

TEACHING MENTAL HEALTH CONCEPTS IN THE LAW SCHOOL*

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Law schools are viewed as prime targets for the practice of social or preventive psychiatry. The pivotal role lawyers play in the making of social decisions indicates that their knowledge of the behavioral sciences should be increased. This paper describes some behavioral science concepts that can be taught in law school, as well as several suggested methods for doing so. Material is drawn from the author's experience on two law faculties.

GROWING AWARENESS of the serious mental health problems facing our society has placed enormous demands on all who study and treat such problems. This has accelerated interest in what has been called preventive, or social, psychiatry.¹ The aim of practitioners in this speciality is to find more effective ways of utilizing present and future knowledge of psychiatry and other behavioral sciences, for the prevention and treatment of emotional disability. During the last seven or eight years, this concept has resulted in several intensive efforts to bring behavioral science into the curriculum of law schools.² I have had the opportunity to participate in and observe this activity from its beginning.

Law is an ideal field in which to practice social psychiatry. Persons with legal training not only legislate laws, adjudicate them and practice at the bar, but more and more they are chosen to run corporations, and are prominent on the boards of directors of most social agencies. Because of the respect they generate with their skill in logical analysis and organization, wherever they work they gain prominence and power in making social decisions. Thus the pivotal position of the legal profession makes it an important target for social psychiatry. The degree to which lawyers and the law conform to sound behavioral science principles is an important measure of the social effectiveness of their practices.

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Unfortunately, at the present time, few lawyers gain any skill in behavioral theory during their law school education; in fact, they appear to be conditioned in a way that makes them relatively insensitive and resistant to such concepts. Before approaching the question of *what* law students might be taught, it is important to realize *how* they are presently educated.

For more than 50 years, the principle method of teaching law has been the Case Method.* This has no resemblance to the kind of clinical case material familiar to physicians, social workers and psychologists, but is rather the study of written judicial opinions handed down by various state and federal courts of appeal. Rather than data recorded from direct observation, these are logical and philosophical discussions at least thrice removed from the events described. Students prepare for class by carefully reading the case opinions to find the facts in the case, what law was applied, and what policy considerations the court utilized in reaching its conclusion, as well as any procedural elements relevant to the decision. It is assumed that students will come to class with this information, well-briefed and ready for discussion.

The conduct of class, for the most part, follows strict Socratic lines. Freshman students, from the very first day, are called upon to present such information, and to give the reason why the court then did what it did. They are asked to distinguish one case from another, the two having been chosen carefully for apparent similarity as well as elusive differences. For months on end, students are led to believe that their responses

are inadequate since, inevitably, they provoke only more difficult professorial questions. The hope of finding "the law" seems more and more like that of discovering the Scarlet Pimpernel, even though it is theoretically close at hand. This method is used throughout the first and second years, although naturally there are individual variations among professors. In the third year, teaching methods broaden to include seminar presentations and greater emphasis is placed on solving legal problems. Some of these presentations have a more practical slant and are called "bread and butter" courses by students, a term of deprecation at least in the eyes of the faculty.

At the end of the first year, a very important reward procedure is carried out—nominations to the Law Review are made.† Law reviews are the single most important source of influence on legal thinking outside of judicial opinions and legislative statutes. The most surprising fact about them is that they are edited and managed by law students. Law students select what will be printed and carry out all editorial functions with nearly complete autonomy. They also write articles that may have important impact on subsequent legal decisions. This unique educational institution is a golden key to the future for all who possess it. It is awarded solely by the mathematical calculation of class status and its holders join the intellectual elite of the legal world. They gain access to jobs in the best law firms, clerkships in the Supreme Court and academic appointments. To "make the Law Review" is of major importance to academic suc-

*For a good description of this method, see Edmund M. Morgan.³

†For further discussion, see David Reisman,⁴ especially pages 39 through 42.

cess, and work on it may be as close as a law student will come to the work realities of law practice, although it is not very close.

TEACHING CONTENT

The question of *what* behavioral science material should be taught, is easier to answer than the *how* of doing it, although several traditional areas of law lend themselves readily to application of such material. The most commonly utilized field is the criminal law, with its questions of responsibility, competence to stand trial and credibility, as well as the vast but unattended field of criminal treatment. The latter subject readily lends itself to discussion of such concepts as the dynamics of superego formation and function, as well as sociological factors in antisocial behavior.⁵

Another useful area is family law. Scholars in this field of legal study need and, indeed, want behavioral materials to assist in resolving the legal problems of divorce, custody, adoption and marriage. The psychodynamic elements involved in these social actions are regarded as relevant and will be readily assimilated by law teachers, when we make them available. Here, as in other areas of law, there are many specific legal questions that we have never approached directly. Although we have relevant information, it must be reworked to meet the legal problem squarely. There seems to be less resistance to incorporating behavioral material in this area than in criminal law. This may be because family law has evolved more recently and traditions are not so firmly entrenched in the legal community. What resistance there is comes largely from the pressure of religious institutions.

The law of evidence is also fruitful,

especially for psychology. Its questions involve memory, perception, judgment and other ego functions, which lend themselves well to experimentation. Some work has been done in this area in the past, but the interdisciplinary communication process was not well worked through, and unresolved misapprehensions developed.

In addition to these fields of substantive law, there are numerous possibilities for seminars, and in the past this is where most of the teaching has been done by behavioral scientists. The seminar is usually the source of new material introduced into the standard curriculum—it is the testing ground. However, seminars reach a relatively small group of students and should be viewed as the start rather than the end of efforts to influence the curriculum.

The curriculum suggestions described above are all subject to the criticism that they merely present ideas. Most would agree that such intellectualized approaches have but little effect on action. This leads to the truly difficult question of *how* to teach our materials in the law curriculum.

TEACHING PROCESS

The crucial factor in bringing personality theory to the point of usefulness is the degree to which it becomes related to the user's own attitudes and feelings. Making available such insight as we have is not easy in the teaching process. However, ways for doing so have been developed in the medical schools,^{6,7} psychiatric teaching programs⁸ and schools of social work.⁹ These teaching techniques entail methods which properly should be called therapeutic in their aim. This means that students are encouraged, and even pressed, to identify actively with

the concepts and to express openly their feelings about them. The teacher's task is to clarify, explain and relate these reactions to the material by procedures comparable to interpretation in the psychotherapeutic process. The aim is to remove the barriers (that is, the resistances or defenses) to comprehension. Students are encouraged not only to observe themselves, but also to reflect upon the reactions and attitudes of others in the group. This process, in our definitional system, may be called group therapy.* I am convinced that such a process is essential to the useful mastery of psychodynamic theory, and the law school setting is no exception to this rule. Naturally, the suggestion of this method of teaching arouses some anxiety in tradition-oriented law faculties.

One fact, however, can be utilized to meet this objection, namely, that the case method described above creates the same kind of emotional undercurrents and stresses that develop in therapeutic groups. The main difference is that in our approach we attempt to deal with the undercurrents and, hopefully, to resolve them. This, coupled with the wide and growing awareness of the great loss of intellectually competent students due to emotional difficulties, creates a willingness to experiment with such "therapeutic" forms of presentation. Let me now describe some of the techniques that have been utilized successfully.

Since lawyers must constantly collect information from and about their clients, they recognize and accept readily the importance of good interview technique.†

This need is found in all kinds of law practice, and thus overcomes the rationalization that psychological theory is only relevant in such special fields as criminal or family law. All lawyers need accurate information and it must be gained, directly or indirectly, through the interview process.

In the context of four or five class hours, an effort is made to communicate and demonstrate some of our theories about transference-countertransference phenomena, concepts about one's role and its impact on the interview and the technique of conducting a nonstructured interview. This obviously encompasses a wide topical area touching some of the most technically difficult problems in our practice. However, it is clear that lawyers consciously and unconsciously manipulate these matters, with or without skill.

No didactic effort is made to cover in class all the content noted above. Before the first class, mimeographed materials are handed out setting forth these subjects in some detail. These are especially written with an eye to lawyers' problems, and they present dynamic theory in the context of the typical cases and situations lawyers handle. In addition, there is a one-page "problem," which is to be studied thoroughly before class. Several general questions designed to stimulate reflection on the problem are asked. This problem is so constructed that it has within it many opportunities for both conscious and unconscious identification, ethical conflict, role confusion and thus strong emotional reac-

*Group psychotherapy, as "all forms of psychotherapy tries to create a situation in which patients can have helpful new experiences and learn from them; they all attempt to bring about correlative emotional experiences."¹⁰

†A recent, excellent paper by Irvin C. Rutter¹¹ discusses a law course to deal with this and other aspects of "lawyers' operations."

tions. Its purpose is to provide the stimulus and the focus for intense classroom discussion.

At the beginning of the first class, a student is asked to present the facts of the problem. Inevitably, distortions creep into the description, and the student is then directed toward just those points for further elaboration. With this pressure the distortion increases, and his emotional and logical position become more firmly committed. Then, instead of viewing the distortion as error resulting from inadequate preparation, the class is asked to account for the altered facts. Since all have the printed description before them, there is rapid acceptance of the fact that something has gotten in the way of accurate recitation. The focus of discussion quickly shifts away from the problem situation to the class reactions to it, and these are examined by the group as examples of transference-countertransference phenomena. As discussion proceeds, the classroom events are analogized to the interview situation, and theory is tied to this direct and emotionally charged experience. Much attention is paid to the affective and motor reactions in the classroom. If there is an outburst of laughter, we wonder what it means; if the class gets restless, we look for a reason; and when the atmosphere flattens out with mutually boring superficiality, the latent hostility is ferreted out for discussion.

The first hour or two of these classes is characterized by much student interest and excitement. However, by the third session, the class usually becomes leaden and unresponsive: It has realized what is happening. The inevitable resistance to the uncovering process has developed.

This clearly hostile-defensive mood is permitted to continue long enough to be demonstrated clearly, and until some apt but disguised expression of it emerges. The speaker may then be interrupted, practically in mid-sentence, and the class will be confronted with the problem of accounting for the absence of the lively exchanges in prior sessions. It does not take long for the source of the resentment to be revealed and actively directed toward the man on the rostrum. This is encouraged, elaborated and then consolidated by ego and superego interpretations to allay future anxiety. At this point, the class actively goes back to work on the problem. Throughout this process, the emotional responses of the class are related to the helpless and hopeful feelings that clients bring into an interview, as well as what this will mobilize in the lawyer. The class has an opportunity to express actively, discuss and explore their feelings of anger and resentment toward authority—an uncommon experience in law schools, as well as elsewhere. This is an important problem to lawyers, since they not only have the authority of their professional role with which to cope, but in addition they are purveyors of the massive authority of the law to the community at large.

There is much student feedback from these sessions, nearly all of which is positive. On occasion students have requested more off-hours sessions to carry the process further, and most of the class attends.

Such a teaching technique usually arouses initial anxiety in the law faculty but, after witnessing results, they share the enthusiasm of the students. After seeing a repetition of the unfolding process in a number of different classes, they express the same kind of excite-

ment we feel as young therapists when, hopefully and on faith, we carry out a maneuver that works the way the book said it would.

This teaching technique has been used now in several different law courses and in two different law schools with uniformly good results.* No untoward reactions have so far arisen. In my view, it is an extremely effective teaching method.

A few remarks about the nature of the class group are in order. Since this process is conceived as therapeutic, what of the group size? This procedure has been carried out in classes ranging from 50 to 125 students. Obviously, not all students can actively participate, but there is no doubt whatsoever that the whole class is actively involved in the groups' process. Since those who speak are often selected on the basis of some motor response, there is little tendency for the discussion to settle down to only the talkers. That such a large group can be actively involved in a group process came as a surprise to me, but was not so to law teachers. This experience suggests that we might fruitfully explore the possibilities of increasing group size in other settings where the goal is insight-producing group interaction.

As mentioned above, the case method of instruction has the capacity of mobilizing great anxiety in students, and it provides little help for its resolution or discharge. This fact, coupled with the personality configuration of those who select law as a career, results in a kind of character armoring detrimental to professional effectiveness. In addition, the ethical concern and social idealism

many law students bring to their training tends to be mauled badly as professional study proceeds. No effective means has been developed to date for meeting this serious problem.† Since we analyze these matters as problems of the formation and function of superego and ego ideal, they lend themselves to a teaching approach calculated to increase insight.

With this in mind, a four-hour block of time has been developed, to approach the whole area of professionalism and professional behavior. It is given late in the first semester of the freshman year. Because student frustration and anxiety over faculty expectations has reached a high level by this time, it is hypothesized that there will be a strong motivation to explore such questions.

Before the first class, materials are handed out to lay the groundwork. Abstracts from Charlotte Towles's book¹³ as well as other material are utilized, and several general questions are asked to foster and stimulate introspection and identification with the subject matter. In the first session, students are asked to discuss why they chose to become lawyers. Their personal fantasies about the lawyer's role as well as their ideas about public expectations are explored. Hidden and conflicted motives such as public service versus remuneration are brought to the fore, and the nature and inevitability of overdetermination of motives is clarified. Discussion proceeds to feelings about how these goals and motives have been handled and affected by the law school experience. Resentment and frustrations are brought out in much the same man-

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†This subject has caused much ongoing concern for legal educators. One of the most comprehensive recent studies has been reported by Julius Stone.¹²

ner as described above, and efforts are made to make such conflict more psychologically acceptable. It is the experimental hypothesis (and hope) that this procedure will alleviate some of the students' tensions that heretofore have resulted in a high incidence of academic failure, drop-out and emotional disturbance in those with proved intellectual competence. It is too early even to speculate about results, but we hope to devise some method for testing this hypothesis in the future.

I would like to close with a more general comment. One of the conspicuous qualities of most of the writing and discussion about law and behavioral science is the remarkable ignorance of members in one field of the other. Most lawyers know little or nothing of our theories and, likewise, we are at least as ignorant of the values, methods, procedures and goals of the law. Intercommunication is virtually nil. In spite of much recent discussion on the virtues of developing universal languages, semantic as well as psychoanalytic theory lends credibility to a comment by Konrad Lorenz, that there is no substitute for learning the other fellow's language.

With this in mind, it is clear that any teaching effort by behavioral scientists in the law school setting must include opportunities for each to learn the other's language. This means that the psychiatrist or psychologist should "live in" and be around for all sorts of informal contacts. Also, participation in standard courses should not be of the sort where the visiting lecturer drops in, presents his wisdom and then departs.¹⁴ Presence for protracted periods is es-

sential. This not only permits frequent reiteration and reworking of material, but it tends to strip the mystery from the participants—a fact which may not, but should, be welcomed. It permits a more penetrating understanding of each others' concepts, including "the feel" of them. There is probably no better way to achieve an amalgamation of ideas than through this kind of procedure.⁹ Needless to say, such persons must maintain strong ties with their parent group, or risk the loss of their own professional identity, which renders them useless. This need should be anticipated and built into the teaching arrangements by such devices as joint appointment to both law and nonlaw faculties.

CONCLUSION

An effort has been made to set forth some of the ways and means I have utilized for teaching psychodynamic concepts to law students. Although methods and materials are still in a state of experimental flux, after six years' experience they are beginning to assume shape and their effectiveness may be estimated. Each new effort has suggested several more possibilities, which only await available time for implementation.

Similar but different methods have been used in law schools at Yale,¹⁵ Boston University,¹ Northwestern,* Temple¹⁶ and, to a lesser degree, at several others. Experience in those schools seems to reflect some of the same concerns and problems described here, and the others appear to share my enthusiasm for the realized and potential advantages of such methods.

It has been my purpose to suggest

*Professor Howard R. Sacks has written some excellent material on the legal interview, which has not yet been published.

the variety of ways in which the techniques and interests of social psychiatry may be carried out in the setting of a law school. Although full and final evaluation of results in such a program can not be made for many years, it is my current estimate that it will make a lasting impression on students and lead to their more sensitive and efficient approach to social and legal problems. Finally, it should be stated that, despite occasionally battered feelings, participation in these activities have provided a deeply satisfying professional experience.

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