

At the Lectern

Beyond Role Playing: Using Drama in Legal Education

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Using drama in education is not a novelty. Educators have long used it to achieve a variety of pedagogical goals.¹ Drama can be employed as a tool for research, reflection, and skill-building, from assigning students to read and comment on plays to asking students to write and produce their own plays.² But beyond the use of role-playing to teach specific legal skills, the potential for incorporating drama in legal education has not been explored.

As the Chinese University of Hong Kong admitted its first class of law students in 2006, the faculty sought ways to showcase its emphasis on an active learning process. Toward that end, the staff wrote and acted in a mock trial drama for the University Open Day 2005, where prospective students and their parents visit different departments to learn about the opportunities that the university offers. The drama was intended to demonstrate the values and processes of the common law, as well as to illustrate the school's commitment to innovation. The Faculty of Law has staged two further dramas, one in 2006 and one in 2007.

At the University Open Day in 2006, the first cohort of LL.B students staged *Food for Thought*, a play highlighting the values and attributes of the common law tradition as experienced by ordinary people whose lives are touched by the criminal justice system.³ This play was later performed again at the dedication ceremony for the School of Law in front of an audience of local Hong Kong dignitaries. In 2007, we wrote and staged another play for the Open Day, this

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1. Richard Courtney, *Play, Drama & Thought: Intellectual Background to Drama & Education* (3d ed. Simon and Pierre 1974).
2. David Pammenter, *Learning Through Theatre: New Perspectives on Theatre in Education* 64 (Tony Jackson ed., Routledge 1993).
3. *Food for Thought*, by Anne Scully-Hill and students, first produced in October 2006.

time involving both staff and students as actors, in *Shipwrecked*, a play centered on the meaning and purpose of the criminal law and based on the well-known *Dudley and Stephens*⁴ case.

Discussions with students during rehearsals and following the productions led us to consider how such plays could help students learn both substantive law and law-related skills. To determine whether this approach was effective, we conducted a review of the relevant literature and subsequently engaged students in focused group discussions. The findings of that literature review and empirical research will be discussed here.

Going Onstage

Staff as well as students looked forward to both plays. As LL.B Programme Leader, Professor Anne Scully-Hill selected the theme of the play after discussion with colleagues and students, produced the first draft of the scripts, and with support from colleagues, held auditions to select student actors. Although those with prior acting experience tend to take the central roles, there was no requirement that they had previous performance experience, nor was academic achievement part of the selection criteria, as the play itself presented the opportunity for training in public speaking, stage movement, and presentation. It is true, however, that the more articulate students were usually more promising as actors. The script was modified as student actors participated in the rehearsals.

Between eight and ten students participated as actors in each play, and a number of additional students assisted with props and costumes. Rehearsals typically involved two to three sessions scheduled one to two weeks before the performance, with students meeting on their own time to rehearse further. Students with central roles had additional one-on-one supervision to hone their skills in voice, speech, and presentation. Performances took place in the large lecture theaters on campus and were filmed so as to have a record of the students' achievement.

The Value of Drama

It is suggested that there are three main ways in which drama could be utilized in the law school: as part of skills training through simulation and role play; as part of instruction in substantive law via the depiction of law or lawyers in film or theatre; and to help students explicate and analyze legal concepts by engaging students in a dramatic production. The first example, well established, has proven benefits, which will be discussed shortly. The second, the use of visual media to trigger discussion, is a development from the

4. *Regina v. Dudley and Stephens*, 14 Q.B.D. 273 (Q.B. Div'l Ct. 1884). Dudley and Stephens was one of the most important cases in 19th century England, where the necessity defense in murder came within the spotlight of the Queen's Bench. Four sailors lost at sea had to determine whether one of them should be killed so to preserve the others. The drama asks the audience to render a verdict on this question: should we condemn these sailors as murderers or should they be excused on the basis of necessity?

“Law & Literature” movement, extending the idea of exploring law through a literary text to make use of available visual media.⁵ This second mode has also yielded positive learning results for students. The third mode is less evident in the literature and where mentioned, it is generally seen as an inappropriate mode of learning substantive, or black letter, law. The primary aim of this article is to revisit the suitability of the third option, the dramatic production, as a means of learning substantive law while also developing higher intellectual and transferable skills.

Law schools have primarily used drama to teach advocacy skills.⁶ The National Institute for Trial Advocacy (NITA) has promoted the “learning by doing” model in which students take on the role of trial counsel, making opening and closing arguments and questioning witnesses. Thus, law schools “teach students what they are to do in courtrooms by putting them in courtrooms,”⁷ giving students the practical skills by which to apply their scholarly knowledge and blunting such criticisms as, “if the weakness of the apprentice system was to produce advocates without scholarship, the weakness of the law school system is to turn out scholars with no skill at advocacy.”⁸ Education through simulation has also been said to enhance students’ self-confidence, interpersonal skills, and communication skills⁹ as well as unfolding for the students the human perspective of law, its application and processes,¹⁰ and giving students an opportunity to develop not just professional skills but also their emotional intelligence.¹¹

5. Amnon Reichman, *Law, Literature and Empathy: Between Withholding and Reserving Judgment*, 56 *J. Legal Educ.* 296, 319 (2006).
6. See Allen M. Tow, *Teaching Trial Practice and Dramatic Technique*, 13 *J. Paralegal Educ. & Practice* 59 (1997); Les A. McCrimmon, *Trial Advocacy Training in Law School: an Australian Perspective*, 5 *Legal Educ. Rev.* 1 (1994), available at http://epublications.bond.edu.au/law_pubs/95/; Edward D. Ohlbaum, *Basic Instinct: Case Theory & Courtroom Performance*, 66 *Temp. L. Rev.* 1 (1993); Steven Lubet, *Advocacy Education: The Case for Structural Knowledge*, 66 *Notre Dame L. Rev.* 721 (1991).
7. Ohlbaum, *supra* note 6, at 33.
8. *Id.* at 10 (quoting Justice Robert Jackson).
9. Jacqueline D. Lipton, *Role-Playing Exercises in First Year Legal Process Classes*, 16 *J. Prof. Legal Educ.* 97, 101-105 (1998).
10. Ross Hyams, *The Teaching of Skills: Rebuilding—Not Just Tinkering Around the Edges*, 13 *J. Prof. Legal Educ.* 63, 69 (1995); see also Jeremy M. Miller, *Essay and Play: Law’s Estrangement from Drama*, 18 *W. St. U. L. Rev.* 265, 310 (1990) (“The point of this article is to sensitize lawyers and law students to the fact that, as lawyers, they are not only dealing with legal analytic skills and making money, but that they are also dealing with flesh and blood, with human lives. It is easy to forget; sterile, written opinions and statutes coax us to forget.”).
11. Peter Reilly, *Teaching Law Students How to Feel: Using Negotiations Training to Increase Emotional Intelligence*, 21 *Negotiation J.* 301, 313 (2005).

Reading relevant plays and observing dramatic presentations of lawyers can help students understand lay perceptions of law and lawyers.¹² These texts and films can also serve to trigger important discussions of legal institutions and processes such as trial by jury¹³ or miscarriages of justice.¹⁴ Students can learn empathy and the ability to see the social or human implications of their work. Moreover, by viewing law through a literary or dramatic presentation, students are encouraged to recognize the potential for multiple perspectives on any given case. This is a valuable skill for law students to learn for, as Reichman has noted, “The study of law has always dealt with a variety of plausible alternatives to the story presented before a court of law or the legislature.”¹⁵ Lastly, by using diverse sources and teaching methodologies, students remain more engaged in the learning process. Despite these obvious benefits, drama has not been widely used in law schools.

There are several reasons for this seeming lack of enthusiasm. First, there may be a legitimate worry about the depth and breadth of coverage possible in a role-play situation. For example, in a project designed to use drama to teach history, Hume and Wells found that “[the drama] did not lead to the engagement in historical knowledge building that had been our goal; the practical problems which the students found so engrossing did not give rise to the perceived need for theoretical constructs which we argued is the essential starting point for theoretical knowledge building.”¹⁶ The strength of this concern depends in large part on the manner in which drama as a learning tool is framed. If, for example, students are given a range of preparatory readings before engaging in the dramatic event, or indeed have opportunities to read after the event, it is possible to extend both the depth and breadth with which the material is covered. Lipton, when using participatory drama as a tool to teach Australian constitutional law, specifically keeps pre-reading to a minimum and then revisits the relevant academic materials after the students have engaged in the dramatic exercise.¹⁷

12. Suzanne Shale, *The Conflicts of Law and the Character of Men: Writing Reversal of Fortune and Judgment at Nuremberg*, 30 U.S.F. L. Rev. 991 (1996); Richard K. Sherwin, *Picturing Justice: Images of Law & Lawyers in the Visual Media*, 30 U.S.F. L. Rev. 891 (1996); Robert C. Post, *On the Popular Image of the Lawyer: Reflections in a Dark Glass*, 75 Cal. L. Rev. 379 (1987).
13. *Twelve Angry Men* (MGM 1957) and *Inherit the Wind* (MGM 1960) are well-worn favorites for generating discussion on the use of trial by jury.
14. *Let Him Have It* (New Line 1991) and *In the Name of the Father* (Universal Studios 1993) each deal with the dramatization of a true story and revolve around the legal battle to put right a miscarriage of justice.
15. See Reichman, *supra* note 5, at 299.
16. Karen Hume & Gordon Wells, *Building Moral Communities Through Educational Drama* 83 (Betty Jane Wagner ed., Ablex 1999).
17. Lipton, *supra* note 9, at 114.

A second worry arising over the use of drama in legal education is how students may respond. Hyams notes that students often experience simulations as “time-outs” from the traditional lecture mode rather than an integrated part of the course. However, Hyams found that by scheduling simulations during the latter part of a course, students had gained enough knowledge to make the experience useful in re-visioning or re-framing their knowledge.¹⁸

One final concern is the possibility that drama does not help students retain material as well as traditional modes of learning.¹⁹ Hyams accepts this criticism as valid when simulations are used in isolated or uncoordinated ways. However, he argues that if simulations are used to help students understand rather than to recall information, then retention levels are automatically enhanced.²⁰ Students must develop a sense of ownership over their part in the drama and perceive value in performing well. However, as described above, retention levels will depend upon the context in which participatory drama is located within the course and the access students have to supporting materials both before and after the performance. For example, students in the Whiteman and Nielsen experiment had annotated their copies of the play script but were not allowed to take these out of the class. Providing students with an opportunity to take notes and to read supporting materials may enhance knowledge retention.²¹

The Value of the Open Day Plays as Teaching and Learning Tools

In order to assess the plays’ value as teaching tools, student actors from both the 2006 and 2007 productions were invited to join four focus group interviews. The Chinese University of Hong Kong’s Centre for Learning Enhancement and Research (CLEAR) facilitated the meetings which occurred in October 2007, shortly after the second play was staged. The student actors were divided into four groups: the major and minor actors from the 2006 drama, and the major and minor actors from the 2007 drama. (Although each

18. Hyams, *supra* note 10, at 66.

19. Despite their initial findings that drama in teaching could enhance retention levels, Whiteman and Nielsen concluded that further research indicated that students who were introduced to a topic via participating in a drama scored lower levels of knowledge retention than students who were introduced to the same topic via the traditional lecture mode. Victor Whiteman & Margaret Nielsen, *An Experiment to Evaluate Drama as a Method for Teaching Social Work Research*, 22 *J. Soc. Work Educ.* 31, 80 (1986).

20. Hyams, *supra* note 10, at 76.

21. Whiteman & Nielsen, *supra* note 19, at 80.

group of students was invited to attend a focus-group session, timing problems resulted in two of the three major actors in the 2006 drama joining the 2006 minor actor focus group instead.)

Each focus group was asked to consider the same set of questions, discussed below.

How did participation in the play influence the students' learning experience?

Students who played key characters spent more time in preparation and also contributed to the revisions of the scripts while others who played less integral roles mainly played their parts as written. Not surprisingly, the time commitment for actors with major roles was significantly greater than those playing the minor roles. For example, those with minor roles in the 2007 drama participated in only three training sessions while the key actors spent almost two weeks in rehearsal. Students believed that the higher level of engagement led to greater learning outcomes. Moreover, students who were more involved were able to explain the themes of the dramas in more detail and thought more deeply about the issues raised in the dramas. They also felt they practiced more skills, such as critical evaluation of the drama script, and experienced more intensive training on how to speak and present their dialogue and character. Interestingly, despite their greater time commitment, none of these key players complained they had spent too much time on the tasks.

Echoing Hyams's findings about the link between motivation and effective learning, one of the students who played a major role in the 2006 drama said she felt that she had to be very familiar with the legal issues at hand, and be able to talk about those issues clearly so the audience would also understand. She said she liked being free to learn without the looming pressure to pass an exam. This student said learning through drama was more interesting than through traditional lectures. However, it would also seem from the student's responses that the depth of her learning was due to her teachers' guided instruction and repeated rehearsals, which helped her assimilate the material. A second student, who took a major role in the 2007 drama, expressed similar views and explicitly referred to the chance the drama gave him to learn criminal law as well as the opportunity to enhance relevant skills such as public speaking and argument presentation.

A number of the students who held minor roles felt less involved, citing the long waits during rehearsals. But even these students felt that the learning experience was worthwhile. For example, they learned how to perform in public and developed skills communicating with their peers and professors. One student added that the collaboration strengthened her sense of belonging to the law school, and many with minor roles said they would participate again and take on a more significant role if they had the chance.

What did students think that they had learned through acting?

In general, the students learned both substantive legal knowledge and a variety of skills through their participation in the plays. Specifically, students reported that the 2006 play taught them much about the common law of Hong Kong, and the 2007 production taught them the trial process. One student welcomed the fact that the two dramas were different as she learned very different things from each.²² On further questioning, students said they were more able to see how the law bears relevance to real life (particularly the 2006 drama) and to look at an issue from multiple perspectives (particularly in the 2007 drama in which the audience was asked to deliver a “verdict” on the sailors who survived), echoing the findings of Reilly²³ and Reichman.²⁴

The majority of learned substantive knowledge came from working with the script and from discussions of the script with the teachers who helped produce the play. Repeated rehearsals reinforced this learning. Students agreed that participation in a dramatic performance invoked a stronger response to the issues raised in the play than they would have had in a traditional lecture setting.

The students pointed to specific examples of skill acquisition. Observing the different legal arguments made by the student lawyers in the 2007 drama enhanced their critical analytic skills. So did the fact that they had to vote at the end of the play on which barrister’s argument was most persuasive and, therefore, which sentence would be imposed on the defendant.

Additionally, one of the students acting as a barrister in the 2007 drama felt she had improved her writing and editorial skills as she helped the teacher who wrote the play to streamline the script and re-focus the barrister’s argument. The same student, who participated in both the 2006 and 2007 dramas, noted that she acquired different knowledge and skills from each. The students said they valued the transferable skills such as working in groups and honing their presentation and organizational skills. The dramas were great fun and had improved student-student and student-teacher relationships (particularly in the 2007 drama where students and staff acted together).

Students performed the 2006 play twice, once for their teachers and fellow students during Open Day, and again in front of local judges and lawyers during the dedication ceremony. Students remarked that the repeat performance required them to revisit issues and, as a result, allowed them

22. The student’s response here supports Lipton’s findings that dramatic simulations can be used in more than one type of course and for more than one purpose. Lipton, *supra* note 9, at 113.

23. See Reilly, *supra* note 11.

24. See Reichman, *supra* note 5.

to understand them at a deeper level.²⁵ The second performance, in front of judges and lawyers, also presented valuable new challenges such as coping under pressure. The students felt greater pressure during the second performance because the audience understood the legal content of the play, unlike the Open Day audience which was largely comprised of members of the general public. The added pressure also gave them a greater sense of achievement and self confidence. These responses support Hyams's findings that the effectiveness of simulation as a teaching tool is greatly enhanced when the student knows that the simulation will have a "real world" outcome and, conversely, that "the simulated activity will lack the required seriousness and proximity to the students unless it is being carried out as part of a preparation for an immediate reality."²⁶

*How did faculty involvement as actors in the 2007 drama
impact the students' learning experience?*

In general, students said they had enjoyed collaborating with the teaching staff as they realized that teachers could be very friendly and were encouraged to more freely ask questions. The active participation of the teacher in the drama also gave one student cause to reflect positively on the devotion of the professors.

Student respondents had the opportunity to offer additional observations or comments. In these comments, they identified ways learning through drama could be enhanced. Their comments can be summarized as follows:

- increase the level of student engagement in the productions by encouraging them to write scripts and with multiple performances of each play;
- frame the presentation of the play with a discussion session beforehand to set the context, and afterward to draw out the themes and issues addressed in the play;
- create a narrator/student dialogue within the play, as was done as part of the 2006 production, to enhance understanding by highlighting certain aspects or questions arising from the drama; and
- save the scripts as reference for the students who would like to revisit the experience.

25. Sarah E. Ricks notes the usefulness of giving students opportunities to repeat their responses to the same material and the same problematic issues as a means of bringing students to the material "each time with added nuance and depth." Sarah E. Ricks, *Some Strategies to Teach Reluctant Talkers to Talk About Law*, 54 J. Legal Educ. 570, 580-81 (2004).

26. Hyams, *supra* note 10, at 69.

The suggestion to increase student participation underscores Lipton's finding²⁷ that student learning is enhanced when students are given responsibility for the success of the learning exercise. However, encouraging students to write scripts would also be particularly valuable because students would first be required to research, then to think about how to formulate the relevant substantive knowledge as a dramatic script. The inevitable revisions are, in effect, written "rehearsals" of the knowledge they acquired through their research. As Ricks notes, the opportunity to confront the same problem or substantive knowledge from slightly different perspectives or at different stages of development of familiarity with a topic can be a very valuable learning experience.²⁸ The students' suggestion to frame the drama through discussion sessions before or after the performance is a clear echo of Lipton's conclusions that opportunities for reading²⁹ and discussion³⁰ will greatly enhance the learning experience. Lastly, making the scripts available to students for future reference renders the play an enduring rather than transient event. This transformation could result in reflective learning opportunities and thus in greater retention of the relevant knowledge. Indeed, Whiteman and Nielsen reached a similar conclusion when students in their sample group who watched a play rather than heard a traditional lecture complained that they had annotated or underlined their play scripts but were not allowed to remove these from the auditorium, and that this had undermined their retention.³¹

Conclusion

Our findings indicate that the students were overwhelmingly positive about the learning opportunities made possible by both the 2006 and 2007 dramas. Perhaps most interestingly, the findings suggest that drama can be an effective tool for teaching both substantive legal knowledge as well as skills such as advocacy. However, the findings also support what has already been reported in the existing literature—that to employ drama to teach substantive law it is necessary to adopt certain good practices. For example, learning is enhanced by placing the creation and production of the drama in an intellectual and discipline-specific context by assigning briefings and readings before and after the production. Further, the more responsibility that the student feels for the dramatic production and the more engaged the student is in the process of

27. Lipton, *supra* note 9, at 102.

28. Ricks, *supra* note 25, at 581.

29. Lipton, *supra* note 9, at 104.

30. *Id.* at 107.

31. Whiteman & Nielsen, *supra* note 19, at 80.

creating it, the greater the potential for effective learning. For this reason, encouraging students to participate in the writing and editing of the script, as well as in the staging, seems an essential step toward improving student learning. In conclusion, while learning law through drama is certainly labor intensive and innovative, it is also, according to our findings, a method of learning which students find stimulating and has the added benefit of combining both substantive- and skills-based learning as well as encouraging students to appreciate law in a human context.