

Statutory Law in Legal Education: A Response to Professor Williams

by Maxine T. McConnell*

Professor Williams is right: law graduates, particularly those who plan to practice, are ill-equipped to deal with today's world of statutory law. They may well have learned the substance of legislation relating to anti-trust, civil rights, environmental control, labor law, land use regulation, and so on through the alphabet of legislative law, but they will have learned little about the development and application of statutes.¹

A course in legislation early on is needed. As Professor Williams suggests, it should be a first-year required course.² Realistically, few students would elect to take legislation in the second or third year when course selection is controlled by subjects covered on bar examinations and by subjects most saleable in the job market. Since knowledge and skill in the area of legislation is neither tested on the bar exam nor saleable in the job market, a first-year required course in legislation appears to be a necessity if law schools are to achieve their goal of "teaching students to think like *complete* lawyers."³

Professor Williams recommends that such a course include the study of policy development and evaluation, statutory interpretation, legislative process, statutory drafting, state constitutional requirements and restrictions in comparison with federal process, skills in reading and under-

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This response is subjective as the editors of Mercer Law Review requested. The perspective is that of a clinical teacher—a veteran of almost fourteen years.

1. Williams, *Statutory Law in Legal Education, Still Second Class After All These Years*, 35 *MERCER L. REV.* 803 (1984).

2. *Id.* at 816.

3. *Id.* at 843 (emphasis added).

standing statutes, and such practical legislative skills as the representation of clients before legislative bodies and the application of statutes to specific situations.⁴ He gives validity to this recommendation by developing his theory that the study of the legislative process entails the use of legal reasoning skills different from those learned by the case method.⁵

Should the study of the legislative process, however, stop at the end of the first year of law school? The second- and third-year curriculum offers numerous opportunities to reinforce and expand upon the knowledge and analytical skills acquired in a first-year course in legislation. Just as the concepts of professional responsibility can and should be taught in every law school course, some, if not all, aspects of legislation and the legislative process can and should be taught in all statutory law courses.

Law must be learned in context⁶ because this is the only way that students can understand and learn to work creatively with legal rules. The cultural, moral, and political history behind the enactment of social legislation is vital to the understanding of the law and legal institutions and is vital to critical analysis and recognition of potential need for reform.⁷

It has been said that

[t]o be learned and thoughtful about the printed words of statutes and judicial opinions and yet insensible to the actual conditions which those printed words create or alter is to be wise about the formal and foolish about the vital. It is to study, not law, but only the form and expression of law.⁸

A course in family law taught by the casebook method, relying solely on judicial interpretation of a provision in a state's family code, fails to contribute to the development of the 'complete' lawyer. The political, moral, economic, and social history of divorce and family law is fundamental to the understanding and interpretation of the law. The need for further reform in areas of family law continues, and students must be sensitized to this need if they are to fulfill their duty to society as members of the legal profession.

First-year required courses in property law should consider the historical, social, and economic effects of legislation in the areas of land use control and environmental protection. Second- and third-year courses in environmental law and land use planning can then concentrate on in-

4. *Id.* at 820-30.

5. *Id.* at 809-13.

6. McAdams & Hotelling, *The Limitations of Law*, 31 J. LEGAL EDUC. 562, 570 (1982).

7. Klare, *The Law-School Curriculum in the 1980's: What's Left?*, 32 J. LEGAL EDUC. 336, 341 (1982).

8. Fetner, *The Law Teacher as Legal Reformer: 1900-1945*, 28 J. LEGAL EDUC. 508, 517 (1977) (quoting Powell, "Law as a Cultural Study," XLII REP. OF THE A.B.A. 572 (1917)).

depth research and consideration of alternatives to existing controls and the implementation of legal change.⁹

The traditional contracts course concentrates on the history and development of the common law of contracts. Statutory variances from the common law are introduced, but little attention is devoted to the history, economics, and social policy leading to the creation of the variances.

These are but a few of the many law school courses in which statutory law and governmental regulation are considered. Few clinical programs devoted exclusively to the legislative process have been developed.¹⁰ It is submitted, however, that most clinical courses provide an ideal opportunity to teach statutory legal reasoning and the legislative process. The term 'clinical' in the context of this paper refers to experiences in the legal process involving the teacher, the law student, and the student's representation of clients.¹¹ Most specialized clinics concentrate on subject matter now controlled by statute, that is, juvenile, landlord-tenant, consumer protection, environmental protection, employment discrimination, criminal, and family law.¹² A 'general practice' civil clinic can provide numerous experiences with statutory law. The focus need not be limited to the application and interpretation of the law. Students must develop skill in reading and understanding the statutes they are using in the representation of their clients. Examination of the history and social policy behind a statute can lead to a better understanding of how that statute can be used in a client's behalf. It also may lead to a creative solution of the client's problem.

Client representation in a clinical setting can provide opportunities for the use of statutory sanctions. Study of the economic and social history behind the sanction can help the student develop arguments for the imposition or denial of a sanction.

It may be necessary, in the representation of a client, to challenge a statute or its application. In this event, not only is it necessary to understand the statute, its history, and any underlying social policy, but it also is necessary to develop and propose a responsible solution. This solution may be attained through the courts or through legislation. Students can

9. See, e.g., Findley, *Environmental and Planning Studies at the University of Illinois*, 30 J. LEGAL EDUC. 213 (1979) (describing active programs at the University of Illinois College of Law that go beyond the scope of normal classroom participation).

10. Williams, *supra* note 1, at 826; French, *Teaching about Legislation and the Legislative Process*, 31 J. LEGAL EDUC. 604, 607 (1982).

11. Barnhizer, *The Clinical Method of Legal Instruction: Its Theory and Implementation*, 30 J. LEGAL EDUC. 67, 71 (1979).

12. The following law clinics are good examples: Urban Law Clinics at New York University School of Law and Rutgers Law School; Consumer Law Clinics at New York University School of Law, University of Toledo College of Law, and George Washington University; Juvenile Law Clinic at Loyola University School of Law.

and have drafted statutes and have been a part of the process of getting the statutes before the legislature.

Clinical cases offer numerous opportunities for students to compare and evaluate statutory and common-law remedies. The simplest automobile accident case or consumer transaction can provide the vehicle for training students to analyze the alternatives available for the resolution of the client's problem.

All of this, of course, presupposes a clinical course structured to include analysis of legal principles and institutions as an integral part of client representation.¹³ Clinics specializing in specific areas of the law that are governed primarily by statute do this. Either through the courts or through legislative bodies, students in these programs can and do become acquainted with the legislative process by resolving problems or effecting changes.¹⁴

A general civil practice clinic is an ideal setting for the teaching of legislation and the legislative process. Caseloads can be designed to provide experience in reading and interpreting statutes, applying a statute to a specific fact situation, and challenging a statute because of its provisions, or lack thereof, or because of its application. Working with the clinic teacher, the students can begin to understand the broad policies behind the given statute and its effect when applied to a specific problem. Legal rules are created to regulate society. Until students experience the effect of a rule in the context of reality, they cannot fully understand the rulemaking process or evaluate the product, much less use it to achieve a client's goal.

This writer has found that few students coming into a clinical course are prepared for statutory legal reasoning. The students cannot use statutes because they cannot read them in the context of a client's problem. Few students question a statutory provision. They assume it is a rule to be followed blindly. Few students have thought about the role of statutory law in the legal system and its effect on the administration of justice. For these reasons, this writer suggests that not only is a course in legislation needed as Professor Williams recommended, but it must be followed by the 'pervasive method' in all appropriate courses including clinical courses.

13. Leleiko, *Clinical Education, Empirical Study, and Legal Scholarship*, 30 J. LEGAL EDUC. 149, 153 (1979) (wherein it is stated: "Clinical teachers and students are forced by the clinic's nature to see, understand, and evaluate the law in action. The intellectual challenge is to understand and analyze the legal system's performance in the context of the individuals and institutions it affects.").

14. *Id.* at 157.