Role Play and the Law Student: Clinical and Experiential Learning

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“Every teacher, before he begins the work of instruction, should have some definite idea of what constitutes an education; otherwise he may work to very little purpose.”

- The Law School has never been an ivory tower:
- “Law as a discipline is constantly fed with practical problems and materials from the ‘real world’: actual rather than hypothetical cases; proposals for legislative reform; and social problems from domestic violence and crime to world peace and environmental survival.”
Legal education: dominant features

- The 3-year undergraduate degree
- The dominant influence of the legal professions: practitioners rather than educationalists have set the agenda
- The imposition of ‘core’ subjects and a ‘core’ syllabus
- The separation of academic and professional stages
- The tension between teaching law as an academic discipline and preparing students for practice.

- Law students’ intentions (1440 questionnaires; 7 ‘new’ and 2 ‘old’ universities; response rate of 63%)
- Qualify as barrister: 13.8%
- Qualify as solicitor: 34.6%
- Work in other legal capacity: 6.9%
- Post-graduate study: 3.6%
- Total: 58.6%
Legal education under scrutiny

- The most important reports on legal education were predominantly concerned with the problems of the legal profession and did not engage with law as an academic discipline or with the higher education context in which it was taught
- Omerod (1971); Benson (1979); Marre (1988)
- These reports are still the dominant influence on the teaching of law in university law schools
Omerod Report 1971

- Membership: law academics, solicitors and barristers
- Failure of the 3 interest groups to agree resulted in the present rigid structure – academic vs professional
- The academic stage was the prime responsibility of the universities BUT the professional bodies had the power to grant or withhold recognition.
- The Bar and the Law Society failed to agree on a joint professional qualification, insisting on separate courses and examinations.
The medical model?

- One proposal raised was that legal education should follow that of medicine i.e. the integration of the academic and the clinical.
- The rejection of this had two consequences:
  - (a) the uncritical acceptance of the 3-year undergraduate model,
  - (b) public funding became unavailable for post-degree professional training.
What are Law Schools for?

- Twinning describes 2 essential functions:
  - (a) the Law School as service provider for the professions (the professional school model)
  - (b) the Law School as an academic institution devoted to the enhancement of learning about Law (the academic model)
Squaring the circle?

- Introducing an element of role play in the form of clinical / experiential learning satisfies both models:
  - (a) the students is better placed to make the transition from university to work-place (especially in the context of ‘soft’ skills)
  - (b) it nurtures an holistic approach to understanding what Law is for and what law does (in the context of Llewellyn's ‘law jobs’ theory)
The skills deficit

- The skills deficit amongst law students causes a problematic transition from school to Law School
- Role play, by its very nature, allows the creative development of these skills (particularly language and articulation)
- It is, therefore, remedial as well as forward-looking
- It meets ‘universal’ needs
The challenge for the Law Teacher

• Innovation is the only game in town.
• Innovation in:
  ✓ Curriculum development
  ✓ Teaching methodology
  ✓ Assessment (both formative as well as summative)
• The lecture/seminar + coursework / examination model is no longer fit for purpose
Paradox

• While students are critical of conventional teaching and assessment, they often prefer the safety and security of the conventional over the innovative.

Manuela Renata Grosu, “The role of innovative teaching and learning methods in legal education”, *International Conference on the Future of Education*
“... the driving force for diversity and innovation is the common goal of improving the quality of student learning and achievement”

Role play: Problem solving

- There is a diversity of role play models, at least one of which is in common use in Law Schools: problem solving.
- Typically, this involves presenting the student with a given set of facts, followed by the instruction: “Advise the claimant / defendant / prosecution”.
- The problem with the problem question?
Role play: moots

• Skills:
  ✓ Fact management and fact relevance
  ✓ Research (often outside the comfort zone)
  ✓ Working with primary materials
  ✓ Analysis and selection
  ✓ Language, articulation, presentation
  ✓ Focus on tactics and strategies
  ✓ Organisation + teamwork
Key word: professionalism
Role play: client interviewing

- Skills:
  - All of the moot skills
  - Interviewing skills
  - The element of surprise
  - Dealing with the unexpected
  - Fact determination
  - Advice-giving: legal and non-legal

Key word: professionalism
Role play: Mock trials

• 1996, Enterprise in Higher Education grant: Developing mock trials for teaching legal skills, the criminal justice system and criminal law.
• Paper presented at the joint conference of the UK and Irish Association of Law Teachers, Galway, 1997
Thinking like a lawyer

• Russell, “Reflections on Learning” (2011) *The Law Teacher* 45:1
• Thinking like a lawyer may be formalistic and technical
• AND
• Highly critical and creative
Bloom, *Taxonomy of Educational Objectives* (1956)

- Thinking: low-order to high-order levels of mental activity
  - Knowledge
  - Comprehension
  - Application
  - Analysis
  - Synthesis and evaluation
- Russell: “The reality is that most law students rarely progress past the analysis stage, with a not insignificant number stagnating at the application stage”
But does it work?

- Greenwich successes in both national and international competitions
- Students who participate show an improvement in academic work and results
- Employability
- BUT
- There is a lack of empirical evidence which focuses specifically on legal education at undergraduate level
Student-centred learning

- Conventional learning is largely teacher-centred
- Role play:
  - Identifies gaps not discernible by conventional teaching
  - Focuses on students’ real knowledge and skills
  - Injects reality and context into learning
  - Effectively engages the student in the learning process
  - Allows student experimentation
  - And it is fun – role play is ‘play’!
No rose garden!

- Time consuming for both teacher and student
- Choosing the ‘right’ scenario / problem
- Student reluctance
- Perceived irrelevance
- Encouraging post-performance reflection and evaluation
- Voluntary or compulsory?
- Formative or summative?
Further references

• Kember, Ho and Hong, “The importance of establishing relevance in motivating student learning”, *Active Learning in Higher Education* (2008) 9:249

• Moizer, Lean, Towler and Abbey, “Simulations and games: Overcoming the barriers to their use in higher education”, *Active Learning in Higher Education* (2009)10:207

- Surface learning: the acquisition of largely unrelated facts ... little attempt to fit them together into a coherent whole ... does not involve significant understanding or interpretation
- Deep learning: connecting knowledge and skills into a coherent ‘whole’ ... understanding, interpretation and application ... generalising and transferring knowledge and skills
• Slides available:

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