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When Great Minds Don't Think Alike: Using Mock Trials in Teaching Political Thought

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ABSTRACT This article examines a mock trial I have developed and used in teaching the history of political thought. Mock trials have been underused but have great potential to become an effective and exciting tool for student learning in this area. In this mock trial, the plaintiff, defendant, attorneys, and witnesses are eminent political or economic thinkers or political leaders of the past. Active engagement in this mock trial helped my students immensely in gaining deeper insight into and a more nuanced understanding of the ideas of the thinker they represented, as well as enhancing their critical and analytical abilities and improving their research skills. As a teaching tool that is amenable to creative adaptation, a mock trial can be an engaging and effective exercise for delving into the history of political thought and making it more relevant.

Since the beginning of the industrial age, social science classrooms have mostly followed a teaching format in which the professor lectures and students absorb; in other words, the classroom “stages” have been dominated by “sages.” In the last two decades, however, active learning methods have become popular supplements or alternatives to the lecture format in many law and social science classrooms in Europe, Australia, and particularly North America (Knerr and Sommerman 2001; Knerr and Sommerman 2004; Ringel 2004; Ambrosio 2006). Problem-based learning, simulations, and role-playing in particular have come to be regarded as some of the most effective ways to both expose students to the complexities of real-world situations and decision-making and induce them to hone skills and gain a deeper understanding of their subject matter through “learning by doing” (Smith and Boyer 1996; Curran, Takata, and Acone 2000; Gillespie and Gordon 2006; Ambrosio 2006).

Moot courts and mock trials are among such active learning tools. With roots in premedieval England (Rachid and Knerr 2000), these techniques have been successfully used in teaching public law (Cooper 1979; Deardorff and Aliotta 2000), international law (Collins and Rogoff 1991; Ambrosio 2006; Weiden 2009), world politics (Jefferson 1999), economics (Carlson and Skaggs 2000), taxation (Bentley 1996), and other disciplines (Knerr and Sommerman 2004). Mock trials have also been used for such practical purposes as predicting jury behavior (Bray and Kerr

1979; Kassin 1984) and making decisions in difficult clinical cases (Smith 1992).

In this article, I examine a mock trial that I have developed and used in teaching the history of political thought. I believe that mock trials have been underused but have great potential to become an effective and exciting tool for student learning in this area. In this mock trial, both the plaintiff and the defendant are eminent political or economic thinkers. The plaintiff files a civil suit against the defendant for inflicting undue harm to the society or a particular social group by spreading ideas that he or she finds ill-justified theoretically and/or empirically. Both sides present their cases to the judge and the jury and are represented by attorneys, who are also renowned thinkers whose ideas are close to those of the plaintiff and the defendant, respectively. Historical figures can be drawn as “witnesses.” After opening addresses, direct and cross-examinations, witness testimonies, and rebuttals, the jury reaches a general verdict.

This article pursues three goals. First, it contributes to the efforts to develop and spread the use of simulations and role-plays in political science classrooms. Second, it makes a case for using the mock trial format for teaching the history of political thought. Finally, it provides practical advice for instructors who are interested in using a mock trial model in classes involving political philosophy.¹

The following section briefly discusses the thriving literature on experiential learning. More specifically, I discuss the rationale, design, benefits, and costs of moot courts and mock trials in the classroom. I then describe in detail the mock trial model I have used in teaching political thought. Finally, I conclude with a brief summary.

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MOOT COURTS AND MOCK TRIALS AS EXPERIENTIAL LEARNING

The increasing popularity of problem-based learning, simulations, and role-playing as effective complements or even substitutes to traditional lectures in political science classrooms draws on several decades of research on the advantages of active and especially experiential learning. Kolb (1976; 1984) argues that learning is maximized when four processes occur in a cycle: concrete experience, reflective observation, abstract conceptualization, and active experimentation. Drawing on Kolb's work, Stice (1987, 293) finds that on average, students retain 10% of what they read, 20% of what they hear, 30% of what they see, 50% of what they both hear and see, 70% of what they say, and 90% of what they say while doing something. Another study involving two experiments in history and political science classes has shown that "the students who participated in the role-plays and collaborative exercises did better on subsequent standard evaluations than their traditionally instructed peers" (McCarthy and Anderson 2000, 279).

For the study of political science, the key strengths of simulations and role-plays stem from their ability to "immerse" students into actively reconstructing and indirectly experiencing complex political phenomena, leading to a deeper understanding of political processes and institutions, as well as refined analytical abilities and enhanced communication and public speaking skills (Smith and Boyer 1996; Brock and Cameron 1999).

Moot courts and mock trial exercises have become essential parts of many law school curricula and are also used, although less frequently, in political science education in Europe, Australia, and North America (Collins and Rogoff 1991; Jefferson 1999; Knerr and Sommerman 2001; Ringel 2004; Ambrosio 2006; Gillespie and Gordon 2006). Many institutions of higher learning in these parts of the world are involved in national or international intercollegiate tournaments as well. Despite similarities in approach and learning outcomes, moot courts and mock trials differ in both format and focus. Mock trials usually simulate first instance courts; feature a prosecution, a defense, and witnesses; and mainly try facts before the court. Moot courts, on the other hand, simulate appellate courts, in which teams of lawyers dispute whether the prior trial court decision was the best application or interpretation of the law (Ringel 2004; Ambrosio 2006).

Besides being exciting and engaging teaching tools, moot courts and mock trials benefit students in a number of ways. First, students gain a deeper understanding of the law, the judicial process, and the substantive area on which a given dispute is focused. Second, because students are required to conduct a thorough investigation of the disputed matter and prepare a robust argument, their research skills and critical and analytical abilities are enhanced. Third, the need to present and defend an argument before a group of exacting outsiders forces students to sharpen their argumentation, thus contributing to the improvement of presentation, debating, and public speaking skills. Moot courts and mock trials can also help students improve teamwork skills and enhance their leadership abilities (Hernandez 1988; Curran, Takata, and Acone 2000; Knerr and Sommerman 2004; Ringel 2004).

Of course, moot courts and mock trials are not without costs. They can consume a lot of time and energy for both faculty and the class, suffer from free-rider problems if not properly designed, entail psychological costs for the "losing" side, and incur direct financial costs for faculty and students (Ringel 2004). Critics also

note that moot courts and mock trials can teach "wrong skills" because they are unreal (Kozinski 1997), and that they can be inherently gender-biased (Morrison 1995). Most studies, however, contest these arguments and agree that the benefits of moot courts and mock trials far outweigh their costs (Knerr, Sommerman, and Rogers 2001). Overall, student reception of these exercises has been very positive (Carlson and Skaggs 2000; Ambrosio 2006; Gillespie and Gordon 2006).

Despite being an effective, fluid, and exciting teaching tool, in the social sciences, moot courts and mock trials have been used almost exclusively in areas adjacent to law and with a primary purpose of teaching law, the judicial process, or a related substantive area such as professional ethics or journalistic rights (Carlson and Skaggs 2000; Ringel 2004). Yet, as I show in the following section, a mock trial format can serve purposes other than teaching law and the legal process and can do so with equal success. Two articles that do address non-law-related areas are worth mentioning. Brock and Cameron (1999) briefly suggest that instructors could use moot courts in teaching political theory. Their treatment of the subject, however, is understandably cursory, as their preoccupation is with applying Kolb's learning preference model to political science. Carlson and Skaggs (2000), on the other hand, do offer an interesting moot court model in which student teams argue before the court on the merits and weaknesses of a particular economic thinker's ideas. Despite its innovation and merits, however, this model's design and potential learning outcomes are only slightly different from those of traditional student debates, and as a result, the full potential that can be reaped through a moot court or mock trial remains untapped.

TEACHING THE HISTORY OF POLITICAL THOUGHT WITH MOCK TRIALS: PLAYERS AND SET-UP

In this mock trial, which I designed and have used successfully for several years, both the plaintiff and the defendant are eminent political and/or economic thinkers played by students.² As explained previously, the plaintiff files a suit against the defendant for causing undue harm to the society or a particular social group by spreading ideas that the plaintiff finds ill-justified theoretically and/or empirically.³ In my class, for example, "Herbert Marcuse" incriminated "Milton Friedman" with "advocating a subtly authoritarian capitalist system that rests on consumerism as a form of social control." "Ayatollah Khomeini" sued "Mustafa Kamal Ataturk" for "sanctioning the encroachment of destructive non-Islamic Western values into the Islamic community by promoting laicism." And "Friedrich von Hayek" has accused "John Maynard Keynes" of "providing justification for a gradual enslavement of men in the form of socialism through advocating excessive government intervention into markets."

Both sides are represented by attorneys, who are also renowned thinkers whose ideas are close to those of the plaintiff and the defendant, respectively.⁴ For example, "Immanuel Wallerstein" has represented "Marcuse," "Karl Popper" has represented his old friend "von Hayek," and the *Artha-shastra* author "Kautilya" has represented "Niccolo Machiavelli." The sides can also draw "witnesses" to shore up their case. "President Franklin D. Roosevelt" has appeared as a witness for "Keynes," and "Ernesto 'Che' Guevara" for "Marcuse." The latter's flamboyant appearance and characteristic answers in the courtroom acted as an effective and fun energizer.

The Judge and the Jury

During the trial, the sides present their cases to the judge and the jury. The judge is selected from among faculty members. Because this exercise models a court based on the adversarial system, the judge's role is to act as a neutral arbiter by presiding over the trial, giving instructions to the jurors regarding the standard of proof, asking both sides questions, and calling witnesses.

The trial jury is composed of six to 12 members, who are selected from among the faculty, community members, and alumni. Inviting some high-profile community members to serve in the jury usually acts as an incentive for the disputing sides to do their best in court. Our jurors have included a Norwegian ambassador, the university president, the former director of the Federal Constitutional Court of Germany, a presidential aide on foreign policy, and the dean of the law school. The students, however, are asked to not assume the jury's familiarity with any given case. They are also reminded that most jury verdicts depend on the direction and strength of the arguments, rather than the personal characteristics of jurors (Kassin 1984).

The jury's task is to hear the evidence and, after deliberation, render a verdict based on a two-thirds majority. The verdict must be based solely on the evidence presented in the court, favoring the side with the most cogent argument. I emphasize to the jurors that the verdict is certainly not (and should not be) a comparative assessment of the thinkers' ideas per se, but should rather reflect the quality of the argument presented and contested by the students.

Timing

The trial can be organized either as a graded in-class exercise or an extracurricular activity. If time allows, several cases may be tried successively in one day. For each case, the trial proceeds in six stages and should not take more than 90 minutes in total. Imposing time limits for each stage forces students to make their presentations as coherent as possible. First, the judge gives preliminary instructions to the jury and the contestants, who then make opening addresses. The attorneys then conduct direct examinations and cross-examinations of the plaintiff and the defendant, respectively. Each side can call witnesses for direct and cross-examination. In the fourth stage, both the plaintiff and the defendant make a rebuttal and a closing argument. The jury then receives instructions from the judge and retires to deliberate. Finally, the jury returns to the courtroom and announces its verdict. Once the trial is over and the jury, judge, and audience have left the courtroom, we conduct a debriefing to share our reflections and link them to theory.

Cases: Selection and Preparation

The cases are selected jointly by the faculty and students toward the middle of the semester. We first identify critical debates in political philosophy that could be interesting and useful to enact. Once the cases are identified, students form teams based on their interests. When conducting the mock trials as an extracurricular exercise, I also selected a certain number of bright students from two other local universities. Overlapping choices are resolved by consensus or lottery. Because teams are composed of three or four members, each case requires six to eight participants. A small team size is advisable to prevent potential free-rider problems. When the instructor sees a situation in which students might benefit from "wearing others' shoes," he or she can encourage students to

take positions with which they personally disagree. Students have four to five weeks to prepare for the trial. This is an exciting time for students to thoroughly research their case, prepare their arguments, write up a brief, and rehearse their oral testimony in teams. For each case, I provide a list of key readings but also encourage students to look beyond this bibliography in order to be able to respond to the opposing side's arguments in court. I set up e-mail groups to share articles, data, and administrative information. Students are also encouraged to prepare a piece of attire that distinguishes the thinker they are representing.

The plaintiff is required to present his or her claim to the instructor and the defendant at least three weeks before the actual trial takes place. This claim should be as specific as possible, focusing on a few concrete points rather than a general allegation. Two weeks before the trial, the sides convene to agree on a list of non-contested facts and disputed issues, which are no longer subject to modification. Each side is asked to submit its written brief to the instructor one week before the trial.

Instructor's Role

The instructor's role varies depending on the stage of the trial and student needs. The instructor should "be part facilitator, advisor, devil's advocate, and task master" (Ringel 2004, 461). When mock trials are conducted within team-taught classes or as an extracurricular exercise, other faculty members can serve as tutors to whom the students can turn for advice. During the actual trial, the instructor becomes a member of the audience, intervening only when there is a need to clarify an administrative matter. Overall, our experience confirms Collins and Rogoff's (1991) observation that the instructor's transformation from a critic and judge to an ally creates a more productive learning environment.

Student Assessment

If the mock trial is conducted as a course requirement, the instructor may consider breaking the participation grade into three components: written brief, courtroom performance, and group work. In my mock trial, members of the winning side also receive bonus points. When the trial is conducted as an extracurricular exercise, the organizers may want to consider giving participation certificates to all students and prizes to winners.

Perceptions

Since the mock trials of political thinkers are as much dramatic productions as they are learning exercises, they offer more excitement to students than do traditional teaching methods. The majority of students who have taken part in these mock trials have reported that they enjoyed this experience; learned a lot about particular thinkers' ideas; and polished their critical thinking, analytical, and public speaking skills. Most have been enthusiastic about enacting a critical historical debate and approached their job seriously. Many also liked the experience of "wearing others' shoes" and "connecting" with their assigned thinker or politician. Some reported enjoying the thrill of competition.

BENEFITS AND COSTS

Students who took part in these mock trials benefited from them in several ways. First and foremost, the in-depth study of a particular theory and its friction with a rival set of ideas helped students gain a deeper insight into and a more nuanced understanding of the ideas of the thinker they represented. In addition, the need

to see various aspects of that theory and develop a convincing and robust argument enhanced students' critical and analytical abilities. Third, a careful examination of a set of related theories improved students' research skills. Fourth, the need to present and defend a case concisely and coherently both in writing and in a debate before a group of judging outsiders helped students develop their writing, presentation, and public speaking skills, as well as their ability to "think on their feet" (Curran, Takata, and Acone 2000). Working in teams toward a common goal, sometimes with students from other universities, also contributed to their productive teamwork skills and fostered networks that persisted after the trial. Some students played their character so well that members of the audience later referred to them by that character's name. Finally, the mock trial helped students unfold their creative potential, as well as develop greater self-confidence in otherwise introverted students. Students in the audience also learned about various theories by watching the trials.

The key drawback of using a mock trial in teaching political thought is that students may slip into focusing on forensic oratory and courtroom "pyrotechnics." At the same time, some students may be prone to read their oral arguments out of fear of potential embarrassment. Such problems should be tackled in advance by developing a set of rules to guide students' behavior before and during the trial.

Our mock trials also entailed some costs, including the expenditure of a lot of faculty and student time and energy outside class. Initially, I also incurred direct financial costs, although later mock trials were sponsored by the university and an educational non-governmental organization. The university's provision of gowns for the judge and attorneys helped create a courtroom atmosphere.

CONCLUSION

As a teaching tool amenable to creative adaptation, a mock trial can be an engaging and effective exercise in delving into the history of political thought and making the subject more relevant. Through engagement in such "learning-by-doing" exercises, my students gained a deeper understanding of some of the most important ideas and critical debates that have shaped political theory to date. They were also able to critically test the validity of contested ideas. Overall, the mock trials enhanced participants' critical and analytical abilities, improved their research skills, built up their public speaking skills, and fostered a spirit of teamwork. ■

NOTES

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1. See Ringel (2004) for useful instructions on how to design and run moot courts in general and Smith and Boyer (1996) on designing simulations.
2. The mock trial presented here should ideally involve at least sophomore students who have already had exposure to the fundamentals of reasoning in philosophy and social sciences.
3. The defendant might also be a policymaker, who is being sued for promoting a harmful policy. Carlson and Skaggs (2000) also suggest this approach.
4. I require the attorneys to be explicit in distinguishing their ideas from those of the side they are representing, however similar these views may be. This precautionary measure helps avoid conflating different thinkers' ideas.

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