

# TIPPING POINT: WILL THIS PANDEMIC MAINSTREAM ONLINE LEARNING IN PHILIPPINE LEGAL EDUCATION?\*

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## PROLOGUE

Online learning traces its roots from distance education, which evolves based on the available technology. In 1728, assignments, called correspondence courses, were distributed and collected via parcel post.<sup>1</sup> Centuries later, in 1919, distance education also took place when University of Wisconsin professors began the first federally licensed radio station dedicated to educational broadcasting.<sup>2</sup> In recent history, it took the form of television broadcasts, videocassettes, and stand-alone educational software.<sup>3</sup> Its latest iteration is online learning.

Curiously, despite studies showing its effectiveness even when used by itself,<sup>4</sup> online learning has not been adopted as a mainstream pedagogical (*or to be more accurate*, andragogical) tool by law schools here and abroad. In the United States (“US”) alone, around 30 of the Top 100 law schools (102 due to ties) have some form of online classes—*not online programs*. In the

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<sup>1</sup> Mary Sharp Emerson, *Going the Distance: Why Online Learning Works*, HARVARD EXTENSION SCHOOL, Mar. 17, 2020, at <https://www.extension.harvard.edu/inside-extension/going-distance-why-online-learning-works>

<sup>2</sup> *Id.*

<sup>3</sup> BARBARA MEANS, YUKIE TOYAMA, ROBERT MURPHY, MARIANNE BAKIA & KARLA JONES, EVALUATION OF EVIDENCE-BASED PRACTICES IN ONLINE LEARNING: A META-ANALYSIS AND REVIEW OF ONLINE LEARNING STUDIES 9 (2010), *available at* <https://www2.ed.gov/rschstat/eval/tech/evidence-based-practices/finalreport.pdf>

<sup>4</sup> *Id.* at xviii.

Philippines, legal education institutions (“LEI”)<sup>5</sup> never embraced online learning. This is unsurprising because only a few higher education institutions (“HEI”), to which LEIs are attached, invested therein. So, too, because the Legal Education Board (“LEB”), as regulator of legal education, proscribes the use of distance learning.<sup>6</sup>

However, law schools tipped towards online learning as a result of the coronavirus disease (“COVID-19”). In the US alone, it was reported that all of its 199 ABA-accredited law schools have moved entirely online, less than a week after President Donald Trump declared a national emergency.<sup>7</sup> Similarly, in our country, the LEB was forced to momentarily lift the abovementioned prohibition through Memorandum Circular Nos. 54 and 55. Caught unprepared to face the challenge brought about by the pandemic, LEIs are now expressly permitted to “formulate contingency plans in response to COVID-19 including the conduct of alternative modes of instruction and off-campus learning to ensure minimal disruption to studies.”<sup>8</sup>

Could COVID-19 be the tipping point towards online legal education? Will it force even the most loyal adherents of the traditional methods to accept online learning as part of the mainstream law school pedagogy? If it is not, what may be its effect on Philippine legal education?

### A. Precis

PART I of this essay argues that the pandemic is not and will not be the tipping point to the system-wide acceptance of online legal education. On

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<sup>5</sup> While § 5(b) of LEB Mem. Order No. 1 (2011) used the term “law school,” the Legal Education Board (LEB) started calling law schools as LEIs in LEB Mem. Order No. 9 (2017). This nomenclature was proposed by the author, when he was still a LEB Commissioner/Regular Member to Rep. Rufus Rodriguez on May 23, 2014, as part of his suggested amendments to Rep. Act. No. 7662 (1993) or the “Legal Education Reform Act of 1993,” as well as to the LEB *en banc* on Jan. 28, 2015, as part of his recommendation to adopt a Legal Education Management Information System. Subsequent use by the LEB of this nomenclature vacillates. The term “LEI” was again employed in LEB Mem. Order No. 15 (2018).

<sup>6</sup> The limitations on the delivery of courses are provided under § 18(a) of LEB Mem. Order No. 1 (2011), to wit: (a) all subjects in the curriculum must be taken within the entire semester; (b) their delivery cannot be delivered in modular fashion (i.e. completing the subject by a class held continuously for a number of days, although satisfying the required number of hours); and (c) *distance education shall not be allowed, unless otherwise provided for by the LEB.*

<sup>7</sup> Paul Caron, *100% Of Law Schools Have Moved Online Due To The Coronavirus*, TAXPROF BLOG, Mar. 18, 2020, at [https://taxprof.typepad.com/taxprof\\_blog/2020/03/list-of-law-schools-that-have-moved-online-due-to-the-coronavirus.html](https://taxprof.typepad.com/taxprof_blog/2020/03/list-of-law-schools-that-have-moved-online-due-to-the-coronavirus.html)

<sup>8</sup> LEB Mem. Circ. No. 55 (2020), item 3; LEB Mem. Circ. No. 54 (2020), item 4.

the other hand, the aspect of legal education to which online learning will most likely have a significant effect is presented in PART II.

## PART I

*“The tipping point is that magic moment when an idea, trend, or social behavior crosses a threshold, tips, and spreads like wildfire.”*

—Malcolm Gladwell<sup>9</sup>

My earliest encounter with the *Tipping Point* model was in Detroit, during the fall break of 2018. Ignorant of its contemporary history, I was surprised to see that, unlike other big American cities, Detroit was homogenous—homogenously black.<sup>10</sup> It was explained to me that this was due to the “white flight” phenomenon. One of the oft-cited explanation for which is the *Tipping Point* model posited by Nobel Prize winner Thomas Schelling.

According to Schelling, white flight may have resulted when the tipping point is reached, *that is*, that moment in time when whites feel that they are in danger of achieving minority status.<sup>11</sup> Thus, even the most non-racist or tolerant white, who initially did not mind the presence of colored people or may even prefer integration,<sup>12</sup> would leave due to a chain reaction. In other words, it is “the critical *point* in a situation, process, or system beyond which a significant and often unstoppable effect or change takes place.”<sup>13</sup>

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<sup>9</sup> MALCOLM GLADWELL, *THE TIPPING POINT*, back cover (2006).

<sup>10</sup> According to the United States Census, as of July 1, 2019, Detroit has a 78.6% black population. Compare this to Chicago (30.1%), New York City (24.3%), Los Angeles (8.9%), and the entire state of Michigan (14.1%). See United States Census Bureau, *Quick Facts: Los Angeles city, California; Chicago city, Illinois; New York city, New York; Detroit city, Michigan*, UNITED STATES CENSUS BUREAU WEBSITE, at <https://www.census.gov/quickfacts/fact/table/losangelescitycalifornia,chicagocityillinois,newyorkcitynewyork,detroitcitymichigan,MI/PST045219>

<sup>11</sup> Thomas Schelling, *Dynamic Models of Segregation*, 1 J. MATHEMATICAL SOCIOLOGY 143, 181 (1971).

<sup>12</sup> *Id.* at 148.

<sup>13</sup> *Tipping point*, MERRIAM-WEBSTER DICTIONARY, at <https://www.merriam-webster.com/dictionary/tipping%20point>

After this, the tipping point model was soon applied to explain other phenomena, such as the Arab Spring,<sup>14</sup> climate change,<sup>15</sup> and the #MeToo movement.<sup>16</sup>

Before I further discuss why the pandemic is not and will not be the tipping point to the mainstreaming of online legal education, a clarification on the nomenclature used is in order.

When I use “distance education,” I partly adopt the definition used in Standard 306(a) of the *American Bar Association Standards and Rules of Procedure for Approval of Law Schools 2019-2020*.<sup>17</sup> Thus, “distance education or learning” is one in which students and the faculty member are separated from each other. Instruction is delivered using any mode or technology that supports regular and substantive interaction among students and between the students and the faculty member, either synchronously or asynchronously.

On the other hand, “online education or learning” is “learning that takes place partially or entirely over the Internet.”<sup>18</sup> In other words, learning should have a significant Internet-based instructional component.<sup>19</sup> Online learning has two purposes:

1. To serve as an alternative to the traditional onsite (or face-to-face) learning or education, thus, it is totally conducted online. Hence, *pure online learning*, or
2. To enhance the traditional onsite learning, thus, online learning components are combined or blended. This

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<sup>14</sup> Leila Hudson & Matt Flannes, *The Arab Spring: Anatomy of a tipping point*, AL JAZEERA, Sept. 1, 2011, at <https://www.aljazeera.com/indepth/opinion/2011/08/201183081433165611.html>

<sup>15</sup> Fred Pearce, *As Climate Change Worsens, A Cascade of Tipping Point Looms*, YALE ENVIRONMENT 360, Dec. 5, 2019, at <https://e360.yale.edu/features/as-climate-changes-worsens-a-cascade-of-tipping-points-looms>

<sup>16</sup> Julia Salasky, *The #MeToo campaign has reached the tipping point, and now we need to focus on the power of the law*, INDEPENDENT, Jan. 21, 2018, available at <https://www.independent.co.uk/voices/metoo-sexual-assault-harassment-gender-equality-john-worboys-law-justice-a8170546.html>

<sup>17</sup> AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2019-2020 (Erin Reuhrwein ed., 2019).

<sup>18</sup> Means et al., *supra* note 3, at 9.

<sup>19</sup> *Id.*

technology-enabled learning is called *blended* or *hybrid learning*.<sup>20</sup>

Simply put, distance education refers to the situs of the instruction. Online learning refers to the platform of instruction.

One more thing: distance education may also be “synchronous,” which “refers to the teaching and learning activity happening at the same time, real time,”<sup>21</sup> and is used to “approximate face-to-face teaching strategies.”<sup>22</sup> Examples of synchronous technologies are webcasting, chat rooms, and desktop audio/video technology.<sup>23</sup> It may also be “asynchronous,” where “interaction is not live or in real time. Messages are sent at one time and response from learner is given later.”<sup>24</sup>

When I talk about mainstreaming online legal education, I pertain to the second-order change (i.e. transformation phase) following the SAMR Model for Technology Integration.<sup>25</sup> This is because, right now, a number of law instructors have already been using online tools for learning (e.g. sending electronic copies of syllabus via electronic mail). However, this is not maximizing online learning, but using online tools as mere substitutes for some tasks or aspects. Below is a summary of the SAMR Model:

Change	Phase	Definition	Illustration
No Technology			
<b>Enhancement</b>	<b>Substitution</b>	Technology acts as direct tool with no functional change.	Send reading materials via email; Online quiz via Google Forms; Class via Zoom

<sup>20</sup> *Id.* See also Christine Diane Lim, Exploring Educational Platforms and Community Behavior to support DLSU Online Blended Learning Initiative, presented in DLSU Research Congress 2016, De La Salle University, Manila (Mar. 7-9, 2016), available at <https://www.dlsu.edu.ph/wp-content/uploads/pdf/conferences/research-congress-proceedings/2016/GRC/GRC-LLI-002.pdf> (Emphasis supplied.)

<sup>21</sup> *Lim, supra* note 20, at 2.

<sup>22</sup> Means et al., *supra* note 3, at 1.

<sup>23</sup> *Id.*

<sup>24</sup> Lim, *supra* note 20, at 2.

<sup>25</sup> Reuben Puentedeura, Building Upon SAMR, at <http://hippasus.com/rrpweblog/archives/2012/09/03/BuildingUponSAMR.pdf>. See also Patrick Parsons, *Talking Tech: TPACK & SAMR: Real Frameworks for Evaluating Instructional Technology*, 24 AALL SPECTRUM 33 (2020).

<b>Transformation</b>	<b>Augmentation</b>	Acts as direct tool substitute with functional improvement.	Send links to files; Online quiz with auto-grading; Online class with real-time polls
	<b>Modification</b>	Allows significant task redesign.	Create class webpage with files linked; Online quiz with automatic feedback for wrong answers
	<b>Redefinition</b>	Allows creation of new task previously unconceivable.	Online class; Individualized online quiz (with mastery path)

**TABLE 1.** Summary of the SAMR Model.

With a common language, we proceed to the discussion of why the pandemic is not the tipping point.

Fortunately or unfortunately, I submit that the pandemic is not and will not be the tipping point to the mainstreaming of online legal education because of the following reasons: (a) internet access and reliability in the Philippines are substandard; (b) legal education is designed to approximate only the traditional aspect of legal practice; (c) the Socratic Method is still considered as the gold standard in law school pedagogy; (d) a great majority of law instructors are adjunct; and (e) many LEIs do not have a learning management system (“LMS”).

### **A. The reality of poor internet connectivity**

The LEB reported that 56% of law instructor respondents and 35% of law student respondents had stable internet. Meanwhile, a great portion of both groups had intermittent quality of internet access (44% for instructors and 64% for students).<sup>26</sup> Furthermore, 61% of law student respondents are

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<sup>26</sup> Aaron Dimaano, Responding to a Pandemic: Refocusing on Welfare, Quality of Learning and Reducing Inequalities in Legal Education [hereinafter “LEB Policy Paper”], at 5.3 (Apr. 17, 2020), available at [http://leb.gov.ph/wp-content/uploads/2020/04/LEB-Policy-Paper-on-the-Pandemic-Response-1.pdf?fbclid=IwAR1lbPhd3g6eXvMwjWL\\_dDdPIOTiwF\\_3MqCl0g51DieGddmLvET6usbxPM](http://leb.gov.ph/wp-content/uploads/2020/04/LEB-Policy-Paper-on-the-Pandemic-Response-1.pdf?fbclid=IwAR1lbPhd3g6eXvMwjWL_dDdPIOTiwF_3MqCl0g51DieGddmLvET6usbxPM)

living in areas where only 1% to 20% of households have internet access, and 38% of them are living in areas where 20% to 30% of households have internet access. Ironically, an overwhelming majority of law students (89%) responded that they will be able to access it in their own residence either using broadband or mobile data technologies.<sup>27</sup>

Indeed, even if we disregard the results of the LEB Policy Paper for being non-representative,<sup>28</sup> the most recent National Telecommunications Commission (NTC) figures<sup>29</sup> will point to the same conclusion. In 2016, the percentage of individuals with access to the internet stands at 63.58%, while only 34% of households have internet connection. Also, mobile broadband penetration is only 41.58% while fixed broadband penetration stands at 8%. These figures indicate problems with internet access. There is also a problem with internet speed reliability. In the *Q1 2017 State of the Internet Report*, the Philippines placed 100<sup>th</sup> out of the 239 countries and regions surveyed, with an average of 5.5 megabytes per second.<sup>30</sup> We also placed last among the 15 Asia Pacific countries surveyed, and last among the six South East Asian countries surveyed. These figures alone attest to the fact that internet connectivity is a real problem. This problem is not exclusive to provinces. Although majority of the students (41%) and instructors (40%) are in the National Capital Region (“NCR”), they still reported problems with internet connectivity.<sup>31</sup>

Substandard internet access and reliability obviously do not create an environment that is conducive to the mainstreaming of online learning. In fact, there are anecdotal reports indicating that students, in gaming the system,

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<sup>27</sup> *Id.* According to the Policy Paper, this was based on the report of the Philippine Statistics Authority.

<sup>28</sup> A note, however, on the LEB Policy Paper. As disclosed, it employed convenience sampling, a non-probability type of sampling, which is known for disadvantaged generalizability. Simply put, by using an online survey, the respondents are only those who have internet access, aware of the existence of the survey, and are interested in filling-up the survey regardless of whatever motivations they may have. Thus, at the onset, there is bias already – especially if we consider the pervasive negative student sentiment at the moment. Nonetheless, the Policy Paper admits that the results are not representative of the legal education community. *Id.* at 5. They do, however, provide insights.

<sup>29</sup> National Telecommunications Commission (NTC), Department of Information and Communications Technology (DICT) Consolidated ICT Infrastructure Data (Dec. 2019), available at <https://dict.gov.ph/ictstatistics/wp-content/uploads/2020/01/NTC-data-as-of-December-2019.pdf>

<sup>30</sup> JON THOMPSON, JENNIFER SUN, RICHARD MÖLLER, MATHIAS SINTORN & GEOFF HUSTON, STATE OF THE INTERNET Q1 2017 REPORT (David Belson ed., 2017), available at <https://www.akamai.com/us/en/multimedia/documents/state-of-the-internet/q1-2017-state-of-the-internet-connectivity-report.pdf>

<sup>31</sup> LEB Policy Paper, *supra* note 26, at 4.1 & 4.2.

pretended that their internet connection is unstable in order to escape from oral recitations. This leads me to my next point.

### **B. The untouchable fixation with the Socratic Method**

Law instructors still consider the modified Socratic-Langdellian Method<sup>32</sup> (“Socratic Method”) as the gold standard in law school pedagogy. Developed by Harvard Law School Dean Christopher Columbus Langdell, this “distinct legal pedagogy” uses an “approach to law teaching based on doctrines gleaned from cases published in books.”<sup>33</sup> This was based on his belief that law is a pristine science, therefore likening a law library to a chemistry laboratory, and court decisions to experiments.<sup>34</sup>

Notably, however, some legal educators started advocating for its total elimination or treating it as a mere supplementary strategy. Despite being

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<sup>32</sup> I purposely termed it as modified Socratic Method because the Socratic Method, as defined, tests commonly held principles to determine their consistency with an individual’s beliefs, while eliminating those contradictions. Most of the time, there are no right or wrong answers. This is different in practice, especially in the Philippines, where there are set answers.

<sup>33</sup> Larry Ribstein, *Practicing Theory: Legal Education for the Twenty-First Century*, 96 IOWA L.R. 1649, 1653 (2011).

<sup>34</sup> Paul Carrington, *Book Review: Law School: Legal Education in America from the 1850s to the 1980s*, 72 CAL. L. REV. 477, 487 (1984).



criticized as being utterly ineffective<sup>35</sup> or grossly insufficient,<sup>36</sup> the Socratic Method remains untouchable because of its high correlation with achievement in the Bar Examination.<sup>37</sup>

That is why, since the birth of American-style legal education system, and through the establishment of the University of the Philippines (“UP”) College of Law, pedagogy among LEIs remained the same. Justice Ruth Florida Romero aptly concluded that “[i]n the Philippines legal instruction in the classroom is done mainly through the case method developed by Dean [...] Langdell of the Harvard Law School and through lectures and

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<sup>35</sup> There is sufficient literature claiming that the Socratic Method is now an impaired method. The philosophy behind it, borne out of the peculiar circumstances during the time of Dean Langdell, “was [already] dated by the 1920s. It was a relic by the 1960s. Law is now regarded as a means rather than an end, a tool for solving problems.” *Editorial: Legal Education Reform*, THE NEW YORK TIMES, Nov. 25, 2011, available at <http://www.nytimes.com/2011/11/26/opinion/legal-education-reform.html>. And since the emphasis of the method is definitely the theoretical, the gap between legal education and practice of law is regrettably widening (Ribstein, *supra* note 33, at 1651). Recently, numerous empirical studies showed the ineffectiveness of this method to genuine learning due to the erroneous assumption that “all students will learn in a parallel fashion from any given exchange between student and instructor.” Robin Boyle & Rita Dunn, *Teaching Law Students through Individual Learning Styles*, 62 ALB. L. REV. 213, 218 (1998). This bias towards group learning forgets that each student has his or her own learning styles. *Id.* And even if we consider it as an individualized (*not* group) method, it still does not improve learning because “...a Socratic dialogue’s series of questions has no topic sentences, no conclusions, and no transitions to a new topic. It gives students few clues about the structure of the information they’re trying to learn. Their natural focus is on answering the question we have just asked (the tree), not on recognizing how that question fits into a larger pattern (the forest).” Michael Gibson, *A Critique of Best Practices in Legal Education: Five Things All Law Professors Should Know*, 42 U. BALT. L. REV. 1, 15 (2012). There is also a plethora of empirical evidence showing that SM causes multiple psychological problems. Ruta Stropus, *Mend It, Bend It, and Extend It: The Fate of Traditional Law School Methodology in the 21<sup>st</sup> Century*, 27 LOY. U. CHI. L.J. 449, 456-460 (1996).

<sup>36</sup> Nonetheless, there are a number of legal academics who still believe in the pedagogical values of the modified Socratic-Langdellian method: (a) analytical, (b) intellectual, and (c) verbal attributes. These are all indispensable in the legal profession. *See* footnote 4 of Stropus, *supra* note 35, where she cited several journal articles defending this method). However, they conceded that it will not, when used alone in law school, adequately prepare law students to the future demands of the profession.

<sup>37</sup> This traditional teaching method is the only significant predictor in bar examination achievement. Most of the identified predictors (e.g. student learning strategies, curriculum, institutional responses) have weak positive correlations. *See* Madelene Sta. Maria, Marshall Valencia, Christopher Cruz, Louie Montemar, Charisse Yap-Tan & Justin Sugang, *A baseline study on Philippine legal education (2010)* (unpublished manuscript, on file with the University Research Coordination Office, De La Salle University) [hereinafter “Baseline Study on Philippine Legal Education”].

recitations.”<sup>38</sup> A survey conducted in the late 1970s found that more than 70% of law professors assigned cases, and 91.3% of NCR and 69.6% of non-NCR students answered that oral recitation was expected of them during class.<sup>39</sup> More than 40 years thereafter, its dominance remains unrivaled. In 2010, a system-wide empirical study commissioned by De La Salle University (“DLSU”) College of Law found that oral recitations and discussion were used more extensively than lectures.<sup>40</sup> And the same results appeared three years after in a follow-up study I conducted for my Juris Doctor thesis.<sup>41</sup>

What makes the Socratic Method effective in facilitating learning is the immediacy of feedback—the subsequent question thrown by the instructor, the intonation, and even other non-verbal cues and gestures. Conducting recitations through online platforms may not approximate the benefits when conducted onsite. Obviously, with only the professor’s face projected, the non-verbal cues are almost gone. Feedback is not as immediate as before. Coupled with substandard internet access and reliability, employing this method certainly does not help the cause of online learning since synchronous learning is bandwidth-intensive.

### **C. The stagnant design of Philippine legal education**

As discussed, the Socratic Method, which has for its objective equipping law students with analytical skills, is the prevalent teaching strategy among LEIs. It is through this method that the proverbial *thinking like lawyers* is realized. The design behind it is the simulation of an adversarial court proceeding wherein the professor takes the role of a judge, while the student being asked (*or* grilled) takes the role of a counsel.<sup>42</sup>

The method and the design behind it actually reflect the prevailing notion of legal practice, *that is*, litigation—both persisting notwithstanding the

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<sup>38</sup> Florida Ruth Romero, *Legal Education: Philippines*, in 3 1980 ASEAN COMPARATIVE LAW SERIES 41 (Purificacion Valera Quisumbing ed., 1982).

<sup>39</sup> Irene Cortes, *An Appraisal of the Law Curriculum and Prevailing Methods of Teaching Law*, 1 PHIL. Y.B. LEGAL EDUC. 30 (1978).

<sup>40</sup> Baseline Study on Philippine Legal Education, *supra* note 37, at 32.

<sup>41</sup> Justin Sugang, *A Problem Bigger than Law Schools: Reforming Philippine Legal Education through an Institutional Approach* (2014) (unpublished thesis for J.D., De La Salle University, on file with the De La Salle University College of Law).

<sup>42</sup> Lisa Penland, *The Hypothetical Lawyer: Warrior, Wiseman, or Hybrid?* 6 APPALACHIAN J. L. 73 (2006).

changing dynamics in the legal profession<sup>43</sup> or even the promulgation of *Cayetano v. Monsod*.<sup>44</sup> Nonetheless, this obvious bias towards litigation makes it difficult for LEIs to adopt other teaching strategies, despite requiring other modes. To illustrate, the LEB was compelled to incorporate Alternative Dispute Resolution as one of the core courses in the Model Law Curriculum due to the gradual upstaging of litigation by arbitration not only in international but also in domestic disputes, as well as the adoption of its mechanics by government agencies.<sup>45</sup> However, the way its content is delivered is via the Socratic Method. Notably, the practical skills instilled by this method (e.g. those needed in adversarial court proceedings) are in no way appropriate to those required by arbitration or mediation (e.g. negotiation and writing skills). How then would the innovative methods of online learning be adopted if the relatively newer legal fields, which call for different practical skills, are still taught traditionally?

#### **D. The overwhelming dependence on adjunct instructors**

In responding to the pandemic, big LEIs favored the asynchronous mode of distance learning because it addresses “inequality gaps and bring all students to a more or less level playing field.”<sup>46</sup> A number of them made official that preference,<sup>47</sup> and some even prohibited synchronous learning outright.<sup>48</sup> The reasons are obvious. Asynchronous learning enables “students to study at their own pace,”<sup>49</sup> allowing them to pursue other pressing matters.

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<sup>43</sup> Nowadays, “lawyers do more non-litigious work than litigious ones and are highly involved in every aspect of business management.” Sedfrey Candelaria and Maria Christina Munding, *A Review of Legal Education in the Philippines*, 55 *ATENEO L.J.* 582, 589 (2010). In fact, one could even say that a good lawyer could avoid going to courtrooms, *at all*. Lawyers are engaged as administrators and policy-makers, and may be involved in advocacy and lobbying. All of which are squarely within the definition of law practice in *Cayetano*, there being an application of legal knowledge or skill.

<sup>44</sup> G.R. No. 100113, 201 SCRA 210, Sept. 3, 1991. The expanded definition of legal practice covers the mere giving out of legal information to laymen (*Ulep v. The Legal Clinic, Inc.*, B.M. No. 553, June 17, 1993), and even the teaching of law (Re: Letter of the UP Law Faculty entitled “Restoring Integrity: A Statement by the Faculty of the University of the Philippines College of Law on the Allegations of Plagiarism and Misrepresentation in the Supreme Court, A.M. No. 10-10-4-SC, Mar. 8, 2011).

<sup>45</sup> LEB Mem. Order No. 1 (2011), § 55.

<sup>46</sup> UP College of Law Mem. No. FCT-2020-026 (Mar. 30, 2020) (unpublished memorandum for faculty and students, on file with the UP College of Law).

<sup>47</sup> Ateneo Law School (“ALS”), DLSU College of Law, UP College of Law, and University of San Carlos (“USC”) School of Law and Governance.

<sup>48</sup> ALS, UP & USC.

<sup>49</sup> ALS Mem. No. 2020-14-G (Apr. 13, 2020), *available at* <https://ateneo.edu/aps/law/news/memo-als-community>

The student may be sick, tending to a sick relative, or doing errands because other housemates may have an underlying disease. It also “take[s] due consideration of the reality of poor internet connectivity”<sup>50</sup> in the country.

That asynchronous learning is effective has support in educational literature, such as in teaching library and information science,<sup>51</sup> agricultural education,<sup>52</sup> and pharmacy education.<sup>53</sup> So, too, in legal education.<sup>54</sup> However, in order to make it effective, asynchronous learning frontloads time and effort from the content delivery to the preparation phase. An instructor must pre-record teaching modules, upload the syllabus, reading packets, and assignments, and create discussion boards and other assessment tools, *all beforehand*. Otherwise, its purpose is defeated.

This, however, poses a challenge when we consider that more than half of the faculty members of LEIs have adjunct status (i.e. engaged part-time).<sup>55</sup> More accurately, the LEB Policy Paper pegs it at 94%, with this majority status overwhelmingly maintained across the different major regional categories.<sup>56</sup> Law instructors in the Philippines, especially the veteran ones, do not extensively prepare for a course before a semester. Since majority are practitioners, the good ones simply come to the classroom with a textbook; the better (*or cocky*) ones with head knowledge. This is made more complicated when we follow recommendations from existing literature that online learning is made more effective when asynchronous is combined with synchronous (functioning as introductory or integrative parts of the course) modes.

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<sup>50</sup> USC Advisory to our Law Students (Mar. 27, 2020), available at <https://www.facebook.com/lexcircle/photos/a.214196325324284/3078787895531765>

<sup>51</sup> Susan Stansberry, *Effective Assessment of Online Discourse in LIS Courses*, 47 J. EDUC. FOR LIBR. & INFO. SCI. 27, 28 (2006).

<sup>52</sup> Sara Brierton, Elizabeth Wilson, Mark Kistler, Jim Flowers & David Jones, *A Comparison of Higher Order Thinking Skills Demonstrated in Synchronous and Asynchronous Online College Discussion Posts*, 60 NACTA J. 14, 20 (2016). Note, however, that “neither group demonstrated anything but small forays into higher order and critical thinking skills.”

<sup>53</sup> Carol Motycka, Erin St. Onge & Jennifer Williams, *Asynchronous Versus Synchronous Learning in Pharmacy Education*, 2 J. CURRICULUM & TEACHING 63, 65 (2013).

<sup>54</sup> Yvonne Dutton, Margaret Ryznar & Kayleigh Long, *Assessing Online Learning in Law Schools: Student Says Online Classes Deliver*, 96 DENV. L. REV. 493, 521 (2019). For further readings on the current state of online education in American legal education, see Michele Pistone, *Law Schools and Technology: Where We Are and Where We Are Heading*, 64 J. LEGAL EDUC. 586 (2015).

<sup>55</sup> Josefe Sorretera-Ty, Law School Administration Cluster: Current State, presented at the 2019 Legal Education Summit, Manila (July 31-Aug. 1, 2019), at 21 & 23.

<sup>56</sup> LEB Policy Paper, *supra* note 26, at 4.2.

### E. The total absence of LMS

Lastly, the effectiveness of asynchronous learning seems to be but a function of online tools—specifically, the use of an LMS.<sup>57</sup> If the tools are not integrated, then it would be very difficult for instructors to see the mastery of students. Consider the following:

One of the things that I noticed when teaching online was that I had much greater access to students' work than I did in the face-to-face course. In the online course, I was able to see every post students made in the discussion board, and I was able to watch their preparation for negotiation, their performance in that negotiation, and their reflection on their performance. Since much of this interaction was conducted in writing, I was able to judge their attention to detail, their ability to think clearly, and the extent of their participation. In addition to assessing their assignment, the LMS allowed me to observe how often they accessed the material in the course and where they went within the course. While I can look at the classroom in a face-to-face environment and assess from body language whether or not students comprehend the material, I am never quite sure. The distance-learning environment allows me to more accurately gauge how students are processing the material.<sup>58</sup>

Imagine a professor conducting an asynchronous class, say a discussion board through Viber, sending assignments through email, and holding online quizzes through Survey Monkey. In this case, I would daresay that asynchronous learning is no better than the traditional onsite class. The diverse and unintegrated tools will render it difficult for a professor to accurately monitor student progress and, consequently, give useful feedback immediately. Without the necessary tools, the benefits of asynchronous learning are near absent.

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<sup>57</sup> An LMS is, from a technical standpoint, “a server-based software program that interfaces with a database containing information about users, courses and content.” From a functional standpoint, it “provides a place for learning and teaching activities to occur within a seamless environment, one that is not dependent upon time and space boundaries... These systems allow educational institutions to manage a large number of fully online or blended (part online and part face-to-face) courses using a common interface and set of resources.” See Anthony Piña, *An Overview of Learning Management Systems*, in *LEARNING MANAGEMENT SYSTEM TECHNOLOGIES AND SOFTWARE SOLUTIONS FOR ONLINE TEACHING: TOOLS AND APPLICATIONS 1-2* (Yefim Kats ed., 2010).

<sup>58</sup> Sean Nolon, *Using Distance Learning to Teach Environmental Problem Solving Skills and Theory*, 28 J. ENVTL L. & LITIG. 211, 225 (2013).

Sometime in January 2019, DLSU has rolled-out its LMS via Canvas (called AnimoSpace),<sup>59</sup> with its College of Law undergoing training as early as November 2019. Remarkably, Canvas is used by more than 3,000 universities around the world. Among the notable American law schools that adopted it are Harvard Law School, Yale Law School, Stanford Law School, University of Michigan Law School, Georgetown University Law Center, and University of Chicago Law School. While the Far Eastern University, Ateneo de Manila University, and UP has Canvas, Moodle, and University Virtual Learning Environment respectively, none of their constituent LEIs bothered to adopt an LMS. The USC recently adopted Schoology as a response to the pandemic.

## PART II

Considering the foregoing reasons, the pandemic may not be the tipping point to the system-wide acceptance of online legal education. Although some aspects of teaching already utilize some online tools (i.e. sending out syllabi, answering student queries via electronic mail, or forming Facebook or Google groups to facilitate communication), and most, if not all, LEIs have turned to online learning due to the pandemic, COVID-19 will not usher the mainstreaming of online legal education. Once onsite classes becomes feasible, perhaps through mass production of an effective vaccine, I surmise that all, if not most, law instructors will conveniently reinstate the traditional pedagogical or andragogical mode of teaching.

However, with online learning being currently forced even to the most loyal adherents of the Socratic Method, COVID-19 may have given all of us a foretaste of its potential. And what I project right now are the following: (a) utilitarian (*not* pedagogical) adoption of online legal education; and (b) adoption via its blended form. While not reaching the transformation phase of the SAMR Model, these adoptions will most likely be the lasting effects of the pandemic.

*First*, online legal education may be adopted *not for its pedagogical value*, but for a utilitarian purpose, enabling us to complete the substitution phase. I predict that there may be a rise in its use as an alternative to make-up classes. In 2019, there are at least 21 suspended class days in Manila due to inclement weather, strikes, and the hosting of Southeast Asian games,<sup>60</sup> on top of

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<sup>59</sup> DLSU, *AnimoSpace: The Lasallian Learning Management System*, MEDIUM, Dec. 3, 2018, at <https://medium.com/@DLSUManila/animo-space-the-lasallian-learning-management-system-ff836eb17970>

<sup>60</sup> Manually culled from #WalangPasok in Twitter.com.

national and local holidays. LEIs or professors may choose to hold sessions via the Internet to compensate for the suspended onsite class. Moreover, make-up classes—be it synchronous or especially if asynchronous—may likewise be conducted online to compensate for the instructors’ absences due to personal or professional reasons. And this, especially if utilizing pre-recorded videos or podcasts, may be used for all classes in all LEIs where he may be teaching.

*Second*, online education may be adopted in its blended form, pushing us further to the augmentation phase. For example, law instructors who may have been exposed thereto may use discussion boards, pre-recorded video lectures, or podcasts. He may also deploy electronic quizzes. These technology-assisted learning methods may act as a supplement to the onsite Socratic Method to further enrich classroom discussion and free him from manually checking objective-type questions. Since results may be obtained in real-time, he may even use electronic quizzes as a diagnostic tool deployed before beginning a new topic to give him a sense of aspects of the assignment that may need expounding.

## EPILOGUE

Indeed, COVID-19 significantly disrupted the Philippine legal education system, forcing even the traditionalists to consider online learning. However, no amount of watering will make a plant grow in infertile soil. With the kind of system currently in place, with the actors, philosophy, and focus dominating therein, and with the hard and soft infrastructure within its reach, online legal education will not be part of the mainstream law school pedagogy—*despite the pandemic*. And it will not be a legitimate and effective alternative to the prevailing teaching strategies among Philippine LEIs—*in spite of its potential*.