

better measure of the variation is the standard variation, which is essentially a measure of how far the grades fall away from the mean.

The standard deviation should be equalised across classes. But we can justify limited exceptions to allow leeway for small classes, to account for differences in prior performances of the students, and to minimise the impact of poor evaluation instruments if students are properly warned of that possibility in advance. The argument made here for standardisation should not be read as an argument for normalisation. Some schools attempt to solve the problem of unequal spreads across courses by mandating that certain percentages of the class fall into each of the available grade intervals. If the percentage ranges for each interval are very narrow, the forced curves will have the salutary effect of keeping all teachers to the same mean and standard deviation. The forced curve has the added benefit of avoiding differences in skewness and other statistics that are used to describe distributions. Nevertheless, there are a number of potential problems with specifying the precise percentages of grades to be awarded in each of the grading intervals.

One of the common misconceptions about grading is that it is better to use a coarse grading scale with fewer and larger groupings because the grader can have more confidence in the grades. Clearly it is true that no one will get the wrong grade if one grade is given to all students. Likewise, teachers probably make few errors when they have to determine only whether the students pass or fail. But that is only half of the story, and is the less important half. There is a trade-off between, on one side, the frequency of errors and, on the other side, both the precision of information recorded for subsequent retrieval and the magnitude of the errors in that information.

Once we have established the principle, it becomes obvious that grade inflation generates a number of problems. When some teachers increase grades, they create incentives for students to take their courses rather than other courses. At the margin, the higher grades in a grade-inflated course will cause some students to take that course instead of a course that would have been better for their educational development. That in turn puts pressure on other teachers to inflate their grades because many teachers want to have students in their elective classes. With time, there is pressure on other schools to inflate their grades so that their graduates have a fair shot in the competitive education and employment markets. Thus, grade inflation spirals.

Any time a faculty imposes grading constraints on its members, it risks forcing miscommunication. If the class is abnormal, the constrained teacher is unable to send an accurate message of comparative performance because she cannot award abnormal grades. On the other hand, if the class is normal, an unconstrained teacher with a defective assessment instrument might send inaccurate messages of comparative performance by sending abnormal grades.

Because these risks are somewhat speculative, increased uniformity in grading will not necessarily lead to increased accuracy in communication. Indeed, grading constraints will undoubtedly lead to some sets of grades that are less accurate than they would have been if the teacher had been unconstrained. But the issue is not whether uniformity will improve matters in every case, but rather whether it improves communication in the long run. Forced uniformity will often increase accuracy, and overall the odds lie against complete professorial freedom in grading.

Assessment of student performance is never perfect. Choosing the types of instruments for measuring performance will always involve tradeoffs. Nevertheless, we should try to avoid exacerbating deficiencies in our assessment by making errors in the numerical methods we use for coming to summary comparative statistics. Judgments about proper grading practices must take serious account of the context in which our grades reside. If we are to give grades and class ranks, let them be fairly calculated. We teach that justice matters; let us do our best when it is our turn to hand down the decisions.

## CLINICAL LEGAL EDUCATION

### **Lawyering for justice and the inevitability of international human rights clinics**

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28 *Yale J Int'l L*, 2003, pp 505–546

Globalisation may be taken for granted, but is the US legal profession prepared? A 1996 survey conducted by the American Bar Association Section on International Law and Practice found that law schools are responding to the demand for global relevance in legal studies by offering multiple and diverse courses in international and comparative law. Yet, as the ABA survey found, most students never take an international law course, and other opportunities for exposure to international law in law school are scant.

How will law schools prepare students to participate in the 'new' global society in a meaningful way? The answer is not simply offering more courses, or even making those already offered mandatory. While each of these measures would help, the better answer lies in a particular pedagogical approach — an approach that requires students to grasp and digest the inherently transnational dimension of

legal practice. Notably absent from the universe of international educational opportunities at most law schools are clinics that focus on international human rights law.

Today any notion of a national law that is independent of international law is a joke. All our problems are transnational and can be controlled only by transnational cooperation. New human rights problems are accompanying globalisation. These include: transnational migration and associated humanitarian crises; trafficking in persons and drugs; expanded forms of economic colonialism; and the drive for expanded markets and cheaper labor and materials, which force a race to the bottom. Because of their inherently transnational character, these issues give rise to the notion that human rights — and violations of those rights — affect each member of the global community, no matter where the actual violation occurs. And whether or not one agrees that this morality is universal, the concern for justice inevitably implicates international human rights and international law.

In view of this shifting landscape, lawyers today should be familiar, at the very least, with the components of international legal regimes and international human rights norms. The challenge for legal education today is, thus, how such a global ethic of responsibility can most effectively be taught. International human rights law must be a part of any legal training that is relevant to the contemporary world.

The law school clinic is a particularly effective medium for teaching international human rights lawyering. Correspondingly, in international human rights we find an extraordinary vehicle for the original social justice mission of clinical legal education.

There are benefits to be gained by law schools for being among the first to orient themselves in this direction. Law schools with a strong international program will attract broad-minded and civic-minded students and faculty — particularly as popular interest in global affairs continues to grow. And law schools with a meaningful international human rights clinical component will have a significant advantage in training the next generation of global leaders.

The blend of theory and practice that is the essence of clinical legal education plays a particularly significant role in the teaching of international human rights. In part, this is because of the mistaken belief that international human rights law is not law and in part because of enforcement challenges. The dynamic, developing nature of this field of law makes it particularly well-suited to practical learning. In addition, there is value for students in seeing how international human rights standards are, in fact, applied and respected in diverse domestic, regional, and international settings.

Students can, and should, learn the legal standards, mechanisms, and institutions that comprise the international human rights system in the traditional classroom. However, international human rights clinics, just like direct service clinics, have a role by emphasising the real world utility of projects and providing opportunities for students to have real social impact. They demonstrate to students that rights violations can be seen and acted upon as legal problems. Students learn from clinics lessons that they will not get from a regular academic course — including how to develop and apply legal theories to real situations impacting real people, and to use the legal system to seek social change.

Human rights clinics are not an entirely different breed from traditional clinics. They are grounded in the same pedagogical social justice principles and committed to cases that are directly related to contemporary social problems. They share the experiential learning theory — that students should be engaged in aspects of the learning process that distinguish the clinical experience from simple applied research. Students learn many of the same skills in a human rights clinic as they would in traditional clinics — with the added dimension of transnationalism. They are exposed to a specific body of law and learn to do research in both international and domestic law. They acquire legal, factual, and advocacy writing skills, and practice oral communication. Students are required to apply critical thinking skills in close readings of facts and law, and learn to develop effective strategies and solve problems creatively. They learn to integrate theory and practice. Working collaboratively, students must develop the capacity to be organised under pressure, with competing demands, and to produce quality work. Clinical legal education thus presents students with the opportunity to experience and reflect upon the skills and challenges of the lawyer's role in practice.

So, what distinguishes human rights clinics from the traditional clinical curriculum? Unlike direct services clinics, where the client is the object of the case, international human rights clinics are not a client-centered program. They support, instead, a norm-centred pedagogy. With human rights advocacy, the object may be the articulation or clarification of a norm or set of standards, as much as, if not more often than, representation of an aggrieved individual or group. The subject may be a variety of legal and non-legal strategies. 'Clients' are rarely individuals, and they are often physically distant from the clinic itself. Indeed, although projects generally are organised through non-governmental organisations, it is more accurate to refer to these as partner organisations than as clients.

The added value of an international human rights clinic over a lecture or seminar course is the exposure students get to the range of lawyering activities — and the chance to be engaged in the process of developing and promoting human rights norms. Students learn that lawyering can be pursued in many places in a variety of ways. This exposure is especially meaningful given that international law is constantly evolving and subject to change as customs change. Like impact litigation, where the purpose is to create new (and better) law, much of human rights work is ground-breaking. Thus, students have a unique opportunity to look critically at existing law and to participate in the struggle to create an alternative vision of global justice.

As legal, political, economic, and social institutions become increasingly transnational, international law and human rights norms and mechanisms become increasingly ubiquitous and central to the fulfilment of justice. If we agree that the legal profession has a responsibility to ‘enhance the capacity of law and legal institutions to do justice,’ and that law schools are called upon to contribute to the fulfilment of this responsibility, then the principal concern is how to make this objective meaningful and relevant for the next generation of lawyers.

This concern is reflected in the expansion of international and comparative law offerings in law schools across the country. Legal educators no longer debate the value of clinical education for the inculcation of skills and professional ethics with justice at their core. Thus, inevitably, the international human rights clinic will emerge as a prominent method for preparing law students for meaningful practice in the contemporary, and manifestly global, legal landscape.

## **DISTANCE EDUCATION**

### **Using distance learning to enhance cross-listed interdisciplinary law school courses**

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*29 Rutgers Computer & Tech LJ*, 2003, pp 33–52

Courses that are interdisciplinary in their approach to teaching substance and skills and that include graduate students from other disciplines can be a valuable addition to legal education. In addition to enabling students to share different perspectives, such courses provide an ideal environment for teaching law students to collaborate with other types of professionals. This is increasingly essential to the effective practice of law.

Notwithstanding these benefits, the capacity of law schools to offer cross-listed courses is constrained by numerous logistical and administrative challenges. Distance learning or distance education — the use of computers, telecommunications, and digital networking to permit learning outside the boundaries of the classroom — holds the potential to expand the availability of cross-listed courses by reducing these barriers. Equally important, distance learning can provide professors of cross-listed courses with pedagogical tools for enhancing interdisciplinary communication and collaboration, and circumventing some of the problems inherent in teaching students from different disciplines.

For law professors specifically, cross-listed courses present unique pedagogical challenges stemming from the difficulty of teaching a class comprised of students who are near-experts in legal analysis, the language of the law, and the legal system and students who are novices. Moreover, it is crucial but extremely difficult to create an environment in which these two groups of students, coming from different backgrounds, professional cultures and knowledge bases, are not mutually intimidated.

In the author’s class on public health law, offered to law students and graduate students in public health, distance learning was used, presenting the opportunity to evaluate its ability to: (1) facilitate teaching at different levels to students from two disciplines; (2) enhance interdisciplinary interaction and collaboration; and (3) reduce the barriers associated with time and place constraints.

The purpose of this article is to evaluate the capacity of distance education technology to enhance the effectiveness of cross-listed interdisciplinary courses. It is intended to help professors use distance education to make new and established law school courses accessible to graduate students studying other disciplines. Additionally, since there is little scholarship on the unique pedagogical challenges presented by cross-listed law school courses, this article offers some general observations and suggestions that will hopefully be useful to teachers of these courses, regardless of whether or not they employ distance education.

The course sought to facilitate interdisciplinary collaboration by introducing each group of students to the foundational principles, language, theoretical perspectives, and problem-solving approaches of the other discipline. Because both groups of students intended to practice their respective professions within a public-interest setting, the course concentrated on the public policy implications of the law and provided training in interdisciplinary collaboration within the simulated context of a government public health agency.

Aside from separate introductory lectures delivered to each group of students on the first day, live classes were conducted using the discussion method. A considerable portion of live classes was