

## **The Double-Edged Sword of Legal Education: Uncertainty Mitigation and Social Innovation During a Pandemic.**

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Abstract: Socialization activities are a paramount part of the learning process, as well as other informal and non-formal education opportunities arising from participation in the University's social life. With that taken away due to the implementation of social distancing measures, students often can feel isolated, depressed, and anxious, and thus face unprecedented challenges in achieving their learning objectives. University educators are mandated to reflect on how to shape the teaching activities to maximize their impact on students' cultural backgrounds and skills; ultimately, what we should care about is our students' wellbeing in a view of accompanying them to success in life. As Hobbes thought us at the very beginning of our legal studies, the social contract theory implies the use of law as a means for contrasting uncertainty, fear, and even violence. Often the link between legal studies (and students, regardless of the seniority) and society as a whole operates behind the curtains of technicalities and of not easily accessible narratives. By unveiling this important relationship, law teaching activities can contribute to de-escalating some of the lockdown side effects upon students and at the same time trigger innovative societal changes. Methods exist and can be further developed for creating a rich learning environment, where law represents a tool for participation and inclusion despite the challenges posed by prolonged e-learning and remotely operated education activities. The simulation of decision-making, legislative, or court proceedings can empower the participatory side of law studies. The present reflection will contextualize the social contract theory to the present time and develop it into viable teaching techniques for law educators, capable to achieve a threefold objective: 1) keep the students' interest in the subject high and thus boost their results in their legal studies; 2) generate social and legal innovation thanks to a unique bottom-up approach provided for by early-stage lawyers who will lead the world community in the near future, and 3) mitigate the negative effects of social distancing within the law students and teachers community by stimulating active thinking and providing groundbreaking learning environments and new, participatory teaching methods. In order to provide examples of the statements above, the paper will conclude by detailing three learning environments and how to implement them in law classes.

*Keywords* Law, Simulation Models, Learning Environments

## **Introduction**

The present study is grounded on the observation of a law teacher in an undergraduate University course, in a University located in northern Italy. Considering the geographical location of the University, lockdown measures and the emotional impact of the Covid-19 pandemic have both been particularly harsh and long-lasting. While the courses continued without pausing despite the disease outbreak, the shift from physical classroom work to online learning and teaching implied several notably relevant consequences, at both personal and professional levels, especially for learners. Feelings of loneliness and of uncertainty, low self-esteem, lack of motivation, and even hikikomori were reported among many students' community in recent times. Isolation has been identified as the most compelling challenge students face within their educational environment.

Legal studies are the backbone of the social agreement which ultimately regulates human interactions at all levels and, especially when law is taught to non-law students, it can serve as an advanced overview on citizenship education and on critical thinking (Richardson, Butler and Holm 2009, pp. 29-41).

The understanding of decision-making procedures at the public level, as well as the principles governing specific communities (in the case of the author, the EU one) proves critical in the development of civic awareness and related responsibility.

Concerning the specific moment in time when the present study is conducted and the article written, civic awareness and social responsibility feelings among students have a twofold, desirable consequence; on the one hand, a sentiment of participation to the community (University, local, national, EU and global ones) can demonstrate that present restrictive measures in place to reduce the disease spread do not imply the failure of social groups where the student is involved. Instead, the effort for containing the pandemic is shared among nearly all the globe and the feeling of isolation can be reversed with a shift of paradigm, from physical distancing to globally shared objectives.

On the other hand, a stronger civic consciousness can be awakened within students and thus mitigating the sometimes negative approach of young people towards Covid-19 precautionary measures usage (masks, personal and social distancing, lack of physical contact, limitation in social gatherings, etc.).

In this vein, law teaching activities can contribute to de-escalating some of the lockdown side effects upon students and at the same time trigger innovative societal changes.

The present paper aims at detailing some educational activities that can be introduced within law university courses. They were selected, tested and adjusted to pursue two objectives. First, these activities are suitable for online learning and can be run through video telecommunication software of any kind, by creating as many conversation rooms as the working groups, where the teacher can hop and provide for tutoring and guidance. At the end of group working, a ‘plenary session’ with all the participating learners can be used for final discussion and debrief, as well as for launching the activity at its beginning. Second, the reported activities are defined as learning environments insofar they can simulate real life cases and problems that learners will solve by applying legal concepts, on the one hand, and practicing their social skills, such as negotiation, public speaking, leadership, critical thinking, etc., on the other.

The peculiar present time and its well-known challenges beg for innovation in University education: whilst our teaching programmes are likely to remain the same, especially at undergraduate level when basic concepts need to be thought, we as teacher can respond to these challenges by upskilling our profiles and adjusting them to the needs arising from our students, among which, now more than ever, arise from isolation and confusion. At this regard, practical group works seem to be the most effective method. A little disclaimer: the observations and reflections offered below were originated from an international law and EU law courses embedded in a Cultural and Linguistic Mediation undergraduate degree (‘Laurea Triennale’, in Italian system and language). The subjects and the context in which they are thought prove particularly suitable for offering the activities described in Par. 5. Aware that every course is different, the author acknowledges that this cannot be a one solution fit-for-all yet she firmly believes that more debate should be conducted among fellow teachers on how we teach law and to which purpose, especially now.

## **2. Law As A Mitigation Tool Against Isolation Negative Effects**

The use of law as a tool of directed social change is widespread in all contemporary societies (van Rossum, 2018.). However, metaphysical concepts of law, purely formal concepts of law and preoccupation with merely technical functions of law, hinder the transformative potential that law studies have on both the short and the long term.

Law is such a knowledge intensive domain which serves as principal source of legal cognition for all and the legal community in particular. The legal skills prove paramount for a multitude of background work constituting the backbone of society, including decision-making, governance, compiling

statutes, procedural rules, evidence, bill, amendment, contracts, tenders, declarations, and many more. Therefore, legal information is a valuable resource for society as a whole, yet especially for the law students who generally learn how to become lawyer at the same time of learning how to become adults and citizens.

Legal studies are the core of the social agreement ultimately regulating human interactions at all levels. Often the link between legal studies (and students, regardless of the seniority) and society as a whole operates behind the curtains of technicalities and not easily accessible narratives.

Psychologist June Louin-Tapp defines the concept of legal socialization as

‘compliance to laws and respect for authority is variously called socialization, internalization of norms, conformity to rules, identification, moral internalization, and conscience formation. Regardless of nomenclature, psychologists have attended to the problem of compliant behaviour as an aspect of socialization research, crucial to the maintenance of the social system. Essentially socialization is the process whereby members of a society learn its norms and acquire its values and behaviour patterns’ (Louin Tapp, 1997).

Internalization in social sciences is the process of acceptance of a set of norms and values established by people or groups which are influential to the individual through the process of socialization. The process of internalization starts with learning what the norms are, and then the individual goes through a process of understanding why they are of value or why they make sense, until finally they accept the norm as their viewpoint (Scott, 1971).

On the one hand, especially in times of emergency, such as the Covid - 19 outbreak, when compliance to health protection norms need to be particularly monitored and enforced, law teaching activities can contribute to de-escalating some of the lockdown side effects upon students and at the same time trigger innovative societal changes in terms of compliance.

The legal socialization, as outlined above, can happen and should happen during the educational process, and even more so when teaching law to young adults, being them law students or students of other disciplines where law serves as a collateral subject.

By taking the student closer and closer to the legal system, and by unveiling the rationales underpinning public decision-making, compliance to norms, especially of emergency nature, can be enhanced, especially through the understanding of individual and collective social norms and responsibility. Law as a discipline aims to encourage learners to analyse real-life issues critically and to identify possible solutions creatively and innovatively; it supports learners to revisit assumptions, world views and power relations in

mainstream discourses and to engage in individual and collective action to bring about desired changes, also outside the learning environment, in the community and wider society.

On the other hand, despite law can be learned alone, through textbooks and previous cases, any law teacher will agree that the most effective way of actually transferring legal knowledge is by leveraging it through practical examples and utterly clear simulated situations, where students can prove their understanding of the principles / regulations / norms at stake. Besides, brain research demonstrates that ‘when the fun stops, learning often stops too’ (Wills, 2007): implementing some fun activity in class can only increase the learners’ success in approaching the subject. And ultimately, also the teachers’ one in delivering their class.

### **3. Increasing the Participatory Effect of Law Studies**

Almost 40 years ago, a handful of Nordic countries gathered to rework their curricula to include more creativity, collaboration, and communication – skills that are nowadays considered key to functioning in the contemporary world.

Today, schools and universities in the North incorporate joint problem-solving activities and collaborative group assignments into the curriculum. These are key to allow students to explore the discipline with receptiveness and experience it first-hand. Practical cases and workgroups can be incorporated into simulation-based learning – allowing students to be creative while expanding their knowledge.

With legal knowledge in general, it is the opinion of the author that focus should be shifted from the ‘learning by heart’ the legal system, a practice that increases stress, anxiety and creates undesired competition among students (Jenkin, 2019), to actually understating the critical functioning of the legal apparatus and its profound societal usefulness. The pursuance of this ‘participatory’ objective is of course made more complex by the forced digitalization of the learning process, which in Italy occurred for safety reasons since March 2020.

The Nordic Way helps support students’ curiosity, encouraging them to take control of their own learning, and the best way for fostering such an approach is by keeping the teacher accountable not only for the substantial knowledge transfer but also for the context in which this transfer takes place and the sort of knowledge that is transferred. The mentioned context can also be referred to as a learning environment, i.e., the diverse physical locations, milieu, and cultures in which students learn. And such environments can

be arranged and made available to learners also in the case of e-learning, through digital platforms.

Crucially, simulation activities serve at least two essential functions: they assist in overcoming some, at least, of the psychological barriers to deep learning and they force students to interact among them and with the teacher. While it would be going too far to claim that simulations, in their various forms, are the ultimate teaching method, it is accurate that they are a pedagogical method that is too rarely utilized by law teachers. Also, they are a method that has the potential to elevate and re-energize classroom experience (Moizer et. al, 2006, pp. 207–224). Most notably, in times when social and participative activities are scarce if not absent, the ability to create real-life exercises, where students are required to interact and challenge themselves with high-intensive, knowledge-dense and upskilling simulation, can also improve the learners' personal experience among themselves, with the class, the teacher and the community as a whole.

Legal education appears to offer the ideal environment for the use of simulated learning mechanisms. As Twining puts it, “law as a discipline is constantly fed with practical problems and materials from the ‘real world’: actual rather than hypothetical cases; proposals for legislative reform; and social problems from domestic violence and crime to world peace and environmental survival” (Twining, 1994).

The Global Citizenship Education is a UNESCO's initiative, referred to as a framing paradigm that encapsulates how education can develop the knowledge, skills, values, and attitudes learners need for securing a world that is more just, peaceful, tolerant, inclusive, secure, and sustainable. It represents a conceptual shift in that it recognizes the relevance of education in understanding and resolving global issues in their legal, social, political, cultural, economic, and environmental dimensions. It also acknowledges the role of education in moving beyond the development of knowledge and cognitive skills to build values, soft skills, and attitudes among learners that can facilitate international cooperation and promote social transformation (UNESCO, 2014). While the initiative has been applied in different ways in different contexts, regions, and communities, it has a number of common elements, which include fostering in learners:

- an attitude supported by an understanding of multiple levels of identity, and the potential for a ‘collective identity’ which transcends individual cultural, religious, ethnic or other differences;

- deep knowledge of global legal and political issues and universal values such as justice, equality, dignity and respect;

cognitive skills to think critically, systemically and creatively, including adopting a multi-perspective approach that recognizes the different dimensions, perspectives and angles of issues;

non-cognitive skills including social skills such as empathy and conflict resolution, communication skills and aptitudes for networking and interacting with people of different backgrounds, origins, cultures and perspectives;

behavioural capacities to act collaboratively and responsibly to find global solutions for global challenges, and to strive for the collective good.

These competencies prove paramount for both the learners' future professional career and for the present personal moment the whole world population is going through.

An open and democratic classroom climate in which discussion and dialogue take place appears to effectively promote the development of citizens even before law students, or future lawyers. Moreover, a formal curriculum that includes citizenship projects within law courses also appears to be an effective type of education. The effects of legal education, focusing on citizenship-related knowledge and skills can prove useful also in relation to the quality of the studies reviewed.

#### **4. Simulations and their Effect Towards Learners' Results And Overall Attitude**

Simulation activities have been used for training purposes in many fields to bridge the gap between theory and practice. It was felt that practice with such materials and 'problems' would provide better training for the future professionals than focusing solely on theories and guidelines. The concept of using problems based on real-life situations to educate students has been much expanded in Europe by the University of Limburg in Maastricht which, since its foundation in the 1970s, has used Problem Based Learning (PBL) as its pedagogic philosophy (Moust, van Berkel and Schmidt, 2005, pp. 665-683). The School of Medicine in the University of Limburg was first to adopt this approach, 'the Maastricht approach', and the Law Faculty soon followed. Instead of being provided with theoretical knowledge in a traditional lecture structure, law students were provided with problems as the "starting point for self-directed learning activities" (Nuy and Moust, 1987, pp. 16-30).

As a catalyst of the transformative process, legal education should promote the use of a wide range of active and participatory learning methods that engage the learner in critical thinking about complex global issues, and in developing skills such as communication, cooperation, negotiation and

conflict resolution to resolve these issues. This can be a challenge for many formal education systems with hierarchical teaching models and learning environments. As shared by Valerie Taylor, during a plenary session of the UNESCO Forum on Global Citizenship Education, schools and classrooms are often 'resolutely undemocratic. Teachers are often largely unaware of their assumptions and so perpetuate non-transformative behaviours or beliefs (UNESCO, 2014).

The opportunity and convenience to introduce a simulation-led activity is supported by increased evidence of the advantages of simulations in the delivery of legal and political sciences and international relations programmes. Simulations require students to learn and perform in interactive environments in which it is the environment that is simulated but the behaviour is real. Simulations offer social science students an opportunity to learn from first-hand experience, and this sort of experiential learning allows students to apply and test what they learn in their textbooks, often helps to increase students' understanding of the subtleties of theories or concepts and draw in students who can be alienated due to isolation, distanced teaching and social distancing. By putting students in role-play situations where they need to make defensible decisions and often have to convince others to work with them, simulations also provide students with the opportunity to develop their communication, negotiation, and critical thinking skills, and in many cases, improve teamwork skills (Asal and Blake, 2006, p.p. 1-18).

Educational simulations are experiential processes where a group of participants collectively explores a complex reality. Bringing together diverse (simulated) stakeholders in a safe space is essential to exploring various solutions and testing their viability. These simulations can be easily transformed into useful law teaching group activities, thus maintaining not only the benefits from the perspective of social and soft skills, but also, at the same time, test and validate the students' actual mastery of the legal matter.

Simulations are social because they require the participation of real people who represent different groups and organizations, even if through digital means. They represent selected real-world situations or processes, enabling learners to actively operate its key elements and make claims about how they work. The simulated reality is created through the use of game elements (roles, problem cards, pictures, tokens, boards, etc.), thus triggering an additional 'fun effect' capable of further boosting the students' attitude and results.

As a special type of simulation, legal simulation serves to explore real legal issues. Sometimes, unlike social simulation that applies role-playing and stylized settings, legal simulations require that participants assume their

real-life roles, work with real-world data, and operate within their cultural contexts. This is the case of the notorious Moot Courts, simulated court or arbitration proceedings, usually involving drafting memorials or memoranda and participating in oral argument. Conversely, in different scenarios, law students may well play the role of a completely different stakeholder. Also, this aspect can be used by the teachers who select which simulation activity is most suitable for the achievement of specific educational and technical goals with their classes.

Finally, simulation-based teaching and learning offer some pedagogic rewards. These include the fact that it is student-centred rather than teacher-centred, it identifies gaps not discernible in conventional learning, it integrates reality and context with academic learning (including interviewing skills and practical advice-giving, as well as the ability to deal with the unexpected), and it effectively engages the student in the learning process. Moreover, since simulated learning almost always involves co-operative or peer-focused activity, it nurtures a range of soft skills such as those mentioned above and the whole range of communication skills (language, articulation and presentation). Finally, it allows for student social experimentation, something often ignored in legal education, as if law was not the beating heart of civil behaviour and citizenship morale.

### **Conclusions and Three Examples of Learning Environments for International and EU Teachers**

The definition (According to the Glossary of Educational Reform) of learning environment recognizes that students learn in many different ways in very different contexts. Since learners must do the learning, the aim is to create an environment for learning that optimizes the ability of students to learn. There is an infinite number of possible learning environments, which is what makes teaching so interesting.

The following notes are drawn from practical experience and subsequent reflections on the use of simulation-led learning environments in teaching international and EU law to non-law students, during their Bachelor's degree. They are not intended as undisputable research outputs: instead, they are observations, aimed at offering such teaching methods to fellow teachers and attempting to outline the kinds of experience they provide to, and the skills they promote in, the students. The exercise proposed below involve skills relating to negotiation, public speaking, problem-solving, group working, leadership, dispute resolution, drafting, social interaction, and good knowledge of the substantial relevant matter.

There are adjustments needed, especially for non-law students, to studying a new discipline, or relatively new in case law was a subject during secondary school (Lipton, 1998).

The proposed learning environments are meant at stimulating both the knowledge needed for scoring at EU law and international law courses and both skills that prove useful in general work and personal life. In the present times, when contact is scarce and people feel detached from their community, and suffer from lack of meaningful interpersonal contact, the teacher's capacity to organize, moderate, manage and rate these exercises is paramount for keeping the interest towards the subject high and away from depressive or anxious feelings of isolation or deprivation. For this reason, the listed activities were also selected according to the possibility of being run remotely with a group of 15 to 30 undergraduate students.

### **1) Role-play on EU decision-making**

Its institutional origin represents an added value to the activity since it provides for a guarantee regarding the accuracy of the data and information included in the simulation. The material is also sided by instructional guides and explanatory videos, thus making it extremely convenient for a teacher with not much experience in creating learning environments and simulation activities to rely on it. Considering that the procedure has been simplified for the purpose of the simulation<sup>1</sup>, the simulated case can be summarized as follows.

In some member states, any product resembling chocolate may be sold under that name. In other member states, a product may only be labelled 'chocolate' if it contains cocoa butter. This is problematic, as it means that there are some countries where chocolate manufacturers are not able to sell their products, thus hampering trade within the EU. The European Commission ensures the free movement of goods in the EU. For this reason, the Commission has drawn up a directive that is to apply to all member states. The proposal for this directive is to allow producers to replace cocoa butter with other vegetable oils and still call their products 'chocolate' and oblige all member states to permit the sale of such 'chocolate'.

In the context of the present simulation activity, learners act out a meeting of the Council of the European Union, where they play the part of ministers from EU member states, and of representatives of the European Commission and the European Parliament. The aim of the meeting is to reach a decision on the legislative proposal concerning the ingredients in chocolate. The

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<sup>1</sup> Involved states are in fact more numerous than those depicted by the simulation. However, the teacher is free to adjust the template according to the number of participating students

proposal can only be adopted if both the Council of the European Union and the European Parliament agree on the definitive wording. During the meeting, the European Parliament informs the Council of its position regarding the Chocolate directive. On the one hand, students need to take their national interests into consideration. On the other, they should allow the European legislative process to run smoothly. The overall pedagogical objective is to have students experience how European decision-making works and to understand that various national and other interests play a part.

According to observations gathered before, during and after the activity, it can be maintained that students gained formal knowledge of the processes and techniques of negotiation and decision-making in the EU. In addition, they learned how other factors can affect outcomes, including time pressure, informal discussions that take place on the margins, and personalities.

## **2) A Game for Democracy**

New Shores – a Game for Democracy is a multiplayer internet game that sends students to a virtual ‘green island’. With wild forests and rich coal deposits, it seems a perfect place to lead a long, peaceful life. However, the illusion gets soon dispelled.

Initially equipped with nothing more than a basic hut and a couple of action points, learners are thrust into a harsh reality of earning money, protecting their households and developing public infrastructure, creating and respecting rules, negotiating their content with other players. During the activity, they discover that all these actions are interlinked; while exploiting the island’s natural resources may quickly improve their living conditions, it may also disturb the island’s ecological balance and lead to natural disasters, create a conflict with a neighbouring community or even within their own one. Or it can trigger sanctions by simulated authorities.

The game has been developed within the project Nauru Game for Active Citizenship of Youth funded from the European Union as part of the Erasmus+ Programme<sup>2</sup>. The main objective of the simulation activity is to shape learners’ attitudes and increase the awareness of social participation, sustainable development, and climate change. To reach these aims, the simulation developers created an innovative internet-based activity accompanied by an e-learning platform.

The e-learning platform for educators, teachers, tutors, and students themselves offers a unique opportunity to get a better understanding of

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<sup>2</sup> Available at <https://newshores.crs.org.pl/#game> (last accessed: November 2020)

how to access and moderate the game and use it in educational contexts. Especially in times of social isolation, a web-based learning environment is very convenient: it is sufficient to watch a video tutorial for moderators, read a workshop scenario and explore multiple possibilities to exchange knowledge and experience with other educators. As a side note, access to ‘New Shores - A Game for Democracy’ is upon payment only, thus limiting the number of classes who will actually undertake this activity.

### **3) Model United Nations**

Model UN is a popular activity for those interested in learning more about how the UN and the international community in general operate. Hundreds of thousands of students worldwide take part every year at all educational levels. Many of today’s leaders in law, government, business, and the arts – including at the UN itself – participated in Model UN as a student. The Model United Nations simulation is a global phenomenon and probably the most known simulation activity that can be proposed to law students with greatly different levels of complexity.

In the classroom, students learn from their teacher, whilst during this kind of experience, students learn from each other. The simulation does not replace the classroom because it complements the classroom. Students have to internalize what they learn in class and deliver that information in an effective way to others. They develop confidence and leadership skills through experience. Model UN conferences are opportunities to practice research, public speaking, teamwork, negotiation, and writing skills in a safe and structured environment. The role of the teacher in Model United Nations simulation is to guide this “student-led” learning by ensuring information quality (e.g. proper background, basic research, fact-checking support, drafting of position papers) and giving students the tools to teach one another.

Usual Model UN simulations take place at events crowded with hundreds of students, from a very large share of the world; this option is still viable at this moment, thanks to the development of internet-based conferences. Even guidelines are available on how to adjust Model UN activities to online learning today (Model United Nations Institute, 2020). Still, in the presence or remotely, these are expensive experiences, and not all the students can afford to participate, despite the sporadic availability of scholarships. However, the author’s experience teaches that it is still possible to organize small-scale Modules, within a University or even within a single course. Of course, skills such as public speaking will be less relevant in the latter context yet still prove useful from the perspective of substantial knowledge acquisition

and also in the development of other soft skills, such as being sociable and effective in digital environments, which appears to be a rather useful notion to acquire nowadays.

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