Experiential Learning in the Era of Donald Trump

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Session Goals

• Explore Modern Challenges of Teaching Legislation
  – Consistent with new ABA accreditation standards
  – In current divisive political dynamics
  – Given modern university-faculty-student interactions

• Offer Concrete Experiential Learning Techniques
Colliding Complexities

- Teaching Legislation
- Teaching Experiential Courses
- Teaching Modern Students in Modern Univ.
ABA Accreditation Reforms

• Fundamental shift in delivery of legal education
• From teaching → learning
• From input → outcomes
• Student-centered learning
• Practice-ready graduates
Revised Standards

• 301: Law schools establish and publish learning outcomes
• 302: Law schools at least include competency in identified skills (e.g., substantive and procedural law; analysis and reasoning; ethics; other professional skills)
• 302: All students must complete 6 credit hours of experiential courses
  – “primarily experiential in nature” providing opportunities for performance, evaluation, skills development
• 304: Simulation courses (depicting live client experiences)
• 314: Providing summative and formative assessment
Standard 303. CURRICULUM

(a) A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following:

(1) one course of at least two credit hours in professional responsibility that includes substantial instruction in the history, goals, structure, values, and responsibilities of the legal profession and its members;

(2) one writing experience in the first year and at least one additional writing experience after the first year, both of which are faculty supervised; and

(3) one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement. To satisfy this requirement, a course must be primarily experiential in nature and must:

(i) integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more of the professional skills identified in Standard 302;

(ii) develop the concepts underlying the professional skills being taught;

(iii) provide multiple opportunities for performance; and

(iv) provide opportunities for self-evaluation.

(b) A law school shall provide substantial opportunities to students for:

(1) law clinics or field placement(s); and

(2) student participation in pro bono legal services, including law-related public service and community service projects; and

(3) service learning experiences designed to develop law students’ skills and knowledge in the context of addressing community problems.
Standard 304. SIMULATION COURSES, LAW CLINICS, AND FIELD PLACEMENTS

(a) A simulation course provides substantial experience not involving an actual client, that (1) is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a set of facts and circumstances devised or adopted by a faculty member, and (2) includes the following:

(i) direct supervision of the student’s performance by the faculty member;

(ii) opportunities for performance, feedback from a faculty member, and self-evaluation; and

(iii) a classroom instructional component.
Critiques

- Academic freedom
- Alignment with P&T standards
- Not the answer to law schools problems
- Lack of training, knowledge, experience of law faculty in these techniques
Realities of Modern Implementation

• Implementation amidst political divisiveness
• Struggles to achieve civil discourse in interpersonal communications
• Confrontation trumping cooperation
• Social media activism
• National attention/debate about the role of universities in politics, diversity
Simulation Courses in the Curriculum

- **Jam-Packed Doctrinal**: Torts; Contracts; Constitutional Law; Evidence; Criminal
- **Sacred Seminars**: Gender & Law; Sexuality & Law; Race & Law
- **Logical Leftovers**:
  - Converting Relic Skills Classes
  - Advanced Courses
  - Non-Bar Courses
A Tale of Two Legislation Courses
Course Description

While most law school classes focus on the common law and constitutional law, modern legal practice is heavily grounded in statutory law. The “bread and butter” of modern legal work in most practice areas (e.g., environmental, family, health care, tax, immigration, energy, disability) is rooted in reading, interpreting, and applying federal, state, and local statutes as passed by the legislative branch and interpreted by agencies and courts. This course will accordingly prepare lawyers to (1) understand how laws are passed on the state and federal level in political, structural, and historical context; (2) read statutes holistically and accurately to identify and frame interpretation questions; (3) locate and utilize legislative materials appropriately as interpretive and advocacy tools, recognizing the limits of each source; (4) apply statutory interpretation theories, cannons, and models to achieve advocacy goals.

To achieve these learning goals, we will use different statutory texts and subject matters each class. The subject matter will generally deploy modern examples of civil rights issues, such as anti-discrimination statutes (e.g., Title VII of the 1964 Civil Rights Act, Battered Immigrant Women Protection Act, state marriage equality acts, anti-bullying legislation, Lilly Ledbetter Act). The subject matter lens will vary, however, in order to teach the general doctrines,
Version 1

• Drafting Exercises
  – Cyber bullying bill
  – Workplace fairness bill

• Legislative Process
  – Planned Parenthood Comprehensive Sex Ed
  – Bathroom Bounty Bill

• Statutory Interpretation
  – Civil Rights Act
  – N.H. Surrogacy Law
Since 1846 the law school at the University of Louisville has provided nonpartisan space for individuals to teach, discuss, and research matters of law and public policy. Despite the thousands of partisans who’ve walked its halls, the law school as an institution has remained nonpartisan, preserving its neutrality, and refusing to embrace an ideological or political identity.

Unfortunately, this long run of institutional neutrality seems headed for an abrupt end. Promotional materials for the law school now proclaim its institutional commitment to “progressive values” and “social justice.” Incoming students and faculty are told that, when it comes to the big issues of the day, the law school takes the “progressive” side.

The plan, in short, is to give the state-funded law school an “ideological brand.” (The Interim dean says it will help fundraising and student recruitment.) In 2014, the law faculty voted — over strong objection — to commit the institution to “social justice.” Now we’re at it again, seeking to brand ourselves “the nation’s first compassionate law school.”

These branding projects are misguided. For starters, the chosen brands are divisive, alienating about half the people in the country. While terms like “social justice” and “compassionate” might seem “inclusive” to you, tens of millions of Americans disagree. People hear these terms in a legal or political context and think “liberal orthodoxy.” (Quick: what’s the “social justice” and “compassionate” position on same-sex marriage?)
In a recent commentary, one of my colleagues attempted to portray the law school’s decision to embrace “social justice” and “compassion” as benign, and having nothing to do with a “liberal agenda.” He viewed these concepts as essential in a modern society.

I agree with the idea that compassion is a worthwhile and understandable objective. Indeed, it is an essential part of life. If the movement toward a “compassionate organization” were nothing more than that, who could object? However, to suggest that the law school has not adopted a partisan social agenda, and that it has not labeled non-liberals “outsiders,” is (at the very least) wrong and misleading.

MORE ON UofL LAW SCHOOL DEBATE

- Professor Milligan: “These branding projects are misguided”
- Professor Marcossen: “Deeply disappointed and frankly embarrassed”
- Student Johnson: “No special vision is needed to see that justice in practice is not neutral either”
- Letter: Let law students ‘find their own way’
- Letter: Why is ‘compassion’ divisive?
- Letter: “At times, debate has been chilled”

There is ample evidence that the law school has veered to a partisan agenda. In a prior commentary, I discussed the diversity training conducted by the law school in collaboration with the Vice President for Diversity. At the request of faculty staff,
Open letter to law school dean and faculty

The Courier-Journal  2:30 p.m. EST January 18, 2016

I have been following the discourse and debate centered around Professor Luke Milligan's commentary and the concept of being a "Compassionate Law School." It is refreshing to see the legal academy openly debate issues. I certainly appreciated the responses by Professor Marcosson and Mr. Johnson.

At the same time, I cannot help notice the irony in many social media posts and commentary by other advocates of "compassion," which (to put it mildly) do not reflect this proposed virtue or at least my conception of it. Indeed, many of the responses I've read and heard over the past few days prove Prof. Milligan's point. In particular, some have accused Prof. Milligan of fabricating the diversity exercise that he references. Prof. Russ Weaver also referenced this event, as did Mr. Johnson.

In August 2013, this diversity event took place during my first-year orientation. I was there, along with Mr. Johnson and approximately 130 other new students. Students were asked to stand when the speaker called out characteristics with which they "identified." These included categories based upon family status, race and ethnic background, political persuasion, religion, sexuality, and gender, among others.

As the "outed" students stood, the rest were encouraged to applaud and cheer, and, as Prof. Weaver suggested, "polite applause" was insufficient. Despite assertions by some that this exercise was unprofessional, I see nothing but growth in my law school experience due to the open nature of this discourse and the possibility for change and growth that it represents.
Political Violence in the Era of Trump

What do the violent attacks of Trump protesters on Trump supporters reveal?

VANN R. NEWKIRK II  |  JUN 3, 2016  |  POLITICS

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Trump setting up political debate for a new Golden Era

BY ADAM CHIARA, CONTRIBUTOR - 08/31/16 01:18 PM EDT

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An iconic statue on the University of Louisville campus was vandalized Wednesday morning with a Donald Trump remark.

The Thinker statue, located in front of Grawemeyer Hall in the southwest part of the Belknap campus, had the words “Trump Build That Wall” written on it in pink chalk. Campus-goers noticed the remark Wednesday morning, just a few hours following the real-estate mogul’s victory in Tuesday’s presidential election.

READ MORE: Gov. Bevin: ‘Good riddance’ to Greg Stumbo

READ MORE: 5 takeaways from GOP’s Ky House takeover
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Legislation Pedagogy

• “Ground Hog Day”
  – Required or elective?
  – Content coverage?
  – First-year or UL?
  – Doctrinal or skills?
Legislation Pioneers

• Intentionality in course design
• Student perceptions of the course
• Diverse reasons and expectations among enrolled students
• Political diversity
Modeling Interactive and Inclusive Experiential Learning Classrooms

• Student-Driven Projects

• Experiential Learning Requirement

• Assigned Roleplays

• Vertical and Horizontal Feedback
A Model for Student-Centered Learning

• Autonomy – voluntarily mediating and owning the learning process
• Scaffolding – building support for learning and removing structural supports as students succeed and thrive
• Audience – not in a vacuum, presenting to “authentic audiences”
Student-Centered Simulation Course

• Selecting the *Type of Project*
  – OPTION A: External Legislative Field Work
  – OPTION B: Live Case Study of a Legislative or Statutory Interpretation Issue
  – OPTION C: Historic Survey of Legislation

• 15 hours of active work
• Early in the semester
Selecting the *Subject* of the Project

- Legalizing marijuana (state, out-of-state)
- Bag ban in grocery stores (local)
- Strangulation laws (state)
- Repeal of ACA (federal)
- G.I. Bill enactments (historic) (federal)
- Role of executive orders in immigration policy (federal)
- Chinese Exclusion Act (historic) (federal)
- Pill Mill Bill (state)
- Bank Liens (state)
- “Clean Campaigns” Bill (state)
- Repeal the Safe Act (state, out-of-state)
Student-Centered Simulation Course

• Students as Expert
  – Not student as advocate
  – Mastery goal orientation v. mastery performance goal orientation

• Foundational Knowledge
  – Assigned reading selection
  – Pivot foot

• Collective Class Critics
  – Supporters, opponents, undecideds, theorists
Experiential Learning Requirement

• Graded
• 1-2 hours
• Committee hearing, legislative debate, meetings
• Constructivist adult learning
• Conflict in action
Role Plays

- Intake of a legislative client (legislative process)
- Drafting
- Legislator meetings
- Hearings
- Judicial nomination (statutory interpretation)
Participation

• Fighting serial or sporadic participation
• Structured and assessed feedback models
• Grading the Grading
Takeaways

• Additional critique of implementing ABA standards
• Role of legislation in experiential learning
• Need for more tools, training, discussion
• Introduction of one model