The University of the Pacific Law Review

Volume 48 | Issue 4 Article 6

1-1-2017

Socio-Economics and other Principles of Law School Pedagogy: Introduction

Michael P. Malloy
The University of Pacific, McGeorge School of Law

Follow this and additional works at: https://scholarlycommons.pacific.edu/uoplawreview

Recommended Citation
Michael P. Malloy, *Socio-Economics and other Principles of Law School Pedagogy: Introduction*, 48 U. Pac. L. Rev. i (2017).
Available at: https://scholarlycommons.pacific.edu/uoplawreview/vol48/iss4/6

This Symposium is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in The University of the Pacific Law Review by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

Socio-Economics and other Principles of Law School Pedagogy

Introduction

Michael P. Malloy[*]

The articles that follow are based upon presentations given during a panel at the 2017 Annual Meeting of the Association of American Law Schools (AALS). The panel, *Socio-Economics of Law School Pedagogy*, was part of a full-day program organized by the AALS Section on Socio-Economics. It sought to examine the current scholarship and practical implementation of emerging approaches to law teaching and learning, against the background of socio-economic principles. Among the questions addressed by the panelists were: (*i*) What are the objectives of law school teaching and learning identified in contemporary scholarship? (*ii*) Can theory and praxis effectively operate in tandem in the law school classroom? (*iii*) Do extended narrative arcs and simulations provide opportunities for assimilating lawyering skills as well as doctrine?

Socio-economics proved to be a good starting point for such inquiries. As Professor Lynne L. Dallas has noted in her seminal work in the field, "socio-economists emphasize interdependencies and how choices of some persons are constrained by the opportunities of others."[1] I would suggest that this description could, to an appreciable degree, serve as a description of the underlying project of law school education itself. Our interactions and relationships in society are rationalized and justified as a matter of law by the trade-offs involved in competing choices and opportunities. In this sense, law is not just a source of external costs, but also has "a cultural impact on changing beliefs and the internalization of norms,"[2] what Professor Dallas refers to as "the expressive function of law."[3] Teaching law, then, is not simply the identification of a set of rules and their attendant costs; teaching must convey an understanding of the dynamics of social interaction reflected in the law and to a significant extent shaped by the law. The authors of this set of articles explores the expressive functions of the law in that regard.

The first article[4] introduces the basic theme of the panel and offers some concrete suggestions about transforming the socio-economics insight of the interactive nature of behavior into a pedagogical technique. In effect, the

---

* Distinguished Professor of Law, McGeorge School of Law, University of the Pacific.

1. LYNNE L. DALLAS, LAW AND PUBLIC POLICY: A SOCIOECONOMIC APPROACH 5 (Carolina Academic Press, 2005).

2. *Id*. at 9.

3. *See id*. at 8–9 (discussing expressive function).

4. Michael P. Malloy, *Narrative Arcs and Simulations*, 48 U. PAC. L. REV. 837, 837 (2017).

technique of a continuous simulation along a consistent narrative arc seeks to bring praxis into the traditional law classroom. The hope is that such an approach will make the assimilation of lawyering skills more effective and efficient.

Professor Hamilton's article[5] explores the use of "student e-portfolios" as a promising curricular strategy to assist law students in beginning to construct a professional identity using a digital repository for the purposeful collection of each student's work in one accessible place. The e-portfolio enables the student, working with faculty and staff, to "create evidence of learning in creative ways that are not possible with typical paper-based methods."[6] This makes it possible for students to accrete a beginning professional identity built upon their concrete work and made more accessible through the use of graphics, video, web links, and presentations. Consistent with one basic insight of socio-economics, the e-portfolio curricular strategy would seem to recognize the interactive nature of the profession and to foster interaction at several levels, assisting each student to move towards the realization of the faculty's goal of forming an ethical professional identity. This identity in turn should strengthen each student's prospects of meaningful employment after graduation, which in turn has the potential of enhancing the law school's standing and garnering stronger applications to the law school.

Professor Blissenden's article[7] melds the approaches of the first two contributions in very innovative and constructive ways. In an effort to make law teaching and learning student-centered and actively engaged, Western Sydney University School of Law has implemented a policy of providing law students with mobile devices for their learning in law. Blissenden explores ways in which that initiative has been interwoven with the techniques of pedagogy in the classroom. Beyond the traditional written page of the law school text, interactive technology opens the possibility that students may drill down into the real-world dynamics of the narrative behind the case authorities that the common law tradition focuses upon. The hope is that the heightened use of technology in the classroom storytelling methodology can facilitate active learning throughout the class. The challenge facing this approach for the future appears to be two-fold: the danger of student distraction into other available online content, and the need for effective training of law instructors in the utilization of technological advances as an instrument of their pedagogy.

---

5. Neil Hamilton, *Formation-of-an-Ethical-Professional-Identity (Professionalism) Learning Outcomes and E-Portfolio Formative Assessments*, 48 U. PAC. L. REV. 837, 847 (2017).

6. Laurie Posey et al, *Developing a Pathway for an Institution Wide ePortfolio Program,* 5 INT'L J. E-PORTFOLIO 75 (2015).

7. Michael Blissenden, *Law Student Learning, Storytelling and Student Device Initiatives*, 48 U. PAC. L. REV. 837, 875 (2017).

Professor SpearIt's article[8] also explores some of the fundamental resource and cost issues in legal education, specifically the hidden costs—or, perhaps, unacknowledged costs—associated with achieving greater diversity in legal education. While diversity is largely recognized as an important value in higher education,[9] law schools and the profession are still at this relatively late date noticeably stratified by race. In this important and thoughtful article, the author considers the variety of costs associated with achieving a more diverse law student body, including the costs of support, resources and services necessary to nurture the progress of diverse students in their law school education. He emphasizes that achieving the objective of diversity is not the end of the process but the beginning. If schools seek to achieve diversity in their student bodies, they must be able to anticipate the challenge that diversity creates for academic support and to commit strategic resources to maintain diversity and student success.

Finally, Professor Vitiello's article[10] brings us full circle to reaffirm that theoretical or doctrinal scholarship and analysis remains a critical component in legal education, as it is in the practical life of the law. This insight is an important corrective against a false inference that might be drawn from the work of this panel—that somehow the burgeoning importance of interactive and practical learning implies that theoretical analysis is to be downgraded in the teaching and practice of lawyers. I would be tempted to go further and suggest that the dichotomy of theory and practice is a false one for any truly gifted and effective lawyer. It may be true—though it is always rancorous to agree with a privileged toot—that "[t]he life of the law has not been logic; it has been experience."[11] Yet that hardly ends the discussion. What is *experience* itself if not events understood and explicated? The human perspective seems to require explanation in our experiences, and that requires theory to collaborate with praxis. In a very real sense we as lawyers bring concepts to brute reality, and we experience life clothed in ideas. It is my hope that the articles that follow will aid the reader in understanding how the life of the law is taught to those who end up living it.

---

8. SpearIt, *Not For Free: Exploring the Collateral Costs of Diversity in Legal Education*, 48 U. PAC. L. REV. 837, 887 (2017).

9. *See, e.g.*, Grutter v. Bollinger, 539 U.S. 306 (2003) (acknowledging law school's compelling interest in attaining diverse student body); Fisher v. University of Texas at Austin, 133 S.Ct. 2411, 2419–20 (2013) (citing *Grutter* with approval, but rejecting lower court's application of narrowly tailored requirement). *But see* Stephan Thernstrom, *Diversity and Meritocracy in Legal Education: A Critical Evaluation of Linda F. Wightman's "The Threat to Diversity in Legal Education,"* 15 CONST. COMMENT. 11 (1998) (considering the implications of "color-blind" admissions under California Proposition 209).

10. Michael Vitiello, *The False Dichotomy Between Theory and Skills Training: Why Good Lawyers Need to Pay Attention to Theory*, 48 U. PAC. L. REV. 837, 915 (2017).

11. OLIVER WENDELL HOLMES, JR., THE COMMON LAW 1 (1881).