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Legal Cases as a Teaching Tool

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One of the objectives in teaching is to help students sift through factual information and make sense of it. Moreover, instructors in sociology classes also want their students to think more broadly about the nature of human behavior and social interaction. Instructors use varied assignments to accomplish these goals. When the case study method is used in law schools, the justification often is that students will learn to “think like lawyers.” However, it seems that what that means in the academic context is that students must think clearly and logically and be able to reason from facts to a conclusion about what those facts mean. This ability is at the heart of the “critical thinking” skill that is so important for all students to develop. Presenting students with legal cases and asking them both to read and understand the court’s logic and, further, to write somewhat modified legal “briefs” of the cases, has proved very beneficial in sociology classes and in the English-as-a-second-language classroom.

In two sociology courses, Law & Society and Family Law, Jean Thoresen has been using legal cases as a primary teaching tool. The class as a whole is assigned a set of cases to read, and individual students are given responsibility for particular cases. Each student then presents both an oral and a written “brief” of the particular cases that are her/his responsibility. The “brief” is similar to those usually required of first-year law students: it begins with the case name and formal legal citation and subsequently includes a statement of the facts in the case, the legal question at issue, the reasoning of the court in reaching its decision, and the significance of the decision. It is this last section that can get particularly “sociological”: students discuss the significance of the case both in terms of its bearing on legal issues and its effect on individuals and

society. This latter section is what most differentiates the “socio-legal brief” in the undergraduate sociology class from the legal brief of the law student.¹

“Briefs” are literally that, and these assignments average two to three pages in length; conciseness is highly prized. This also allows students to do several briefs without feeling overburdened with the number of pages required or getting bogged down in one case. A legitimate question might be: are undergraduate sociology students interested in and/or capable of this sort of writing that is normally assigned to students who, after a very competitive admissions process, are at the graduate level?² My students have provided unqualified “Yes” answers to both those concerns. After all, first-year law students usually have never written “briefs” before the first-year Legal Writing courses that are generally required of all beginning law students. The students who take our Law & Society and Family Law courses, which are 300-level courses, are usually upperclass students who are not that different in capability from beginning law students. The use of socio-legal briefs can help students to develop those skills needed in graduate and professional life and can enhance critical thinking as an outcome, just as a required Legal Writing course is designed to teach those skills to first-year law students.

More importantly, the students have become fascinated with the process of legal analysis involved in briefing. It is a new way for them to approach a case or situation and therefore has the virtue of being different from the usual essay, term paper, or exam. It also feels very “grounded” and real. If C. Wright Mills defined sociology as the intersection of history and biography,³ we might look at a legal case as the moment when the individual actually meets the society: each case is really an example of a particular issue in a person’s life, as it plays out in the context of the judicial system representing the institutionalized norms of the wider group.⁴ More particularly, in the Family Law course, we address issues such as who can get married, what a “family” is, restrictions on parenting, divorce, support, alimony, and custody issues, adoption, abortion, fetal rights, etc.⁵

For example, a court in Florida decided that a group of six nuns, under the supervision of a Mother Superior, could live in one house together as a “household,” thus not running afoul of a local ordinance designed to prohibit boarding houses, rooming houses, and hotels.⁶ A court in Maine, however, decided that six unrelated mentally retarded adults, under the supervision of two staff members, could *not* live together as a household without violating a local zoning ordinance designed for essentially the same purpose as that in Miami Beach.⁷ There are several levels of analysis that these companion cases can elicit. First of all, the local ordinances differed slightly. The City of Miami Beach statute defined a household primarily on the basis of shared facilities;

the Brewer ordinance required the presence of a "domestic bond" or its equivalent. Apparently, the court was not persuaded that the two staff members were enough like "parents" to fill that social role. It is also possible that the court might have been persuaded to accept the notion of "houseparents" had the staff members not rotated on shifts. On a rather different level of analysis, it is also possible that nuns are perceived as more acceptable neighbors than are mentally retarded people. Asking students to track statutory language precisely for its meaning and import strengthens their language skills; asking them to consider the differing perceptions of nuns and mentally retarded adults engages their sociological imaginations. For the clinical sociologist, an in-depth discussion of this latter point clearly would be more important than parsing legal language. The instructor's skill in exploring the social construction of "reality" about both nuns and mentally retarded people is what provides these cases with their sociological significance,⁸ and students should come away from class with some interesting conclusions about how groups get defined by others—especially by those in power, such as judges. The students were highly involved in the discussion of these two cases that emerged from the class presentations of the briefs. The issues involved in cases like this are of immediate import to students, and students are intensely interested in the opinions courts hand down about these matters and the reasons given for the decisions.

Often, students also offer their own dissents to court opinions, thus learning how to marshal and interpret facts in support of their own positions. This incidentally has the value of suggesting to them that institutional decision-making is quite subjective and encourages them to look at why certain decisions may be politically, economically, or socially more advantageous or desirable to certain groups than to others.

In addition to teaching students to think analytically about sociologically relevant issues, socio-legal briefing tends to improve a student's writing skills. In a program for teaching English as a second language, Jeanette Miller, at the University of Delaware, uses legal cases as a framework for getting students to think and write more clearly.⁹ She presents the outlines of a legal controversy to the students, asking them to consider the fact pattern involved. For example, students might be given the following case:

When John was 18, his rich Uncle Harry made a deal with him: if John agreed not to smoke or drink, and to get good grades at the University, his uncle would give John \$50,000 when he reached 21.

John agreed, and Uncle Harry put the \$50,000 in a separate bank account.

When John was 20, Uncle Harry died suddenly. Nevertheless, John continued with his part of the agreement; and when he was 21, he went

to his uncle's lawyer and requested the \$50,000.

The lawyer refused, saying, "Your uncle is dead now, and we are not responsible. The contract is not valid. Your uncle never mentioned this agreement in his will."

John responded, "My uncle and I made a verbal agreement. I kept my part of the contract; I should be paid from my uncle's estate."¹⁰

The students are presented with a series of questions about the case, designed to focus their inquiry. Each student thinks through the case individually; students then come together in small groups to reach consensus. When consensus does not emerge, students may find themselves writing "majority" opinions or "dissents" instead.

Many of the students in this language program come from educational backgrounds that emphasized the mastery of facts but did not emphasize mastery of argumentation skills or hypothesis-making. Therefore, students are coached in these skills through the series of questions that function both as logical and linguistic models for dealing with the case. Consider this question:

What could Harry have done before his death that would have made a difference in this case?

If Harry had _____, then _____.

The student who can complete the sentence is making a hypothesis and, no less importantly, is using the appropriate conditional grammar needed to articulate such statements in English.

Questions can work on several levels: What are the facts? Which are "major" facts, which of less import? What is the relevance of a particular fact (does it matter that Uncle Harry did not mention the agreement in his will)? Where does the evidence "balance?" What reasons are most persuasive to students in coming to their conclusions? What would you decide?

In a multi-cultural group, students bring to the class diverse base assumptions about the law and society and "reasonable" behavior. Consider the comment by a student from Yemen, a country where religious mandate prohibits the use of tobacco and alcohol. The student remarked that John's abstinence was merely respectable behavior and did not merit extravagant payment! Similarly, students from firmly hierarchical societies, like Japan, must be coaxed away from blanket acceptance of the highest authority's viewpoint—in this case, that of the lawyer. In class work, final decisions in a case seem to reflect a blending of doctrines, religions, and social codes. Case studies present an opportunity to interpret a single event through the perspectives of several cultures.

The issue is not to try to guess the “right” answer, that is, what the court found.¹¹ Rather, the issue is to get students to think through a definitive set of facts and to articulate reasons for a judgment. Students can then write clearly about the analytical steps they took in reaching their decisions. Larger issues that may touch on abstract concepts that can be difficult for non-English speakers are involved: What is the role of “intent” here? What are the ethics (never mind the legalities) of the idea of “agreement” between two people? Would this case be decided differently in Japan or Korea? In the ESL classroom, many students are learning not only to “think like lawyers,” they are learning to think like *Westerners*. This can provide an opportunity for newcomers to explore some of the content of American culture in a very concrete way, just as it can allow sociology majors to examine culture and norms.¹²

In the teaching of both sociology and English as a second language, legal cases provide an innovative and productive way to involve and engage students in the process of analytical and sociologically imaginative thinking. The instructor does not have to be a lawyer to make use of the technique; one of the instructors whose work is presented here has a law degree; the other does not. Can you tell which is which?¹³

NOTES

1. It is perhaps worth noting here that the amount of time spent on this last section of the brief, its sociological significance, is what distinguishes the use of this technique in sociology classes from its use in law school classes. In a sociology class, this last section of the class discussion is not just a matter of looking at consequences for society, but an opportunity to teach about such concepts as “family.” At times, and depending on the case, as much as half of the discussion might revolve around significance, rather than the legal question involved or the court’s legal reasoning.

2. An additional question might be: Are sociology instructors without legal background capable of handling this sort of assignment? While there is some danger that nonlawyers might get lost in some of the more dense legal thickets, the use of the case study method in sociology classes focuses more on the facts, the decision itself, and the sociological significance of the outcome than on the court’s legal reasoning. While the method remains constant, it is the balance of analysis of legal reasoning and the significance of the decision for the individual and society that differs between law classes and sociology classes; it is this balance that allows a competent sociologist to function as well as a lawyer would in the teaching role.

3. C. Wright Mills, *The Sociological Imagination*. (New York: Oxford University Press, 1959.)

4. In the sense of a “playing out” of the connection between an individual and society, a courtroom drama provides an excellent example of the benefits of dramaturgical sociological analysis, as utilized by Erving Goffman and others. Erving Goffman, *The Presentation of Self in Everyday Life* (Garden City: Doubleday, 1959).

5. While the example here of a discussion of “family” occurred in a course in Family Law, the author has used the same two cases, *Carroll* and *Penobscot*, in both Introductory Sociology classes and in her “Theory and Therapy,” a 300-level clinical sociology course in which much attention is

paid to families and family therapy models. The case study method is not limited to courses that have the law as a primary emphasis; these two cases involve court determinations of the definition of the term “family,” not some arcane or abstruse legalism.

6. *Carrol v. City of Miami Beach*, 198 So.2d 643 (1967).

7. *Penobscot Area Housing Development Corp. v. City of Brewer*, 434 A.2d 14 (1981).

8. See Peter L. Berger and Thomas Luckmann, *The Social Construction of Reality* (Garden City: Doubleday, 1966), for a discussion of the nature of the issue of reality as a social construction.

9. The information on Miller’s work is based on a presentation she did in November 1989 at the “Second Annual First State Conference on Teaching and Learning in Higher Education,” held under the auspices of the Center for Excellence in College Teaching, Delaware State College, Dover, Judith D. Aubrecht, Ph.D., Director.

10. This example is based on a very famous nineteenth century case that is frequently included in introductory contracts courses, which most law students take during their first year. *Hamer v. Sidway*, 124 N.Y. 538, 27 N.E. 256 (1891).

11. The court in this case found that the uncle’s estate was not liable to the nephew for the \$50,000. Do you agree with that holding? Why or why not?

12. It is for this reason that we present examples from both sociology courses and nonsociology courses. Students learn about sociology in many settings, and many applications of sociological thinking emanate from practitioners other than professional sociologists. Whenever instructors use examples with sociological import, they are, in a sense, “doing” sociology.

13. The one of us who is a lawyer would be more than happy to work with others who are teaching sociology courses, or other courses where this technique could be helpful, in selecting cases that are interesting and relevant to the subject matter. Please contact Jean H. Thoresen, Department of Sociology & Applied Social Relations, Eastern Connecticut State University, Willimantic, CT 06226. Those wishing to discuss using legal cases for teaching English as a second language, contact Jeanette L. Miller, English Language Institute, 25 Amstel Avenue, University of Delaware, Newark, DE 19716.