg's Handout in May 2007 in China titled "the role of skills-based legal education" [Copy on file with the author].

⁶ This is a course designed for the LL.M students in experiential law teaching at Pacific/McGeorge. The course includes 4 modules: Module 1 covers learning theory and skills teaching methods generally, and the objectives of legal education; Module 2 covers teaching of clinical education and client representation, including client interviewing and counseling, fact development, and theory of the case; Module 3 covers teaching of dispute resolution; and Module 4 covers teaching of trial and appellate litigation.

⁷ See Professor Brian K. Landsberg's speech handout in MAY 2007 in China titled "the role of skills-based legal education" [Copy on file with the author].

critiques applied at Pacific/McGeorge include the six-step feedback method⁸, which incorporates self-evaluation, and the four-step critique, which includes headline, playback, prescription and rationale. The critique methods are extremely useful for Chinese legal education not only because they show respect for the students but also effectively help students learn and understand their analytical processes and assess their performance.

Pacific/McGeorge provides student advocacy skills training programs, legal clinic education and field placement programs, and also provides doctrinal courses with adequate and sufficient experiential elements. Professors also weave experiential elements into their knowledge-based courses so that students receive training in problem-solving skills while learning the principles and theories of the law. Legal advocacy and legal clinics are, of course, the most typical forms of skill-based legal education. Thus, all legal education can aim at providing skill-based education.

3.1 The advocacy program at Pacific/McGeorge

Under the umbrella of the Advocacy Program are many specific courses such as trial advocacy, appellate advocacy, Global Lawyering Skills (GLS), ADR, and Negotiation and Settlement. “Professors in McGeorge teach advocacy through lecture, example, simulation practice and critique.”⁹ For example, the GLS professor trains the students in the so-called CRAC¹⁰ method of framing a persuasive argument by following all these

⁸ The six-step feedback method is created by Professor Blaustone. Step one: the feedback recipient identifies strengths of the performance; step two: the peers and/or supervisor respond solely to those items raised by the feedback recipient; step three: the peers and/or supervisor identify other strengths of the performance; step four: the feedback recipient identifies difficulties and/or changes to be made; step five: the peers and/or supervisor respond to the identified difficulties; and step six: the peers and/or supervisor indicate additional difficulties.

⁹ See Professor Brian K. Landsberg’s speech handout in MAY 2007 in China titled “the role of skills-based legal education” [Copy on file with the author].

¹⁰ CRAC means the structure of legal argument that is organized in the order of Conclusion, Rule, Analysis and Conclusion.

five steps¹¹, which is so successful that students become very skilled in using such structure to frame their legal analysis. CRAC becomes their habit of structuring their legal analysis. Professors train their students successfully to use this method from the easiest fact pattern to slightly more complex ones and eventually to a challenging case file problem or even a problem designed for a national competition of law students from different law schools. What the students learn most from these kinds of exercises following such methods is the value of practice and revision. Also in GLS, after some basic introduction and guidelines for the points that students are supposed to know, the professor will usually ask the students to practice in class or after class what they have learned—from how to conduct electronic legal research, how to write memos and briefs to deliver oral presentation in class, and eventually to deliver oral argument before a panel of judges. In this way, students are trained, through every stage of a typical litigation, a large number of skills that a qualified lawyer is supposed to possess. GLS is not a doctrinal course, but its experiential elements are applicable for any professor in China with their doctrinal courses, although these elements need to be modified to fit Chinese needs and the Chinese legal and educational system.

Simulation is widely used in many teaching fields. It plays an important role in legal education as well. Although simulation in legal education seems not as workable as it is in some other fields like medical surgery or sports training. Sometimes it may be dangerous to train law students with too much simulation. Simplified simulations may mislead the students about the complexity of legal practice. Simulations that are not interesting or challenging enough may not be taken seriously by the students and could discourage their interest.. Such improperly designed simulations could only mean to the students either just a new but meaningless experience or just one more experience

¹¹ The five steps here refer to the five methods (lecture, example, simulation practice and critique) that are usually used to teach each advocacy skill. The example method is also called demonstration in skill-based education.

that they have already been familiar with. However, simulation could remain indispensable in legal education if properly designed. It is not only useful in courses like trial advocacy, negotiation and settlement, and ADR, but also can be a useful method in a doctrinal course like IPM or a course such as contracts.

3.2 Legal clinic education and field placement at Pacific/McGeorge

Legal clinics are where theory meets practice. What better way to learn than by doing?¹² One Chinese proverb reads: “I hear and I forget; I see and I remember; I do and I understand”.¹³ Pacific/McGeorge is one of the leading law schools in legal clinic education. Through a variety of legal clinics, students enrich themselves both academically and personally. This innovative program provides students a learning environment that promotes real-world education and instills the value of service.¹⁴ In a faculty-supervised law office setting, students strengthen the connection between theory and practice by immersing themselves in practical lawyering skills such as how to interview and represent clients and also begin developing their professional identity as a future attorney.

The clinic is seemingly a much more important way to learn because students bear responsibility to the clients. If the cases are carefully selected and the teachers help the students in appropriate ways, students will likely remember their experiences much longer, regardless whether he or she did a great job or not. This is a very important part of their skills training during law school. People readily agree that it is good

¹²

See

http://www.mcgeorge.edu/Academic_Programs/Experiential_Learning/Pacific_McGeorge_Legal_Clinics.htm

¹³ See *The Global Clinical Movement, Educating Lawyers for Social Justice*, edited by Frank S. Bloch, OXFORD, page 87.

¹⁴

See

http://www.mcgeorge.edu/Academic_Programs/Experiential_Learning/Pacific_McGeorge_Legal_Clinics.htm

idea to incorporate advocacy skills through simulation in doctrinal courses. Why not weave mini-clinics into some academic courses like IPM or contracts? Is it possible to do so? My positive answer is delivered later in this study, which also constitutes one of its contributive points.

To expand the breadth of practice training, the field placement program is also available offering students a broad range of opportunities to engage in supervised legal practice at approved government agencies, courts or non-profit entities to exercise their emerging legal skills in legal research, writing and negotiation.¹⁵ Students interview witnesses and conduct other tasks routinely undertaken by practicing lawyers. This program offers externship opportunities for law school credit. As Dean Elizabeth Rindskopf Parker said, “An internship experience is invaluable, no matter your academic success or career objective. There is simply no better way to enhance classroom learning, demonstrate your ability to future employers.”

3.3 Experiential teaching elements in doctrinal courses at Pacific/McGeorge

Sharing ideas among students themselves and giving feedback by proper critiques plays an important role in the class teaching and learning activities at Pacific/McGeorge. Professors serve as organizers and presiders rather than as lecturers. By interactions, students are supposed to share their ideas and thus are more likely to promote their own learning objectives, which make them active in class. Needless to say, hopefully, the more active they are in participating, the better they learn.

Many professors use Socratic dialogue method as well as simulations in their doctrinal courses. They also provide assigned problems for the students to practice what they have learned. For example, in Evidence, the professor designates each team to perform in class a demonstration relating to the principle and

¹⁵ See

http://www.mcgeorge.edu/Academic_Programs/Experiential_Learning/Field_PlacementExternships.htm

theory taught in class based on their own understanding of the Federal Rules of Evidence. This project enhances not only the understanding but also the practical skill of applying the rule to the specific facts as well as providing a great incentive to learn. Also, each student will be denominated as one of the responsible students for each class meeting. The professor will rely on these students to start out the discussion of each assigned case or problem. And, the professor will continue to call on all class members throughout the class so that students are not lulled into a false sense of security. If anyone is found snoozing, he or she will be deemed losing. By such policies, students are encouraged to prepare well and learn by independent thinking and doing. These are undoubtedly the effective ways of weaving experiential elements into an academic course.

4 The traditional way of teaching the IPM course at Zhejiang Gongshang University

4.1 IPM course description

The basic IPM course is an elective course mainly for undergraduate students not majoring in law who may become the general counsels, administrators or officers in different types of corporations. It is necessary for them to learn something basic about IPM due to the importance of IPM in today's modern economy. This course lasts 14 weeks as a 'long thin unit' with 90 minutes per week. A class may have 40 students enrolled.

4.2 The Pros and Cons of Traditional Teaching of IPM

The class used to consist of lectures with some Socratic questions and also some mini-brainstorming. Now, we teach the students without sufficient interaction not only between students and professors but also among the students themselves. The main downside of the traditional way of teaching the IPM course as it is currently taught is that students do not practice any of their skills. The students just listen to what the professors say in class or watch the video material. It is the way of learning by listening,

not a way of learning by doing. The way of learning by doing may be more effective in teaching students the skills necessary to practice law competently.

4.3 Why is it so and could it be changed?

Law schools could integrate the teaching of theory, doctrine and practice, and teach professionalism as well. Practice skill and professionalism are essentially important for a legal education. Developing students' practical ability should be the practical goal of legal education during law school. Theoretically, Chinese legal educators have already incorporated all of these core elements into the present Chinese legal education. Yet in fact, even the best law schools in China are focusing too much on lectures of legal principles and theories. Chinese schools do not value practical skills very much. Instead, we highly value students' critical thinking, their ability to learn foreign laws, and their skill at making comparisons of laws so as to make helpful suggestions on how to modify the laws.

The underlying reason is that the Chinese have a long history of devaluing skills in education. Traditionally, the Chinese highly value the philosophy and ideas and thoughts about how to rule the nation or to sustain a family. Today's China is still focusing on remaking the law. Most law professors are good at theoretical criticism rather than practicing law. It is a very interesting phenomenon that in the recent decades every city is busy rebuilding houses, roads and bridges and so forth. Similarly we are remaking statutes, administrative regulations and judicial interpretations. On the other hand, many people as well as law school professors and students are disappointed at the implementation of the law in today's China. If laws cannot be respected, what is the use of training practical skills? Another likely reason may lie in the perception that it is more efficient for the students to practice their skills when they start to work rather than to practice the skill during law school time when students are supposed to focus on their understanding of the law as well as the critical thinking. After all, understanding each part of the

law seems much more important due to the much more logically interrelated civil law system. Accurately understanding the law is deemed as the main goal of legal education. How can law graduates, even those with high quality of practical skills, provide sound legal service to their future clients if they fail to understand the law correctly? The laws are not as easy as they appear. That is why Chinese legal education focuses on understanding the law rather than practicing law skills.

But here is one thing I need to point out: in terms of teaching methods, professors in China are intelligent enough to adopt or even create more efficient ways to teach their students. The main issue is not lack of advanced methods but a lack of incentives. As long as the incentive issue cannot be resolved or at least improved, there is no expectation of producing high quality courses. By comparison, I found no tremendous disparity between the United States and China in terms of teaching methods. But the teaching effects are very much different, which has nothing to do with the teaching skill, but the students' attitude toward learning and the professors' attitude about their teaching. In China, teachers occupy low level of the society, with poor and hard-to-change salaries that are only enough to support their necessities. They are burdened with heavy pressure but they have no pride in their career and do not have much hope of improving their living conditions if they just devote themselves to their teaching jobs. Undoubtedly this is a vicious circle. As long as teachers' social status and their living conditions cannot be changed, there is little hope that the education quality will reach a high level. This is the fundamental issue of improving China's legal education as well as other education in China. Of course, this is not the main topic of this study, but it is an important point. This study is intended to encourage adopting experiential law teaching methods to place students into the doing process rather than just listening or reading as the main learning mode.

I believe students can focus and achieve their goals in law school and that experiential learning may help them develop the

confidence they need to succeed. They will come to understand that each one can help society as well as themselves and promote justice.

5 Redesign of the course by adopting experiential law teaching methods

5.1 IPM course goal

This course is devoted to the examination of Intellectual Property (hereinafter, “IP”) asset exploitation and its legal protection. The course’s goal is to prepare the future managers of IP to deal with the various types of IP issues a corporation is confronted with. Students are supposed to cut their teeth in a hypothetical or even a realistic setting and gain their initial experience of dealing with IP issues based on their understanding of the IP laws. It aims to train the students to be ready for practice. Therefore immersive experiences are expected in this course which will prepare them for success in dealing with IPM problems whether in the courtroom or boardroom. Mainly it is to train the class to apply legal principles and theories to solve specific practical problems and controversies. It also helps develop the students’ skills in legal research, writing, negotiating and planning.

5.2 The holistic approach to student learning

5.2.1 Learning by Effective Doing

I appreciate that “sharpening the axe won’t waste the time for cutting faggot”, which is a Chinese saying similar to the English one as “A beard well lathered is half shaved”. Meanwhile we could not agree more with another Chinese saying that “thousands of miles away can only be covered by one’s steps”. Confucius once said: “Isn’t it a pleasure after all to practice in due time what one has learned?” Most students have the desire to achieve their learning goals by doing with thoughtful and constructive critiques and suggestions from their professors. Accordingly, professors should speak in a very respectful and passionate way. Do not make students

overwhelmed, upset, stressed and frustrated. Try to create a casual way or style for the class learning setting so as to make them feel at ease. Professors' encouragement to students is what gas is to a car. Also, learning by doing does not mean learning by doing as much as possible. Successful teaching means to help reach the set goal by efficient and interesting means rather than just help reach the goal in the end.

5.2.2 Sufficient Energizers Facilitate Teaching and Promote Participation

The theory is: (1) Students learn more when they think through situations and come up with their own answers. (2) It is sometimes easier, and more fun, to think through situations when students have a particular role or identity. (3) Varying the learning format, such as small group work, brief exercises in pairs, fishbowls, games with the professor, drawing on the board, pitting one half of the class against the other and so on, increases energy. (4) Dramatization adds fun and energy as well. (5) Creating visuals from student input increases focus and interest. (6) Humor is a wonderful tool for decreasing inhibition, encouraging learning from mistakes and increasing energy.¹⁶ When the instructor injects energy and humor into a class, it is usually reciprocated.

5.2.3 To be Creative is More Important

As legal educators, we should be more creative in training the students to be more creative lawyers. This requires the necessary steps of reform and creation of new curricula as well as the teaching methods. People, especially those who are running the business or planning to run the business, need more legal knowledge than ever before. High quality lawyers are very much needed to help take any necessary steps to gain advantages such as exclusivity and avoid any likely disadvantages and legal risks rather than just to deal with the disputes that happened. Lawyers

¹⁶ The author attributes the theory to Professor Gregory S. Weber's handouts in ADR class.

should play roles similarly like doctors, which mean they should not only be able to cure the patients' diseases but also be able to provide good advice on how to keep them healthy and much stronger before diseases catch them. Simply put, lawyers cannot be just trained as judges. In a sense, lawyers mean more than judges in terms of creative work. Lawyers are supposed to produce more creative products than judges are usually supposed to do. If this theory is admissible, what have law schools done to develop the students' most important problem-solving skill—the creative ability to produce specific advice and useful tools to those who are presently legally healthy but need more measures to warrant their future health? Legal educators could conduct creative teaching to promote the creative legal services by training students' creative thinking.

5.2.4 Less Overwhelming, More Incentives and Define Learning Success Personally

Many times students are trained to meet all kinds of format requirements, which is of course important for anyone who wants to practice their law in the future. But do we need to train these kinds of professional habits so seriously while we have so many other important things for us to learn? Students today are much busier than ever before and they bear much more competitive pressure. Professors should focus on important skills and knowledge and also should care about the students' personal life problems and creative thoughts. Can grades alone serve as an actual substantive incentive to the students' learning? I believe idea sharing and appreciation as well as encouragement serve as the most efficient and effective way of incentive especially for the adult-student. The assessment of the students' learning outcome should be more flexible than grades so as to be workable and reasonable for those students with different difficulties or different personal learning plans. Students are different from one another. How can we assess them or define success for them by the same standard? After all, the final exams of different courses as well as the study should not be assessed in

the same way as Bar Examinations assess students. The reason is that the goal of education is to encourage and help students' learning instead of qualification assessment.

5.3 Class Policy

Based on the course goal set as well as my learning theory, I would set forth the class policy as follows.

- a) Buy or borrow required reading materials and other recommended materials.
- b) Register for the site created on school's electronic network¹⁷ for this course and have an active email account associated with the electronic network.
- c) Class preparation and participation during class are required. Besides reading and listening to class discussions, students own active engagement in working through the material in a group setting is encouraged, which will greatly inure to their own benefit not only in the short-term, but also in later years. Extraordinary participation in terms of quality, not quantity, may result in higher final grade. Unprepared passes, inadequate participation, lateness and/or poor/inadequate preparation may affect the final grade or even lead to the denial of the right to sit for the final exam.
- d) One could be exempted if he/she is able to answer the professor's questions satisfactorily or show his/her own learning plan at the outset, and persuade the professor that the learning outcome is satisfied.

¹⁷ Recently, my university (Zhejiang Gongshang University) has started to use a teaching network online called blackboard, the purpose of which is to facilitate the teaching and learning so as to promote the efficiency of the interactions between the professors and the students. The website address is: <http://eol.zjgsu.edu.cn>. Professors now can post not only the syllabus but also the other course materials like assignments forums and so forth through this website. It is an equivalent to the TWEN or SAKAI used at Pacific/McGeorge.

- e) Everyone must participate in a mini-clinic during the semester and provide a report about it briefly before the final exam.
- f) The syllabus may need to be adjusted depending on the pace of class coverage.
- g) The grades will be given in three ways: an individual reflective journal (30%); an oral presentation (30%); a written assignment (30%); and the creation of good questions or creative solutions (10%).

5.4 IPM class

I will not dwell too much on the IP law aspects of the unit. Instead, I will endeavor to describe the techniques I propose using for this class oriented to learning by doing. Typically the 90 minute class time each week would be described as a lecture. However, it would be much more effective to let the students engage in such a setting so they learn by doing. “As all the indications are that when students attend a lecture they put themselves into a certain mindset which precludes interaction.”¹⁸

Simply put, this course will be redesigned from a traditional lecture to a problem-based learning process with experiential law teaching methods.

5.4.1 Goals

The immediate goals of this course are to develop:

- a) Students’ understanding of the basic IP concepts and categories as well as how IP can be acquired, exploited and protected;
- b) Students’ ability to establish and reflect on their own learning plan as qualified independent learners of learning by doing;
- c) Students’ thinking skills through experiential teaching such as working collaboratively in groups and problem solving;

¹⁸ <http://www.ukcle.ac.uk/resources/teaching-and-learning-practices/solent/>

- d) Students' writing skill by practicing crafting legal documents;
- e) Students' problem-based learning skills.

5.4.2 Materials

Students will be given factual pattern material to prepare for the questions and classroom performance. They will analyze four types of materials. Two of these types are assigned readings: (1) IP statutes, and (2) handouts of case materials and samples of relevant legal documents. The remaining two types of materials will be presented through a lecture and discussion format, and do not require prior reading: (3) recently passed statutory materials and judicial interpretations as well as IP cases published by the supreme court of the People's Republic of China and (4) supplementary DVD cases and three official websites. Towards the end of the semester, students are expected to complete the assigned reading in advance, and are called upon to answer questions.

5.4.3 Problems

The following hypothetical fact pattern will be used as the basic context throughout the entire course for the experiential teaching purpose. More detailed materials will be provided accordingly.

SBH is a female clothing company. It has been 10 years since the company was founded. Its trademark Shanbohu, which was registered seven years ago, now is well known to many young girls in the local market. The owner of the company is ambitious and wants to enhance the development of his company in a much more efficient and safer way and the company aims to be a listed company on the stock market in the not too distant future.

Recently, quite a few things have happened to SBH and the owner felt it is important to deal with these problems correctly and professionally. A management meeting has been scheduled during which the owner/director of the board will listen to each of the board member to give their opinions as to solve the

problems. Suppose you are the member of the board, please prepare your remarks for the meeting.

The first event is that one employee, during his duty as a technician, created the software which the company has been using for a quite a few years. It has been confirmed that the employee has provided the software to some other competitive corporations.

The second event is that one salesman who left the corporation 9 months ago established his own private business and began to sell female clothing to many who used to be the important customers of the corporation. It is confirmed that part of the volume of the clothes that the new company is presently selling is from SBH, the clothes were resold, and the Shanbohu mark had been changed into Shanzhu, which is the new company's trademark. However, their trademark is just in the process of application for registration.

The third event is that SBH received a notice from an in-house counselor of DC (a company located in another province) claiming that they have learned that several machines that SBH bought from a local trader are products that infringe its patent right because they are made by a manufacturer without permission.

5.4.4 Methods

a) Seminar sessions

The class will start with introductory concepts and move toward more specialized or complex concepts. Usually students are put in large group sessions, where the groups meet together and participate in class lectures and Socratic discussions with the professor. After that, the groups may be required to meet separately for further discussion on the assigned problems. Occasionally, after a mini-lecture, the groups may be asked to do Road Maps¹⁹, which is always an appropriate and interesting way for the students to demonstrate their understanding of the

¹⁹A Road Map is a good way to figure out the relationship among different concepts by thoughtfully putting each element into a relationship network.

concepts as well as developing their own thoughts. The seminar session will address the practicalities of dealing with IP management problems under IP laws. The success of the large group session as well as the Socratic dialogue depends on reading that has been completed before the session so that students are ready to present responses to the assigned hypotheticals. Also, professors should avoid maximizing anxiety in students by calling on only one student at a time in the Socratic Dialogue, as they are used to a structured delivery. As to the question that really matters: What could a professor do to have the students prepared fully for their participation in China? My suggestion is: simplify the assignments by specifying the questions; do not bore the students by announcing format requirements; get them committed and pay attention to their concerns and thoughts so as to sympathize with them and provide proper encouragement as well.

Class lectures and discussions will often refer to cases relevant to the topics of this course. Most cases are in the form of DVD, which is a vivid way for the students to learn the facts of the cases. They are produced by CCTV²⁰ or some other authoritative organizations. I used to play these cases in class. The students are absorbed by these cases. But it is too time-consuming and they just learn by watching. They lack of doing by themselves. So now I will reduce the times of playing the DVD in class. Instead, I will only pick up the teachable segments and have the students watch the DVD before class.

b) Role play

The class will role-play the Board of Directors of the SBH Company a few times. When doing role play like this, each team will deal with various IP difficulties and novel situations during the whole semester. The difficulties and situations the Board will have to face range from an IP audit, a license agreement negotiation with the manufacturer, a license agreement for end-

²⁰ CCTV: the central TV station of China.

users, a negotiation on an assignment agreement, the creation of a policy for employees to disclose patentable ideas, a debate on whether to obtain international protection, a debate on cross-licensing with another company, a debate to make software publicly available in some way to serve as a defensive publication, and eventually a negotiation in the process of a litigation of various IP disputes. In particular, the Board will discuss and deal with the three events that I designated earlier. It will be necessary to figure out the solutions based on their IP knowledge either learned or researched. Minutes of meetings are recorded and debriefed at subsequent meetings and action points are checked and updated. The chair and the minute secretary positions will rotate. The pattern for the Board meetings would be to brainstorm the issues, including prioritizing the solutions. The students need to be motivated, which is good for active attendance, and must be enthusiastic for formative feedback. It is also possible for groups of students to develop at their own speed and to a certain extent develop a deep engagement with topics of their choice within the syllabus, concentrating on some in greater depth than others. This encourages them to take more responsibility for their own learning.

Students will also role play a negotiation in Week 12 to settle an IP dispute during the litigation. The role play will be recorded for review by the students themselves and the professor.

c) Mini-clinic

Legal clinic education is at a formative stage in China. One of the main problems is that not every student can have the opportunity to experience a specific type of case in their particular field under a qualified supervisor with sufficient instruction as well as guidance. My view is to incorporate a so-called mini-clinic into many doctrinal courses such as the IPM course. Students are required to find a real client to communicate with and provide possible legal advice as well as some other help with the clients' IP problems. The client may be a fellow schoolmate whose major is not law, a relative or family member,

one class of a particular major, or a small corporation. Students should be encouraged to come up with their own ideas and discuss the pros and cons of the idea compared with the idea from the supervisor or other fellow students in this class rather than just do as the supervisor tells them to do. Of course, there could be some liability issues associated with this model such as malpractice. In this IPM course, this type of mini-clinic is designed for the purpose of problem-solving training and is required at the very beginning of the course. The students should report on their mini-clinics in class at Week 13 as scheduled in the syllabus.

d) Crafting legal documents

“Writing to learn,” is an approach with which Zinsler is associated, which suggests that both the process and product of writing can produce cognitive benefits.²¹ A modest body of literature recognizes that writing-to-learn may be more effective when the writing projects are oriented to problem-solving rather than to displays of knowledge.²²

Students are required to practice crafting corresponding legal documents such as a trade secret nondisclosure agreement, website content license agreement, employment agreement, trademark license agreement, and possibly a business plan involving IP issues. When crafting the legal documents arising from the simulation, students will receive feedback only from their classmates, which is also good practice in critiquing and learning from each other. While crafting legal documents for their real clients during the IP mini-clinic, the drafts should be reviewed and then approved by the supervisor/professor. I will also provide samples of such documents after the students have turned in their drafts.

21 See *Writing to Learn Law and Writing in Law: An Intellectual Property Illustration*, by Michael J. Madison, *Sait Louis University Law Journal* vol.52. no.3

22 See *supra* note 23.

e) Critique

At the feedback stage, either the six-step feedback method or the four-step method²³ will be used. It depends. For example, when critiquing on the negotiation performance, the four-step feedback method should be used so as to “playback” the recipients’ verbal performance. Note that feedback in doctrinal courses such as IPM will definitely be different from that in Advocacy or Clinic Courses, although with the same critiquing methods. In IPM, critiquing will mainly focus on the understanding of IP law as well as the appropriateness of their solutions rather than advocacy and clinic skills. Of course, it is always good to comment on their verbal or non-verbal communication skill as well as their tactical solutions²⁴, which are also important problem-solving skills. The students will have a comparative analysis between the samples given and their own works, which is an instructive way to help improve their work and encourage additional revision. Also, students are required to critique their fellow classmates’ drafts as mentioned above.

f) Reflective journals

Students are encouraged to develop their personal learning plans. They are required to keep individual reflective journals and submit their self-evaluation through reflection in each person’s journal. I would be non-prescriptive in the format of the journals. The flexibility is to encourage motivation and deep learning. These account for 30% of their grades. The students will also undergo a personal interview at the end of the semester with questions based on their own reflective logs. This is to

²³The Six-step feedback method is the same as explained by footnote 3; the four-step method refers to the critique method which includes Headline, Playback, Prescription and Rationale.

²⁴In China, tactics is a little bit different from solutions. By tactics, people usually emphasize on the process of a plan, while solutions are the substance part of plans. For example, the most well-known tactics are the 36 tactics, (<http://blog.nationmultimedia.com/print.php?id=6274>), all of which are just abstract processes of a specific solution. Tactical solution is the combination of tactic and solution.

check their understanding of what they have written and to identify their creative thoughts as well. I will allot 10% for those who demonstrate they have been creative.

Example no. 1: Teaching IP Audit

The IP audit will be covered in week 3. Students are required to read the articles on the handouts previously provided and prepare the assigned problem, which is relatively simple. (Each student is required to create a form with possible assets covered by IP. i.e., as an IP manager, each is supposed to design an IP Audit form to be given to their employees) in advance so that they have some basic ideas about it. A mini-lecture will be delivered at the outset. Then a short period of Socratic dialogue will be conducted, during which some students will be called on to answer instructive questions such as: what is an IP audit to you? What is the purpose of the IP audit? How should it be conducted? Which IP in this case do you think allows you to lower costs and offer a lower price to your consumer thus giving you a competitive advantage and hopefully more sales than your competitor? Whom do you talk to in the company, i.e. which employees? A brainstorming session is also applicable at this time. Following this, I would provide the class with more detailed information of SBH (the same company as in the basic problem), especially information about the company's different assets including those that it does not presently exploit, such as its recently designed software for accounts/receivable for its manufacturing company, or other potential IP. Now, the class will be divided into groups. Each group is required to conduct a complete and thorough IP audit collaboratively using an audit form designed by each group. The professor will visit each group during this period of time. Students are encouraged to conduct thorough brainstorming among the team members. For example, how do they value each item they identified? Should they attempt to exploit it? What is the best way to exploit it? Does it give the company an in-house competitive advantage in what it manufactures? Through brainstorming, each student will

contribute his or her thoughts to the group he or she belongs to. Each group will produce an IP Audit Form filled with all the items that the members of the group contributed. Eventually, the representative of each group will report/debrief their audit form to the class within 5 minutes. The professor will help display the outcomes by computer or other devices so that the whole class can understand exactly what each group's form looks like. Once one group finishes its report, the next group will take the responsibility to give critiques on the reported outcome displayed by the professor. The members of the next group shall critique the fellow group's audit form by dissecting which part is good and which could be improved with brief reasons. This is also a way of learning from peers. Eventually the professor will invite the class to work out the ultimate ideal form incorporating each group's contribution, during which the professor may also provide his own feedback. When giving feedback, it is important to strive for student input into the academic underpinning of the forms they created. Feedback could be recorded on a whiteboard, and concessions are made so that the development of understanding of the topic should become apparent.

Example no. 2: Teaching patent infringement

The students are required to read Patent Law of PRC and some other relevant regulations and judicial interpretations on patent dispute resolution to understand the ways of resolving a patent infringement dispute as well as the case theory of the hypothetical facts (SBH case event 3) before the relevant class meeting.

A mini-lecture would be delivered at the very beginning of the class. Some students will be called on to answer Socratic questions such as: what are the functions of patent administrative authorities? How do they work? Must a patent dispute be reviewed first by the patent administrative department? Is any level of court entitled to hear a patent case? What kinds of legal measures can be taken by the patentee before filing the complaint to a court?

Then students will be put into small groups for quick discussion sessions on various aspects of dealing with the SBH event 3. Each group will be required to provide a 5 minute presentation on the pros and cons of the three basic ways of resolving the dispute: negotiation between parties; turning to patent administrative authority; or litigation. Some responsible students on that day will be called on to critique each group's presentation or even lead the discussion among the whole class.

After the mini-lecture and Socratic questions, the small group discussion and the large session, the class will start the simulations as such: negotiation between two parties, mediation with the mediator representing the administrative department, and negotiation in the process of litigation. The negotiation in the process of litigation will be recorded for review purposes. Meanwhile, in each type of role play, students are also required to craft the agreements. They are required to hand in their drafts in a week. The professor will comment on the recorded negotiation as an example in class while replaying the teachable segments. Also, a DVD regarding patent litigation will be played. Lastly, the professor will give written feedback on each student's draft and encourage the students to revise one more time. Several samples will be provided after their revision.

g) Additional suggestions for the IPM Class

I anticipate that I need to give the students more input on how to work with the PBL approach under my experiential teaching. This must be reinforced regularly via presentations through the semester.

As mentioned in my learning theory part, it is vital to add sufficient energy to the class so as to make it more meaningful and interesting. For example, besides the SBH problem, I will also prepare a variety of well-known and less well-known mini-exercises and approaches to teaching that encourage participation.

It is also important to encourage students' creative thinking. Students should be encouraged to create and refine many do's and don'ts for their hypothetical or mini-clinic clients,

particularly to figure out ideal solutions to exploit their IP assets as well as maximize its protection.

Another point that is worth emphasizing is not to overwhelm the class and treat “troublesome” students with care. I would reduce a lot of formal requirements for the students to follow. Generally, I will follow the set rubric of final assessment and successful completion of assignments as a prerequisite to pass this course. I will also create some special standards for those who either have done their best or who have been creative enough and have met their own personal learning plan.

Lastly, helping the students with their time management skill is also rewarding. Many students seem addicted to procrastination. Many students prioritize their time just in an opposite way as they are supposed to do. Although prioritization is a personal issue, the skill can be improved once they really appreciate the significance and benefits of an ideal prioritization suggested by their professors, which is totally different to their ordinary management. It may also be of great help for the professors to act as a supervisor to check the students’ time management. Based on my own experience of the amazing encouragement of prioritization suggestions from professors at Pacific/McGeorge, I would also encourage my students to keep working on their assignments, to finish any project one step at a time, to spend more time on study, and to avoid delaying work on assignments to the last minute.

6 Conclusion

The teaching skills in the United States as well as the teachers’ social status and the teacher-student relationship are generally much better than those in China. Maybe many professors including myself will argue that the teaching methods are not new to Chinese professors at all. We seem to have known and even already have adopted those methods thousands of years before. Admittedly we are not at all specific enough when adopting such methods. The simplest answer, if asked about what

I have learned at Pacific/McGeorge, is that I learned to be specific. It is true that detail is the key to success or the devil is in the detail.

My answer to the question to what extent is the American skill-based legal education experience transferable is that it is basically transferable on the condition that: (1) more professors as well as deans of law schools could be exposed to experiential law teaching method in different ways; (2) professors could be encouraged to adopt experiential law teaching method by adjusting the assessment standard and providing more facilitators as well as enhancing their salary levels. Undoubtedly, it would take time to have this method deeply rooted in China's legal education. It would be promising and a great success in the long run.

In China, we have ambitious educational goals, which include knowledge of legal principles and doctrines, practical skills and professionalism or ethics as well. The issue is how to reach such goals. Experiential law teaching methods help develop self-directed learning skills and lifelong learning. In a sense, it focuses on the PBL approach and is characterized as student-centered teaching. It increases motivation for learning because students are placed in a context that requires their immediate and committed involvement. It needs a lot of organizing and very good facilitation skills. It needs courage to back off from being content driven. It is also true that implementation needs to be realistic within the constraints of the available resources. In particular, it is a challenging to make sure students are fully prepared for the scheduled meetings so as to make both the large group sessions and small group sessions more interactive and meaningful. Nevertheless, it is of great significance to improve the quality of legal education in China.

In conclusion, well-organized classes and other useful teaching programs are very much needed. The traditional class mode should be greatly changed and be tailored and reorganized in great detail, weaving experiential elements to meet the specific needs of problem-solving skills teaching and of learning

objectives. I believe this will ultimately improve the rule of law in China.

Acknowledgements

I am grateful to Professor Mike Mireles, the supervisor of this study, and especially to Distinguished Professor and Scholar Brian K. Landsberg for sharing his great thoughts, as well as to Writing Specialist Lexis Allen for her suggestions on writing skills.

Appendix: Proposed Tentative Syllabus of IPM Course

1. Required reading materials and websites:

Trademark law of PRC

Patent law of PRC

Copyright law of PRC

Anti-Unfair Competition law of PRC

TRIPS

WIPO Copyright Treaty of 1996

Berne Convention

Paris Convention for the Protection of Industrial Property

www.sipo.gov.cn

www.ncac.gov.cn

www.sbj.saic.gov.cn

2. Recommended Books and Supplemental DVD Cases

a. Own it by Jon M. Garon , Carolina Academic Press

b. Intellectual property by Paul Goldstein, the Penguin Group

c. DVD Cases to be provided

3. Assignments of simulations such as role playing, document crafting and mini-clinic

Students in this course will conduct a substantial amount of role

plays. The class will role-play the Board of Directors of the SBH Company for a few times. When conducting role plays, each team will deal with various IP difficulties and novel situations during the whole semester. The class will also be required to conduct an IP audit, a license agreement negotiation with the manufacturer, a discussion concerning the creation of a policy for employees to disclose patentable ideas, a negotiation on an assignment agreement, a debate on whether to obtain international protection, a debate on cross-licensing with another company, a debate to make software publicly available in some way to serve as a defensive publication, and a negotiation in the process of a litigation of the IP disputes. In particular, the Board will discuss and deal with the three events that will be designated at the very beginning of class. Each student will be required to craft legal documents, which is also part of the role play as well.

Students are also required at the very beginning to find a real client to communicate with and provide possible legal advice as well as some other help with the clients' IP problems. The client may be a fellow classmate whose major is not law, a relative or family member, or a small corporation. The mini-clinic should be reported in class at Week 13 as the syllabus scheduled.

Week 1:

Course Description, Course Goal, Class Policy, Office Hours, Contact Information, Required reading materials and websites, Recommended books, Handouts, Assignment and Assessment, etc.

1. What is IP (Patent / Copyright / Trade mark / Trade secret/ Rights of Publicity)
 - a. Definition
 - b. How is IP categorized?

Week 2:

- c. The difference between industrial property and Copyright and rights related to copyright
- d. Intellectual property law and social, economic, and cultural development (Origins and Rationale for Intellectual

Property Laws)

Week 3: 2. How to acquire IP?

a. IP audits

Week 4: b. Ongoing protection and maintenance

Week 5: c. Purchase license /merger and acquisitions /Freedom to Operate

Week 6: d. International

Week 7: 3. How to exploit IP?

a. Sales and licensing

Week 8: b. Mergers and acquisition

Week 9: c. International

Week 10: 4. How to protect IP?

a. Litigation- International Protection and Choice of Law

Issues

Week 11: b. Request the Administrative Authority to handle the matter

Week 12: c. ADR (negotiation, mediation, arbitration); Negotiation Role Play

Week 13: IP MINI-CLINIC REPORT

Week 14: Review

References

Blaustone, Beryl (2006). Teaching law students to self-critique and to develop critical clinical self-awareness in performance. *Clinical Law Review*, 13, 143-147.

Bloch, Frank S. (1982). The andragogical basis of clinical legal education. *Vanderbilt Law Review*, 35, 321-53.

Bloch, Frank S. (2011). *The global clinical movement: Educating lawyers for social justice*. Oxford: Oxford University Press.

Cai, Dingjian & Wang Chenguang (2010). *China's journey toward the rule of law*. Leiden: Brill.

Garon, Jon M. (2007). *Own it: The law and business guide to launching a new business through innovation, exclusivity, and relevance*. Durham, NC: Carolina Academic Press.

- Goldstein, P. (2007). *Intellectual property: The tough new realities that could make or break your business*. New York: Penguin Group.
- Landsberg, Brian K. (2007). *The role of skills-based legal education*. Unpublished speech handouts, 21 May 2007. Hangzhou: Zhejiang Gongshang University.
- Stuckey, R. & Others (2007). *Best practices for legal education: A vision and a road map*. New York: Clinical Legal Education Association.

Wei-quan Yu, having received his M.Phil. in Civil and Commercial Law from JiLin University and LL.M. in Advocacy from McGeorge law school of the Pacific University, is now a senior lecturer at Law School of Zhejiang Gongshang University, where he teaches courses such as IP law and contracts. He was a visiting Scholar in RenMin University of China (2007). He has been practicing law since 1998. He has published several books and many articles on civil and commercial law.

Heterodox Logic and Law: Topics for a report on philosophy and hermeneutics

Maria Francisca Carneiro

Logics - more specifically the so-called *heterodox logic* – come to light in order to reveal from their own basis significant achievements for the fields of law and science in general. The purpose of this paper is not to recapitulate the classical issue of the logic of law, neither it is to review its history in reference to norms taken individually, but rather to spark preliminary considerations about such norms with the philosophical approach for legal sciences focusing on *heterodox logic*. The central thesis of *heterodox logic* applied to law is that intuition is based on uncertainty, ambiguity, vagueness and inconsistency without trivialization when dealing with contradictions and complementarities, as shown by the theorems that validate them. Thus, new questions are relevant to some problems referring to law structure or, in other words, to legal orderings. The role of *heterodox logic* lies in solving such problems. The importance of hermeneutics is unquestionable in the theoretical construction of law particularly for feeding the human and social nature of that knowledge. Nevertheless, it is impossible to deny a certain “epistemological crisis” in written law at the moment in regards to the complex social issues for which the jurisdiction will have to be, scientific, precise and satisfactory as much as possible.

Keywords: law, logic, hermeneutics, philosophy, paradox, contradiction

1 Prolegomena to *heterodox logic* in law

For classic or orthodox logic, a proposition cannot be simultaneously true (T) and false (F), but it has to be one thing or the other and not both. This way, classic logic does not accept operations that contain contradictions. Also for classic logic, which is quite ancient and was substantiated by Aristotle, sentences that are perhaps vague or inaccurate cannot be considered logic.

However, from the 1960's and 1970's onwards along with transformations within society and habits and mainly with the development of science and technology particularly of electronic computing, new quite varied logical systems, which present themselves as able to turn vague things into accurate ones and able to operationalize contradictory and/or complementary sentences have started to be developed. These new systems were called "rivals" of classic logic and are known as *heterodox logic*.

It is important to note, however, that such logic systems (e.g. *fuzzy logics* and *paraconsistent logics*) are operationalized through mathematical and computing calculations in their practical application. Even so, they also have a philosophical foundation, which is also its epistemological monitoring. For this article, we are interested in this philosophical foundation, because from it a new hermeneutics for law can be derived. Thus, it is clear that in this brief essay we will not address the practical, computing or electronic application of *heterodox logic*, but we would like to register the news that such experiments have been carried out for example at the University of Campinas (UNICAMP) and at the Federal University of Rio Grande (FURG), in the states of São Paulo and Rio Grande do Sul respectively, both in Brazil. At the latter I have been personally taking part in studies concerning this matter.¹

¹ CARNEIRO, M. F. 2009. *Paradoxos no direito – lógica e teoria das categorias*. Porto Alegre: Núria Fabris Editora. 2009. *Direito & Lógica – Temas de direito perpassados pela lógica*. 3rd. Edition, Curitiba: Juruá 2011. *Notes on a way of thinking in*

Thus, the proposition of *heterodox logic* in the field of Law means a new philosophical, linguistic and hermeneutic approximation.

In order to talk about the insertion of new logics into judicial thinking, it is necessary to establish other criteria to map the intuitive concept of both truth and coherence² within law by taking into account that the pragmatic consequences of that truth are the most important thing. If we consider that analysis is an essential step with regards to the origin of a theory, it is understood that the aforementioned assertion requires a fair amount of plausibility.

The central debate on *heterodox logic* applied to law is that intuition³ has its basis on uncertainty, ambiguity, vagueness and inconsistency without trivialization⁴ when dealing with contradictions and complementarities as shown by the theorems that validate them. Additionally, *heterodox logic* requires adequate changes in the notion of deduction.

Such an event can be quite meaningful for law, because it means a change of paradigm within the existing legal theory according to reasons that will be examined in the following sections. Thus, the deadlocks that impede the continuation of big

paraconsistent logic in law. Social Science Research Network, New York, <http://ssrn.com/abstract=1860334>.

² “Truth” can be considered a semantic concept while “coherence” can be a syntactic concept. There resides one more reason for the necessity to make both of them compatible.

³ When giving his inaugural class at the University of Amsterdam in 1912, diverging from Poincaré and Kant (about the discredit of Kant’s space concept by non-Euclidean geometry), Brouwer sustained that “neo-intuitionists consider the separation of moments of life in qualitatively different parts to be reunited only while separated in time, as being the natural phenomenon of human intellect”. (*apud* KNEALE, William *et* KNEALE, Martha. *O desenvolvimento da lógica*. 3. ed., Lisboa: Fundação Calouste Gulbenkian, 1991, p. 680). Intuitionist concept represents a new paradigm from which derives interesting theories later developed.

⁴ In general, a theory is trivial when it is possible to prove all within its semantically closed group. Not to prove all, however, is the most common occurrence, because there are truths not proven though theories which, in that case, are always incomplete (cf. GÖDEL, 1931).

and small debates and, consequently, the discovery of adequate solutions to several present demands can be overcome.

Moreover, the feasibility of making systems and subsystems complementary may provide the introduction of a new field for the scientific investigation of law.

There is also the facilitation of policies, if we so wish, in the composition of some types of hermeneutics in lawsuits that can now be differently addressed by *heterodox logic*.

However, the successful use of *heterodox logic* in law requires a change in intellectual behavior regarding comprehension based on intuitionism, since the concept of complementarity⁵, which is crucial in *heterodox logic*, presupposes the needlessness of mutual exclusion so that the incompatibility between systems does not mean that one must exclude the other (but only may).

The aforementioned logic, apart from its complementariness, enables the interchange between different language plans, which in terms of established deduction would bring up a breakdown of reasoning.

Heterodox Logic facilitates the access to resources between different languages, by enabling non-monotonic⁶ operations to be complementary in a way that they contribute to the results of what is conventionally called “scientific truths”, as such “truths” can be expanded by operations that are not reciprocally excluded among the models from which they originate.

Regarding law, whose patterns are comprised by facts, values and norms and which is made up of a spectrum that

⁵ We shall deal with the concept of complementarity on future occasions.

⁶ All the operations of reasoning create what is usually called “logical consequence”. Each consequence relationship defines logic or what logical system is being used. In a monotonic logical system (which has one single tone) consequences should follow the same tone of this same system in which they are operationalized. For example, in a classic logic reasoning logical consequence should be equally classical. Such a thing does not happen with non-monotonic logics (which do not have only one single tone) and which accept compatible consequences with other systems, for example: an operationalized line of reasoning with the use of classic logic may accept a fuzzy, paraconsistent consequence, etc. In this sense, we can understand that non-monotonic logics are types of *heterodox logic*.

encompasses consuetudinary, praetorian, legal and sociological components over which jurisdictional contribution has its basis, it is of the utmost importance to have a logical, consistent and adequate tool for the scientific handling of those components, as well as a *decisum* that hasn't been hindered by vagueness and inconsistencies, contradictions or trivialities. Due to the fact that each one of the plans of such spectrum may be considered as a different degree, it is necessary to synthesize them in one crucial process.

In such situations, when an inference of non-monotonic order contradicts the conclusion instead of excluding one of the possibilities, both should be maintained and it is then possible to manage them heterodoxically.

Still, some adjustments will have to be provided. One of them concerns the non-simultaneity condition in appreciating the phenomena imposed by *heterodox logic* for an adequate description of the situation. Within law, whose order is structured with a basis on the causal nexus of imputation, the supposition of succession in time⁷ between precedent and subsequent is crucial. As it can be noted, new poetics of the intuition of time are *a l'ordre du jour*⁸, since the traditional characteristic of "atemporality" of logic as knowledge accepted by the majority of scholars is maintained in *heterodox logic*. It is anticipated, however, that this situation of temporality as a prerequisite for knowledge in view of the atemporality of another knowledge will not scientifically involve serious consequences, but only philosophical ones.

Additionally, judicial thinking has expanded in its historical tradition through its argumentative, logical character that also became the rationality of law as it is nowadays; and according to Perelman⁹ temporality is a characteristic (and even a condition) of legal argumentation.

⁷ RICOUER, P. 1994. *Tempo e narrativa*. Tomo I, Campinas: Papirus, p. 261.

⁸ BACHELARD, G. *L'intuition de l'instant e La poétique de l'espace*. *Op. cit.*

⁹ PERELMAN, C. 1997. *Retóricas* (translated by. Maria E. G. G. Pereira). São Paulo: Martins Fontes, p. 369 *et passim*.

The stir around the atemporal character of logic as opposed to the need for temporality in the subjects of legal argumentation and rhetoric comprises an *aporia* or a variable vindication, which does not alter the results of the theoretical course of those subjects. Meanwhile, it is necessary to think about the connection time/knowledge as Kant¹⁰, Bachelard¹¹ and Terré¹² among others did.

The fact is that “*la structure de la norme n’est donc rien qui se produirait dans la nature, mais un modèle scientifique d’interprétation des conditions d’établissement et de fonctionnement des prescriptions juridiques*”, as Müller¹³ points out. Until now, norms included a univocal character in which contradictions were insolvable. Therefore, it is essential to consider the impact that the application of *heterodox logic* may exert in the structured scope of law. The normative properties that are more easily isolated, typified and controlled may comprise a fair sample for the beginning of the experiment that can be used by law as a reflection concerning the degree at which scientific practices acquire rational bases.¹⁴

Many questions would emerge from what we have exposed and everything points towards the threshold of a new moment for knowledge in which “knowledge in itself consists of saying and doing what is revealed through a pertinent listening along with and according to what arises on its own”.¹⁵ Moreover, the remarkable appanage of Logic, which is to scientifically establish itself and develop itself from the components that comprise it, is an interesting methodological counterpoint of Law, which in its

¹⁰ KANT, I. *Crítica da razão pura* (Estética transcendental do tempo e também da lógica transcendental), [s.l.].

¹¹ BACHELARD, G. 1992. *L’intuition de l’instant* (chapitre III – L’idée du progrès et l’intuition du temps discontinu). 2. ed., Paris: Librairie Générale Française; and also *La poétique de l’espace*. 1998, 7. ed., Paris: Quadrige/PUF.

¹² TERRÉ, D. 1998. *Les dérives de l’argumentation scientifique*. Paris: Presses Universitaires de France.

¹³ MÜLLER, F. 1996. *Discours de la méthode juridique*. Paris: L’éviathan/PUF, p. 187.

¹⁴ According to Notices of the American Mathematics Society, v. 45, n° 7 (Rev. William G. Faris), [s.l.], ago./1998, p. 874-6.

¹⁵ HERÁCLITO. *Lógos* (fragment), *apud* HEIDEGGER, *op. cit.*

analogical¹⁶ matrix of inductive nature that is axiomatically considered as a General Principle, uses some fields of knowledge in order to legitimate other fields in the composition of plans that are different from the reality and the languages that refer to logic. *Heterodox logic* may also act the same way due to its recursive, non-monotonic and complementary characteristics.

Thus, the new logics – more specifically *heterodox logic* – come to light in order to reveal from their own basis¹⁷ significant achievements for the fields of law and science in general.

We will next have a look at aspects of the theoretical explanation of this idea.

2 Considerations on the logic of juridical orderings: the regularity of contradictions

In general, a good number of authors address legal logic through the prism of the development of both the history of logic and law itself. This approach clearly sparks discussions on subjects such as the Aristotelian syllogistic, the notorious questions of classic logic considered necessarily under their principles, namely, the third excluded, identity and non-contradiction, the dialectic signification in Hegel and the recovery of zetetics as a free form of argument concatenation.

Considerable progress can be noted when submitting law topics to deontic logic, which enables a renewed “exegesis” of legal texts despite the dilemma between law and morality that may still remain. These approaches naturally refer to problems of norm interpretation.

The purpose of this paper is neither to repeat the classical question of the logic of law, nor to examine its history in

¹⁶ BRONZE, F. J. 1994. *A metodonomologia entre a semelhança e a diferença (reflexão problematizante dos pãos da radical matriz analógica do discurso jurídico)*. Coimbra: Universidade de Coimbra.

¹⁷ In ARISTOTLE, *Organon*: “Real and first elements are those who get their credibility not from other elements but from themselves.”

reference to norms taken individually¹⁸, but rather to spark preliminary considerations on questions that are applicable to some problems referring to law structure or, in other words, to legal ordering.

Legal norms can be analyzed separately or in larger or smaller groups. They can also be analyzed through the way they organize themselves, which is how we aim to do it. Such a laborious and extensive task could not be circumscribed within the pages of this article. Nothing prevents us, however, from examining some of the fundamental concepts of the matter.

Firstly, we must agree that in order to understand structural matters of law it makes no sense to talk about one norm, but rather of a plurality of norms that comprise systematic groups called “legal orderings”.¹⁹ After that, we shall have a quick look at some of the main concepts and matters that affect legal orderings.

Aided by philosophy, legal theory tried for some time to find an ultimate point of reference in each ordering, which would be the original power of all norms and through which the ordering by itself would be justified. Bobbio²⁰ called this creative power “source of sources”. This would be an absolute monistic ordering, but it is actually not like that. Orderings are extremely complex and sources are diverse: the norms in force originated from several classes such as moral, social, religious, common, and conventional classes. These norms can be external or internal to law, to the individual and to the State and become more elaborate if we consider that they present varying degrees of objectivity

¹⁸ Generally, logic exercises applied to law are demonstrated through individual factual cases in the modal, deontic, or classic outlines. Less frequent are the allusions by logic to the juridical ordering as a whole, unless they be by hermeneutics and the General Theory of Law.

¹⁹ MACHADO NETO, A. L. 1996. *Teoria geral do direito como lógica jurídica formal* (Cap. 2, A teoria do ordenamento como lógica jurídica). Rio de Janeiro: Edições Tempo Brasileiro, p. 74.

²⁰ BOBBIO, N. 1995. *Teoria do ordenamento jurídico* (presented by Tércio Sampaio de Ferraz Junior; trad. M. Celeste C. L. Santos). 6. ed., Brasília: Ed. UNB, p. 41.

and subjectivity, and that among them there are fields of influence that comprise limitations and self-limitations.

Another problem of the theory of legal orderings is its claim to completeness: few are the branches of knowledge that spread their arms to embrace the whole of social reality by means of an ordering as law does.

Beyond unity and completeness, orderings claim coherence.²¹ We shall approach this topic briefly in the next section.

From the complex outline that characterizes legal orderings come serious scissions between theory and practice of law, as well as contradictions between the theories, the practices, and the theories and practices. Friedmann²² points out that from the discrepancies between abstract principles and concrete decisions, several concepts of legal systems have proliferated since the beginning of modern period and, consequently, various methodologies were created to address those issues.

Kelsen developed the most clear and efficient theory in outlining a “grid”²³ of legal ordering by juxtaposing the norms ideally hierarchized, subordinated and connected in *nomostatics* and *nomodynamics*. It is a theoretical model of purism, rigor, and logical perfection whose application undoubtedly carries contradictions, lacunae, antinomies and other conflicts. However, modern law was without exception, influenced by it.

In this brief study, we shall focus on the matter of contradiction in ordering. Kelsen²⁴, for example, denied the possibility of contradiction between two legal norms in force, as follows:

Given that two conflicting norms can both be valid – otherwise no conflict of norms would exist – the

²¹ Unity, coherence and completeness are the fundamental element of juridical ordering, cf. BOBBIO, *op. cit.*

²² FRIEDMANN, W. *The ôrie g ên êrale du droit*. 4. ed. Paris: LGDJ, [s.d.], p. 494.

²³ GAVAZZI, G. 1984. *Elementi di teoria del diritto (Struttura a gradi dell'ordinamento giuridico)*. 2. ed. Torino: Giappichelli, p. 37.

²⁴ KELSEN, H. 1986. *Teoria geral das normas* (translated by. Jos é Florentino Duarte). Porto Alegre: Sergio Antonio Fabris Editor, p. 281.

statements on the validity of both norms do not represent a logical contradiction even when one norm defines a definite conduct as due, and the other norm defines the omission of such a conduct.

The starting propositions of the validity of both norms: “‘A’ must be” and “‘non-A’ must be” do not represent a contrary opposition, because since both norms are valid, both are true.

For Kelsen²⁵, the validity of the norm lies in its existence when taking into account that deontic problems between morality and law hindered the logical-scientific construction of legal ordering that should be elaborated from a formal viewpoint.

Only true statements would have normative validity; false statements would be waived. Therefore, if all existing norms were true, they would be valid²⁶ and no contradictions would occur.

It is not necessary to comment on the consequences and difficulties empirically verified in the use of this line of reasoning or on the stream of theories that derived from it.

Hart²⁷ as one of his most worthy contributions has established the distinction between “existence” and “validity” of the norm by bringing new elements to reflection on legal systems, such as the supposition, acceptance and distortion of norms by the legislator, the judge and the society. Just as relevant are the considerations about the “pathology” of the legal system, which is verified in cases such as the incongruence between sectors and respective interests in a single ordering, ruptures and collapses between phases of the ordering that are replaced by the power of authority rather than by the reconstitution or restoration of the system itself.

²⁵ *Idem, ibidem.*

²⁶ *Idem, ibidem* (item XII, *Enunciados sobre a validade de uma norma que com ela está em conflito – nenhuma contradição lógica*).

²⁷ HART, H.L.A. 1990. *O conceito de direito* (translated by. A. Ribeiro Mendes). Lisboa: Fundação Calouste Gulbenkian, p. 120.

The structuring of the ordering also depends on the contents and meaning²⁸ of the norms, as Larenz²⁹ points out. From that derives the existence of an inner and outer system of law, with the former being characterized as “open” and fragmentary, but with both sharing specific functions and being formed by principles.

The material character of these “factors” of law is naturally expressed through the structuring of an ordering and through the concrete questions of pragmatic evaluation, but their genesis is far more complex than that. Larenz³⁰ maintains that the “internal system” is only possible due to an “internal unity”, from which a legal norm is a result for reasons of causality as we will examine later on³¹ even if through the perspective of varied inferences.

In more recent readings on the structuring and systematization of legal orderings, hermeneutical matrices stand out as investigators of the “circular structure”³² among meaning, functions, institutions and rules, whose theoretical lucubration is based on language.

Throughout the last decade, the systemic concepts of law, which were developed under the influence of the theory of systems, have become paramount. Among their most expressive dimensions, Teubner³³ can be pointed out with the autopoietic theory drawn out from an organization operated by orderings:

²⁸ We shall not treat those questions at present, since they go throughout deep debates on hermeneutic and so are beyond the thematic limitation of this article.

²⁹ LARENZ, K. 1989. *Metodologia da ciência do direito* (translated by. Jos éLamego). 2. ed., Lisboa: Fundação Calouste Gulbenkian.

³⁰ LARENZ, K. 1966. *Storia del metodo nella scienza giuridica*. Milano: Giuffrè p. 194 *et passim*.

³¹ *Infra*, item 3, *Coherence as an essential element of Law methodology: a contribution from mathematics?*

³² LAMEGO, J. 1990. *Hermeneutica e jurisprudência – análise de uma rec TEUBNER, G. 1989. O direito como sistema autopoietico*. Lisboa: Fundação Calouste Gulbenkian. *ep ção*. Lisboa: Fragmentos, p. 134 *et passim*.

³³ TEUBNER, G. 1989. *O direito como sistema autopoietico*. Lisboa: Fundação Calouste Gulbenkian.

logical units and clauses, production and reproduction of its own elements³⁴ and self-reference in its constitutive processes.³⁵

While Luhmann creates a “theory of differentiation” defining what is in and out of the legal system based on a radical sociological relativization, Theodor Viehweg³⁶, in his book “Topics and Law”, presents the idea that thinking by problems (topics) may better capture the essence of legal structure than the systematic thinking that uses interpretation to present the unity of the whole.

For Viehweg’s³⁷, a “topical system” may be a contradiction in itself, because a process that is poor in connections and only aims to point out ways, and that is also oriented as closely as possible towards the singular problem, would never pursue the idea of inner order and unity and would be, therefore, unsuitable for the basic concepts of system.

In the last couple of decades some movements have stood out in Brazil, such as the so-called “alternative law”³⁸, which played a relevant role because of the considerations it produced. However, we must agree that this dimension seems to bear a degree of self-annihilation, since its existence and activity can

³⁴ ROTTLEUTHNER, H. 1986. *Un cas récent: l'autopoïésis dans le droit* (Le système juridique en tant que système autopoïétique), in *Arquive de philosophie du droit*, t. 31, (le système juridique). Paris: Sirey, p. 233.

³⁵ EWALD, F. 1986. *Le droit du droit*, in *Archives de philosophie du droit*, t.31, (Le système juridique). Paris; Sirey, p. 245.

³⁶ CANARIS, C. W. 1989. *Pensamento sistemático e conceito de sistema na ciência do direito*. Lisboa: Fundação Calouste Gulbenkian, p. 243.

³⁷ VIEHWEG, T. 2002. *Tópica e jurisprudência*. (Translated by Kelly S. Alflen da Silva). Porto Alegre, Sergio Antonio Fabris Editor.

³⁸ In the late 1980’s and beginning of the 1990’s in Brazil, a group of brave judges from the state of Rio Grande do Sul who were outraged with the social inequality in the country and who believed that Brazilian laws were made to favor the wealthy, decided to make legal decisions according to what they thought would be more fair under the social perspective, even if the decision was not in conformity with the laws in force at the time. This way, this group of judges created a “parallel” legal system to the one that officially existed in Brazil and they called it “alternative law”. Nevertheless, the coexistence of two simultaneous legal orderings within the same country is, for us, a type of *heterodox logic*, which is here exemplified by a concrete situation. The so-called “alternative law” lasted 10 years in Brazil but it is not in force nowadays, and today it is only a chapter within the history of law in this country.

both result in a non-establishment situation: it is possible to conclude, therefore, that the system seems to be of a non-supportive nature. In other words: the alternative law, as such, must always oppose the established law. If, by any chance, it becomes formally established one day, it would no longer be alternative (it would cease from “existing”). Consequently, it cannot establish itself in order to continue “being” alternative. In a way, its ontical nature can be considered alternating, opposing and ambiguous.

Besides, when making use of psychoanalysis, alternative law builds discourses whose typology is disparate compared to that of the established law from the perspective of linguistics. It would be captivating to find out through what way and how far can logic be responsible for shortening the distance between such opposite ends.

One of the current trends within the study of orderings is the one that is trying to find “into the system a new kind of internal statement”³⁹: what determines behavior or the “rules of the game”, what the organizational games of the activity of justice are, and what its “praxeological” forms⁴⁰ are.

This trend makes a wide use of analogy between the artificial formalization of legal language in its recreational *status* and the relationships of interdependence among *statements* that have existed since prior to the aforementioned formalization. It investigates segments and degrees of regulation and indetermination, internality and externality, as well as paradoxes in the legal system. Gaps of uncertainty and recursivity in the systematization of law can be observed.⁴¹ It is probable that soon we shall be facing new perspectives of interpretation on the formation and structuring of orderings starting from the irrational for example and among others, as it has already happened in

³⁹ OST, F.; KERCHOVE, M. 1994. *Le jeu: un paradigme pour le droit*. Paris: LGDJ.

⁴⁰ FRENCH, *Le droit dans la forme praxéologique du jeu, ibidem*, p. 190 e ss.

⁴¹ KERCHOVE, M.; OST, F. 1992. *Le droit ou les paradoxes du jeu*. Paris: Presses Universitaire de France.

Aesthetics. These readings will certainly bring up a wider range of questions and contradictions.

In this quick journey through the theories of ordering and of systems of law, it can be noted that, although there is a remarkable methodological evolution that goes from the most rigid, traditionally symmetrical and static forms to the more fluid, plural and flexible concepts, it is evident that contradictions can be found in some formulations. If such problems are intrinsic to law (by its very nature and objective), we need to find a way to deal with them. And that is where the role of *heterodox logic* lies.

3 Coherence as an essential element of law methodology: a contribution from mathematics?

Throughout the history, there have been concerns of intelligence about coherence in logic, in philosophy and in law as well as in other areas of knowledge.

Traditionally, according to Bobbio⁴², legal coherence comes from the fundamental precept of the legalistic principle of justice (*pacta sunt servanda*), which he calls the principle of legality. Regarding coherence, Bobbio understands that the principle of non-contradiction is its most legitimate expression.

Evidently, this line of reasoning is compatible with the definition of law as a “deductive system”: a particular ordering is a system while all legal norms are derivable from some general principles (called general principles of law). According to Bobbio⁴³ this mindset on the formation of law derives from the Euclidean geometry and is strongly based on Leibniz.

Bobbio⁴⁴, when commenting on the tendency of what he called *giuridificazione della logica* through modern dimensions of law, advises on caring for the “ontological” preservation of logic, which must not be reduced by Law to a rule of conventions

⁴² BOBBIO, N. 1955. *Studi sulla teoria generale del diritto*. Torino: Giappichelli.

⁴³ BOBBIO, N. *A ciência do ordenamento jur ídico (in Teoria do ordenamento jur ídico)*. *Op. cit.*, p.77.

⁴⁴ BOBBIO, N. *Op. cit.*

and serve as ready-to-use solutions. Otherwise, instead of contributing to the meaning of coherence in Law, it would perhaps cause its detriment.

Tautologies are also an applicable resource to the validation of coherence through the rationality of law. This way, according to Vernengo⁴⁵:

A valid normative line of reasoning could be reduced, through analogical techniques, to a sequence of propositional and deontic formulae, whose set would ultimately comprise a conditional whose antecedent is integrated by the premises, and whose consequent is integrated by the conclusion. If such a conditional were tautological, we would have logical validity guaranteed and thereby, the need for a line reasoning.

Tautologies, as we know, result in demonstration. In any case, ever since roman jurisprudence within the scope of law rationality, the “touchstone” of convincing (and even of persuasion) begins with the formula “if p then q ”, which presupposes the construction of hypotheses after which the main propositions announce the legal solutions.⁴⁶ This is, therefore, one of the early days of coherence in law.

However, in the scope of general epistemology, the concept of coherence has been changing. It is no longer possible to talk about coherence alone, but rather it is necessary to talk about it in a wider context comprising the idea of “reflexive balance”⁴⁷ among the elements of the system. On the other hand, cognitive sciences reveal a considerable range of uncertainties in a way that the balance is not guaranteed.

⁴⁵ VERNENGO, R. J. 1976. *Curso de teor a general del derecho*. 2^a ed., Buenos Aires: Cooperadora de Derecho y Ciencias Sociales, p. 105.

⁴⁶ PASQUIEU, C. 1979. *Structure logique de la r gle* (in Introduction   la th orie g n rale et la philosophie du droit). 5. ed., Paris: Delachaux et Niestl  diteurs.

⁴⁷ BONJOUR, L. 1998. *The elements of coherentism (The concept of coherence)*, in Epistemology: the big questions). *Op. cit.*, p. 215.

Nonetheless, what is coherence after all? By synthesizing several theories developed about it, we could nowadays agree with Bonjour⁴⁸:

Intuitively, coherence is a matter of how well a body of beliefs ‘hangs together’: how well its component beliefs fit together, agree or dovetail with each other, so as to produce an organized, tightly structured system of beliefs, rather than either a helter-skelter collection or a set of conflicting subsystems.

It is understood that this “hanging together”⁴⁹ depends on different types of inference, evidence and explanatory relationships that slide through a variety of reflexes. However, in order to understand them it may not be necessary to follow the admonition of Bachelard⁵⁰: “*D’aruite la sym rie, servir de p ture aux vents*”, because it is accepted that theoretical extensions occur through axioms – even when there is the saturation of axioms.⁵¹

Coherence in law is also based on hermeneutics⁵², which systematizes interpretation and executes the application of law in

⁴⁸ BONJOUR, L. 1998. *The elements of coherentism (The concept of coherence)*, in Epistemology: the big questions). *Op. cit.*, p. 215.

⁴⁹ *Vide*, in this sense, studies on the distinction between *probabilistic consistency and logical consistency in coherentism*, por BONJOUR, *op. cit.*

⁵⁰ BACHELARD, G. 1998. *La po tique de l’espace*. 7. ed., Paris: Quadrige/PUF, p. 3.

⁵¹ CAVAILL S, J. 1997. *Sur la logique et la th orie de la science* (preface par Gaston Bachelard et postface par Jan Sebestik). Paris: VRIN, p. 83 *et passim*.

⁵² M LLER F. 1996. *Discours de la m hode juridique*. Paris: L.G.D.J.; BULYGIN, E. 1988. *Norma jur lica y analisis logico*. Madrid, Centro de Estudios Constitucionales; AZEVEDO, P. F. 1989. *Critica   dogm tica e hermen tica jur lica*. Porto Alegre: S rgio Ant nio Fabris; EWALD, F. 1986. *Le droit do droit*, in Archives philosophie du droit (Le syst me juridique). t. 31, Paris: Sirey; FRAN A, L.1994. *Hermen tica jur lica*. 3. ed., S o Paulo: Saraiva; FRIEDMANN, W. 1965. *Th orie G n rale do droit*, v. VI (Bibliot que de philosophie du droit), 4. ed., Paris,: Librairie G n rale de droit et de jurisprudence; ANDRADE, C. J. *Hermen tica jur lica no Brasil*. S o Paulo: Editora Revista dos Tribunais, [s.d.]; CUNHA, P. F. 1995. *Princ pios de direito (introdu o   filosofia metodologia jur licas)*. Porto: R s; ECO, U. 1995. *Os limites da interpreta o*. S o Paulo: Perspectiva; BLEICHER, J. *Hermen tica contempor nea*. 1980. Lisboa: Edi oes 70 Ltda.; OVIEDO, J. M. M. 1972. *Formacion y aplicacion del derecho (aspectos atuais)*. Madrid: Instituto de Estudios Pol ficos;

factual cases by providing guidelines for the solving of lacunae, antinomies, contradictions and for the normative integration, efficacy and efficiency, as well as for the articulation between norms that are principal and derivative, direct and indirect, imperative and facultative *plus quam perfectae, perfectae, minus quam perfectae, imperfectae, etc.*

Nowadays, legal hermeneutics focuses its attention especially on efficiency and efficacy of laws, on their intra-ordering transit and also on pragmatic reflexes of normative application and integration.

Within the development of law, our concern is the functionality of programmatic norms (which depend on other norms that regulate them in order for them to become factual), as well as the generic and laconic spaces that superior norms may contain, whose specification is found in the staggering statements articulated to the legal arrangements that are hierarchically inferior. This way, parts of the contents are lost, formal mechanisms may become anomic and, effectively, contradictions occur.

Regarding the occurrence of contradictions, legal hermeneutics is responsible for regulating the subsidiary use of principles, for instructing their normative uses and for other commonly known things.

The importance of hermeneutics is unquestionable in the theoretical construction of law, particularly for feeding the human and social nature of that knowledge.

On the other hand, it is nowadays difficult to deny a certain “epistemological crisis” in positive law due to the complex social issue for which the jurisdiction will have to be scientific, precise and satisfactory as much as possible.

PALMER, R. E. 1989. *Hermenêutica*. Lisboa: Edições 70 Ltda; SCHAPP, J. 1997. *Problemas fundamentais da metodologia jurídica*, Porto Alegre: Sérgio Antonio Fabris Editor; LARENZ, K. 1983. *Metodologia da ciência do direito* (trad. de José Lamego), 5. ed., Fundação Calouste Gulbenkian: Lisboa, among others.

In Warat's⁵³ opinion, in order to produce satisfactory results, the rigorous knowledge meant to be constructed for the legal world must respect the logical properties of scientific discourse by producing derivations of the principle of imputation and this way providing a significant dimension to the explanations that started from the principle of causality.

But, at times of uncertainty, how can the logical properties of the scientific discourse in law be preserved? Which line of reasoning can be a better protection against (or for) ambiguities?

If the quickest answer that comes to mind is "mathematics", it is convenient to remember that Kant⁵⁴ remarked that "all the lines of reasoning of mathematicians come from the principle of contradiction" and that a scientific proposition can only be known by another, which is deduced from it.

If according to Pitagoras⁵⁵ the elements of numbers are the elements of all things and the whole universe is harmony and number, Jaeger⁵⁶ reminds us that the Greeks' concept of numbers had originally a qualitative linguistic connotation, which only later on evolved towards quantitative abstraction. There are also common semantic questions pointed out by Szabó⁵⁷ between the Greek mathematical proof method and the terminology used in the dialectic method commented by mathematicians on how Lobachewski's hyperbolic geometry and Riemann's geometry revolutionized concepts after two thousand years of Euclidean axiomatization. Similarly, Eichler reconceptualizes symmetry through modular forms, demonstrating how an object can be transformed and look the same after that.

⁵³ WARAT, L. A. 1995. *Epistemologia jurídica da Modernidade*. (in: *Introdução Geral ao Direito*), Porto Alegre: Sergio Antonio Fabris Editor.

⁵⁴ KANT, E. *Crítica da razão pura* (Introdução, item V, Os juízos matemáticos são todos sintéticos), *op. cit.*

⁵⁵ ARISTÓTELES. *Metaph.* I, 5, 985 b.

⁵⁶ JAEGER, W. 1995. *Paidéia* (translated by. Artur M. Parreira). São Paulo: Martins Fontes, p. 205.

⁵⁷ SZABÓ, Á. 1967. Greek dialectic and Euclid's axiomatic. In LAKATOS, J. (Ed.) *Problems in the philosophy proceeding of the international colloquium in philosophy of science*. London, v. 1, North-Holland P. Co. Amsterdam.

Comparisons between ancient Babylon's mathematics and the Vedas⁵⁸ reveal that this knowledge evolved differently among peoples through history in a way that precision and scientific objectivity, as we understand them nowadays, are a relatively recent product in the science of philosophy, and it can be said that they vary according to the evolution of logical-mathematical concepts. Thus, it is clear that mathematical concepts evolve, transform themselves and with them also logic and the so-called "truth, precision, and objectiveness" as characteristics of science. That is why we question whether the time has come to bring knowledge to factual terms by taking into account that the new logics present a sufficient level of theoretical development, which makes them, therefore, a competent application tool.

In any case, the imbrications between mathematical laws - to which logics are correlated - and knowledge have always been essential. Within mathematics, the concept of "burden of proof" is much more subtle and deep and it reverberates in some way on the formulation of knowledge.

For Kneale⁵⁹, "logic (...) will always be studied together with other subjects that are relevant to the organization of knowledge" and "this relatively simple subject is central in the great tradition of the European concept of science".⁶⁰

This way, the attention of law towards logics in its current state of art is full of significations in which *heterodox logic* takes up an outstanding role.

4 Partial conclusions

We have seen within diverse concepts and theories about legal ordering that the communication of the meaning of the norm, in its inner articulation of the law system, has given rise to

⁵⁸ SEIDENBERG, A. 1978. *The origin of mathematics* (in Archive for History of Exact Sciences). C. Truesdell Ed., Vol, 18, n°4, Springer-Verlag: Berlin-Heidelberg-New York, p. 323.

⁵⁹ KNEALE, W.; KNEALE, M. 1991. *O desenvolvimento da lógica*. 3. ed., Lisboa: Fundação Calouste Gulbenkian, p. 751.

⁶⁰ *Idem, ibidem*.

significant inquiries. Similarly, hermeneutics solves the problem of lacunae, efficacy, and antinomy of laws while also leaves questions unanswered.

In part, the insolubility of paradoxes in the theoretical and theoretical-practical fields of law was attributed to its intrinsic nature, which deals with questions of human and social reality (therefore inaccurate and contradictory), while simultaneously looks for a scientific systematization molded on precision and objectivity and based on the logical principle of non-contradiction.

However, new logics systematize themselves in a way that they are able to derogate or enable changes regarding established principles. Among them, *heterodox logic* is particularly intriguing, because it allows the complementarity and/or interfaces between contradictory premises (and not merely the elimination of one or another of those premises), and because it stands out as a working space to manage not only contradictions but also contingencies ($T \wedge F$), which are common to impasses of praetorian solutions and jurisprudence in general.

Despite having been explained in this article under its deductive aspect, *heterodox logic* can also be useful for inductive logical application research and debates, as we will see in the following studies.

Thus, according to the content exposed, we are faced with a new tool that is capable of bestowing on law the object of its eternal *recherche*, which is logicalness in paradoxical decision as an essential contribution to the ideal of justice. It is necessary to consider the questions that arise from the use of the so-called *heterodox logic*, which are essentially expressed by considerations regarding the degree of scientificity and the rationality which law is based on as a scientific knowledge; and regarding the freedom to think, to choose, and to change systems and methods.

Finally, to conclude, in practical terms beyond from possible contradictions, vagueness and inaccuracies that may perhaps exist within the legal ordering of one single country, from our

perspective, what is called *heterodox logic* can still find a big scope of application within the conflicts between different countries or within international law where several negotiations can have unsuccessful results. Therefore, *heterodox logic* could be a useful tool also for Diplomacy and International Courts; at first under a philosophical and hermeneutic viewpoint, and possibly in the near future through electronic or computing applications depending on the results of the scientific experiments that are currently being carried out.

References

- Andrade, C. J. (No date available) *Hermenêutica jurídica no Brasil*. São Paulo: Editora Revista dos Tribunais, [s.d.].
- Aristóteles. *Metafísica*. I, 5, 985 b.
- Aristóteles. *Organon*. [s.l.].
- Azevedo, P. F. (1989). *Crítica à dogmática e hermenêutica jurídica*. Porto Alegre: Sérgio Antônio Fabris.
- Bachelard, G. (1992). *L'intuition de l'instant. (Chapitre III – L'idée du progrès et l'intuition du temps discontinu)*. 2. ed. Paris: Librairie Générale Française.
- Bachelard, G. (1998). *La poétique de l'espace*. 7. ed. Paris: Quadrige/PUF.
- Bleicher, J. (1980). *Hermenêutica contemporânea*. Lisboa: Edições 70 Ltda.
- Bobbio, N. (1955). *Studi sulla teoria generale del diritto*. Torino: Giappichelli.
- Bobbio, N. (1995). *Teoria do ordenamento jurídico*. (Presented by. Tércio Sampaio de Ferraz Junior; trad. M. Celeste C. L. Santos). 6. ed. Brasília: Ed. UNB.
- Bonjour, L. (1998). *The elements of coherentism – The concept of coherence*. In *Epistemology: the big questions*. Oxford: Blackwell.
- Bulygin, E. (1988). *Norma jurídica y análisis lógico*. Madrid, Centro de Estudios Constitucionales.

- Carneiro, M. F. (2009). *Paradoxos no direito – lógica e teoria das categorias*. Porto Alegre: Núria Fabris Editora.
- Carneiro, M. F. (2009). *Direito & Lógica – Temas de direito perpassados pela lógica*. 3rd. Edition, Curitiba: Juruá
- Carneiro, M. F. (2011). *Notes on a way of thinking in paraconsistent logic in law*. Social Science Research Network, New York, <http://ssrn.com/abstract=1860334>.
- Carneiro, M. F. & Loureiro, M. F. (2011). *Law and transdisciplinarity*. Social Science Research Network . http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1865907
- Canaris, C. W. (1989). *Pensamento sistemático e conceito de sistema na ciência do direito*. Lisboa: Fundação Calouste Gulbenkian.
- Cavaillés, J. (1997). *Sur la logique et la théorie de la science*. (Preface par Gaston Bachelard et postface par Jan Sebestik). Paris: VRIN.
- Cunha, P. F. (1995). *Princípios de direito*. (Introdução à filosofia metodologia jurídicas). Porto: Rê.
- Da Costa, N. C. A. (1997). *Logiques classiques et non classiques – essai sur les fondements de la logique*. Paris: Masson.
- Eco, U. (1995). *Os limites da interpretação*. São Paulo: Perspectiva.
- Elgin, C. (1998). *Epistemology's end*. In *Epistemology: the big questions*. Oxford: Blackwell.
- Ewald, F. (1986). *Le droit du droit*. In *Archives de philosophie du droit (Le système juridique)*, t. 31. Paris: Sirey, 1986.
- França, L. (1994). *Hermenêutica jurídica*. 3. ed. São Paulo: Saraiva.
- Friedmann, W. (No date available). *The générique du droit*. 4. ed. Paris: LGDI, [s.d.].
- Gavazzi, G. (1984). *Elementi di teoria del diritto Struttura a gradi dell'ordinamento giuridico*. 2. ed. Torino: Giappichelli.
- Granger, G. G. (1998). *L'Irrationnel*. Paris: Editions Odile Jacob.
- Heidegger, M. (1998). *Heráclito*. (Translated by. Márcia Sá Cavalcante Schuback). Rio de Janeiro: Relume Dumará

- Jaeger, W. (1995). *Paidéia*. (Translated by. Artur M. Parreira). São Paulo: Martins Fontes.
- Kant, I. (No date available). *Crítica da razão pura*. (Estética transcendental do tempo e também da lógica transcendental), [s.l.].
- Kelsen, H. (1986). *Teoria geral das normas*. (Translated by. José Florentino Duarte). Porto Alegre: Sergio Antonio Fabris Editor.
- Kerchove, M. & Ost, F. (1992). *Le droit ou les paradoxes du jeu*. Paris: Presses Universitaire de France.
- Kneale, W. & Kneale, M. (1991). *O desenvolvimento da lógica*. 3. ed., Lisboa: Fundação Calouste Gulbenkian.
- Lamego, J. (1990). *Hermenêutica e jurisprudência – análise de uma recepção*. Lisboa: Fragmentos.
- Larenz, K. (1989). *Metodologia da ciência do direito*. (Translated by. José Lamego). 2. ed. Lisboa: Fundação Calouste Gulbenkian.
- Larenz, K. (1966). *Storia del metodo nella scienza giuridica*. Milano: Giuffrè
- Machado Neto, A. L. (1996). *Teoria geral do Direito como lógica jurídica formal*. (Cap. 2, A teoria do ordenamento como lógica jurídica). Rio de Janeiro: Edições Tempo Brasileiro.
- Müller, F. (1996). *Discours de la méthode juridique*. (Traduit de l' allemand par Olivier Jouanjan). Paris: L'Éviathan/PUF.
- Ost, F. & Kerchove, M. 1994. *Le jeu: un paradigme pour le droit*. Paris: LGDJ.
- Oviedo, J. M. M. (1972). *Formación y aplicación del derecho - aspectos actuales*. Madrid: Instituto de Estudios Políticos.
- Palmer, R. E. (1989). *Hermenêutica*. Lisboa: Edições 70 Ltda.
- Pasquieu, C. (1979). *Structure logique de la règle*. In *Introduction à la théorie générale et la philosophie du droit*. 5. ed. Paris: Delachaux et Nestlé Éditeurs.
- Perelman, C. (1997). *Retóricas*. (Translated by. Maria E. G. G. Pereira). São Paulo: Martins Fontes.
- Ricouer, P. (1994). *Tempo e narrativa*. (Translated by Constança Marcondes César). Tomo I, Campinas: Papyrus.

- Rottleuthner, H. (1986). *Un cas récent: l'autopoïésis dans le droit* (Le système juridique en tant que système autopoïétique). In Archives de philosophie du droit, t. 31, le système juridique. Paris: Sirey.
- Schapp, J. (1997). *Problemas fundamentais da metodologia jurídica*. Porto Alegre: Sérgio Antonio Fabris Editor.
- Seidenberg, A. (1978). *The origin of mathematics*. In *Archive for History of Exact Sciences*. C. Truesdell Ed., Vol, 18, n°4, Springer-Verlag: Berlin-Heidelberg-New York.
- Szabó, Á. (1967). *Greek dialectic and Euclid's axiomatic*. In Lakatos, J. (Ed.) *Problems in the philosophy proceeding of the international colloquium in philosophy of science*. London, 1965, v. 1, North-Holland P. Co. Amsterdam.
- Terré D. (1998). *Les dérives de l'argumentation scientifique*. Paris: Presses Universitaire de France.
- Teubner, G. (1989). *O direito como sistema autopoïético*. Lisboa: Fundação Calouste Gulbenkian.
- Vernengo, R. J. (1976). *Curso de teoría general del derecho*. 2. ed. Buenos Aires: Cooperadora de Derecho y Ciencias Sociales.
- Warat, L. A. (1995). *A epistemologia jurídica da modernidade*. In *Introdução Geral ao Direito*, v. II. Porto Alegre: Sergio Antonio Fabris Editor.

Maria Francisca Carneiro, having received PhD in Law, Master's degree in Science Methodology, Bachelor's degree in Philosophy, and carried out post-doctoral research on Philosophy, is Membro do Centro de Letras do Paraná Corresponding Member of the Italian Society for Law and Literature, Editorial Board Member of the International Journal of Law, Language & Discourse, and of the Scientific & Academic Publishing. Address: Federal University of Paraná Rua Marcelino Nogueira, 536, Curitiba, PR, Brazil. Email: mfrancis@netpar.com.br.