Come to the Edge: Role Playing Activities in a Constitutional Law Class

Thomas R. Hensley, *Kent State University*

How can I get my students to read their assignments carefully? How can I develop the writing abilities of my students? How can I get students interested in the course and excited about learning? Answers to these questions are obviously not easy, but in the teaching of a constitutional law course focusing upon civil liberties I have found that structuring the course around role playing activities seems to create a learning environment in which all of these concerns are met.

Role playing is a widely used technique of instruction in political science (cf. Walcott 1976, 1980). The concept of role playing, which is frequently used interchangeably with the terms *gaming* and *simulation,* can be defined in a wide variety of ways (Pohlmann 1986), but the common elements involve placing participants "in roles which require that they overcome obstacles in pursuit of goals" and "in situations whose opportunities, constraints, and incentives resemble those found in real politics" (Walcott 1980, 1). Advocates argue that many positive benefits can accrue from role playing activities: motivation and interest, cognitive learning, changes in the character of later course work, affective learning regarding the course subject matter, general affective learning, and changes in classroom structure and relations (Walcott 1980, 11-13).

Although role playing activities can be used effectively in all areas of political science, courses in judicial politics seem especially appropriate. One reason is that the roles of major participants in courtroom situations are both familiar and relatively unambiguous: plaintiffs, defendants, attorneys, jurors, and judges. A second reason is that legal issues, although perhaps quite complex, ultimately are decided in a courtroom in stark, contrasting terms; for example, the defendant is guilty or innocent, or the law is constitutional or unconstitutional. It is therefore not surprising that many role playing activities associated with the courts have been reported in the literature. These have included a federal civil trial simulation (Hensley 1980); a semester-long simulation of Supreme Court decision making (Whitaker 1973; Pacelle 1989); the use of a formalized debate format to analyze cases in public law classes (Guliuzza 1991); an international moot court competition (Collins and Rogoff 1991); a "you-be-the-judge" exercise in which students assume the roles of Supreme Court justices during the introductory session of an American government class (Lenchner 1989); and a moot court involving constitutional issues (Claude and Parker 1984).

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In my civil liberties class I use two role playing activities throughout the entire 15-week semester, with one type of activity—advocacy papers—involving the students in the roles of attorneys preparing briefs and arguing cases before the United States Supreme Court and the other activity—a three-part term paper—involving the students in roles as Supreme Court justices, ultimately writing an opinion in a case currently before the Court. By putting the students into these roles throughout the semester, I seek to enable them to learn that constitutional law is approached quite differently depending upon whether one is an attorney, a Supreme Court justice, or a student of the Court. While these objectives are important, the most important function of the role playing activities is to create a challenging, stimulating learning environment in which students must read cases and commentaries with extraordinary care and must engage in extensive, analytically demanding written work. Finally, despite the demands on both the students and me, structuring the course in this manner creates a learning environment that is fun, and teaching and learning should always be fun (cf. Cronin 1991, 489).

Before turning to a detailed description of these two role playing activities, it is appropriate to present a brief description of the course in which these activities occur, although the role playing activities can be adapted to a wide variety of classes. The course is a junior/senior level seminar in civil liberties. This is a controlled enrollment class offered to students interested in attending law school; it is offered each semester, and the class typically enrolls about 20 bright, highly motivated students who want the challenge offered by the class. The demands on the students are substantial. They must write seven papers during the semester, four associated with the advocacy papers and three associated with the term paper. In addition, the stu-

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dents take ten quizzes during the semester; these are objective tests that hold students responsible for the textbook readings and class materials. Student grades are based upon 650 possible points: 150 points for the three-part term paper, 100 points each for the four advocacy papers, and 10 points each for the ten quizzes. Daily class sessions can be conducted either in a lecture format or the Socratic method; I prefer the former, but this is a matter about which much disagreement exists (Fishman 1984; Guliuzza 1991).

The Term Paper: Supreme Court Justice Role Playing

Throughout the semester students develop a three-part term paper in which they assume the role of a Supreme Court justice and ultimately write an opinion as they think their justice will in a case currently before the Court. At the beginning of the semester, each student is assigned a justice based upon the random selection of names from a hat, and the class selects by majority vote the case they want to study for the term. In the first part of the term paper, each student prepares a background paper on his or her justice. The second part of the term paper requires each student to read the major precedents for the case selected, to summarize both the controlling majority opinion and the position of the student's justice in each case, and to speculate on the position the justice will take in the case before the Court. In the third and final part of the term paper, the students draw upon the first two parts of the term paper as well as the lower court opinions and the actual briefs in the case to write an opinion as they think their respective justices will in the case.

The assignment of the individual justices to students is a simple and exciting activity at the beginning of the semester. I place enough names of Supreme Court justices in a hat so that all students will be able to pick a name. The only limitation is that new members of the Court cannot be included because they will not have participated in enough relevant precedents. Both cheers and moans can be heard as students discover the justice with whom they will be spending the semester. I have students select their justices during the first week of the semester primarily because I want the term paper to be a continuous, semester-long activity rather than a project that is hurriedly thrown together at the end. Another important purpose is also served because students now have another perspective from which to view constitutional law throughout the semester, for students inevitably ask themselves how "their" justices approach various doctrines and cases.

The selection of the case is also fun, but this is a trickier process. Students select by majority vote the case they want to study from a list of cases I have developed based upon the following criteria: (1) the case must involve important principles of constitutional law; (2) the case must be inherently interesting; (3) the case must be one for which written briefs are available; and (4) the case must be one which the Court will not decide before the semester is over. The last point is the most difficult. During the fall semester this is not a problem, but it is a major concern during the spring semester because the Court hands down decisions throughout the months of the spring semester. For this reason, during the spring semester I usually wait as long as possible, about the fifth week of the semester, before having the students choose the case. I use *United States Law Week* and *Preview* as primary resources in selecting cases. To provide examples of the types of cases studied, in the 1990-91 academic year the students selected the death penalty case of *Perry v. Louisiana* (1991) and the freedom of expression case of *Barnes v. Glen Theater* (1991); in the 1989-90 academic year they selected the free exercise of religion case of *Oregon v. Smith* (1990) and the abortion case of *Hodgson v. Minnesota* (1990).

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Part one of the term paper is a description of the student's justice. In this paper of approximately three pages, the student is to discuss the justice's background before coming to the Court, the justice's judicial philosophies, and the justice's general voting record in civil liberties cases. I provide the students with an extensive bibliography on each justice, and I have folders on reserve that contain many of the articles. Students are welcome to find additional material, but this is not required; it is my view in this course that students should spend their time reading, thinking, and writing rather than engaging in searches—sometimes long and fruitless—for relevant material (Claude and Parker 1984, 12).

The second part of the term paper focuses upon an analysis of the major Supreme Court precedent decisions in the case selected by the students. I provide each student with personal copies of the decisions, usually about five major cases, and students are charged a fee for the copying costs. I select these precedents based upon several resources: materials in *Preview*; materials in *U.S. Law Week,* especially the summaries of the oral arguments; the decisions of the lower court judges in the case; personal discussions over the phone with the attorneys in the case; and the briefs in the case, if I receive them in time for part two of the paper. The assignment for each student in this paper of approximately five pages is to summarize the majority opinion of the Court in each case, to discuss the vote and the reasoning of the students' justice in each case, and to conclude with a paragraph speculating upon how the justice will vote in the case.

The third and final part of the

term paper requires the students to write a majority opinion in the case as they think their respective justices might do. One major deviation from reality occurs at this point, for I tell the students to write the opinion as though no constraints existed on them from any other members of the Court. In preparing this paper of approximately five pages, the students draw upon parts one and two of the term paper, and I also provide them with the lower court decisions in the case and the briefs that the attorneys have filed. Regarding the last resource, I have never had a problem obtaining the briefs. The attorneys' names can be obtained through either *Preview* or *U.S. Law Week,* and their phone numbers can be found easily in phone books in public libraries. I have found all attorneys to be remarkably cooperative, with most providing the briefs free of charge. They are typically willing to discuss the case over the phone, offering their personal insights about key precedents, major doctrinal issues, and possible voting patterns of the Court. On two occasions attorneys from northeast Ohio were involved in the cases selected by the students, and both attorneys met with the members of my class to discuss the respective cases. The students were enthralled with these sessions, and both attorneys told me how amazed they were at the sophisticated knowledge that the students possessed about the cases.

A few comments can be offered regarding due dates for the papers and the evaluation of the written work. Part one of the paper is due at the end of the third week of the semester, part two is required about the ninth week, and part three is due during the last regular week of the semester. Each part of the term paper is given increasingly greater weight; part one is worth 25 points, part two is worth 50 points, and part three involves 75 points, for a total of 150 points. In evaluating the students' work, I read each paper with great care, emphasizing not only substantive content but also writing quality, and I try to make extensive comments on each paper. I require any student who has had difficulty to meet with me in my office to discuss the problems, and I offer to read outlines and rough drafts of the student's next paper. While this "sequential writing approach" requires a significant amount of time from the faculty member, abundant evidence exists regarding its effectiveness in improving students' writing abilities (cf. Selcher and McClellan 1990).

The Advocacy Papers: Attorney Role Playing

In addition to the three-part term paper activity that places the students in the role of Supreme Court justices throughout the semester, students are also thrust into the roles of attorneys throughout the semester in a series of four projects that I call advocacy papers. In these papers based upon recently decided Supreme Court civil liberties cases, students must prepare written briefs as though they were an attorney for one of the parties, and then these briefs are presented in class, simulating an oral argument before the Supreme Court.

The four advocacy papers correspond to the four major areas of the course: freedom of expression, religious guarantees, guarantees of the criminally accused, and equal protection. As we start each area, I give the students several recently decided Supreme Court cases from which to choose. I use several criteria in selecting the cases; they have to be split (nonunanimous) decisions; they have to involve important doctrines and precedents; they have to be of broad social significance; and they have to be inherently interesting. Given the activities of the Court in recent decades, it is never a problem to create a list of several cases from which the students can choose.

Once students choose through majority vote the first case of the semester, I arbitrarily divide the class into two groups of students; during the semester, each side gets two majority positions and two dissenting positions. I provide each student with a copy of the full decision with all majority, concurring, and dissenting opinions. The students are told that they should pretend that they are the attorney for the party they have been assigned and that the Court has just agreed to hear the case. The specific assignment for the student is to prepare a brief in the case, arguing the case for his or her client as convincingly as possible using the justices' opinions, textbook readings, and class lectures. Students are permitted to do additional research, but this is not required; if additional cases or other readings seem critical to understanding the case, then I provide them to all the students. I limit the papers to a maximum of four pages; they are, after all, "briefs."

Students have approximately two weeks to complete the assignment, and then on the date specified on the syllabus designated students must engage in an oral argument of the case. Each student has the opportunity to argue one case in the semester, and the cases are argued before a one-person Supreme Court —me. For at least the first case, I will enter the classroom wearing a black robe, primarily for the purpose of reducing the tension. Students are typically very nervous when they have to lead the oral argument, and I try to keep things somewhat light; the intimidation and terror will come soon enough in law school.

I allow the students to read from their written briefs as they present the issue, the facts of the case, and the constitutional analysis, but I continually interrupt them for clarifications and questions. I push them very hard on their logic, and I try to exploit the inevitable weaknesses in their position. Again, while the questioning is vigorous, I try to keep it somewhat lighthearted. I also seek to involve the students in confrontation with one another by paraphrasing one student's argument and then asking the other side to respond to the argument. The oral argument lasts approximately 45 minutes, although students frequently become so involved that the entire class period of one hour and fifteen minutes gets consumed.

At the end of the class period the students hand in their written briefs, typically wishing they could rewrite portions of it based upon the ideas that were developed in the oral arguments. I read the papers with great care and make numerous comments on them, making corrections in their writing as necessary but focusing on the logic of their arguments. As with

the various parts of the term paper, I require students who have performed poorly to meet with me to evaluate the problems and seek correctives.

The four advocacy papers are due at various points throughout the semester, interspersed with the three parts of the term paper. Typically, the freedom of expression paper is due at the end of the fifth week; the religious guarantee paper is due during the seventh week; the criminal justice paper is completed during the twelfth week; and the equal protection paper is completed during finals week.

Evaluation

Having described the two role playing activities in detail, it is now necessary to return to the claims made at the outset of this article—namely, that these instructional techniques are valuable in creating a learning environment in which students read their assignments carefully; engage in extensive, analytically demanding writing; and develop an interest and excitement in their subject matter. Although I have not attempted to measure these things directly in my classes, I do think that a substantial amount of evidence exists supporting these claims.

University-wide course/instructor evaluations completed by the students at the end of each course reveal quite clearly that the students think they have done an extraordinary amount of reading and writing. One item requires students to indicate on a 1-5 scale the amount of work they have done in the class, with 1 being very low and 5 being very high. In my most recent class, the score on this item was 4.83, which is a typical result. It is easy to understand this rating. While students can get by with a rather cursory reading of the assigned materials from the text, this is impossible for the cases and briefs they must read for the term paper and the advocacy papers. Indeed, I emphasize to students that they will only understand these cases in the depth required after *several* readings. As the students read and reread the opinions, they are forced not only to understand the logical arguments of the justices writing the opinions but also to rethink the arguments from the particular role assignments they have been given. Then these thoughts must be translated onto paper, and the nature of these papers requires significant commitments of time as the papers are written and rewritten. In this process I tell the students of the statement supposedly made by Justice Brandeis: "There is no such thing as good writing; there is only good rewriting."

Turning now to the interest/enthusiasm claim associated with the role playing activities, it is appropriate to recognize that the heavy and demanding workload associated with these activities could serve to minimize student interest and enthusiasm for the class—but the evidence does not support this negative effect. Although the most important evidence cannot be reported here because it involves the daily interactions within the classroom, a wide variety of indicators suggest that the role playing activities generate a remarkable level of interest and enthusiasm despite the work associated with them. Course evaluations by the students are consistently high. Students rate all courses on a scale from 1 (lowest) to 6 (highest), and the most recent offering of the course received a 5.91 rating. Students' written comments are typically positive, and several students each semester describe the course as the best they have ever taken. Each semester the course is offered it usually reaches its maximum enrollment. Numerous students who have gone to law school have told me how useful the course has been to them.

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Finally, and perhaps most importantly as an indicator of interest and enthusiasm, a large number of students have asked me after the class to serve as director of their senior honors thesis because they wanted to continue to study in this area.

In concluding, it is important to recognize that a course based around these role playing activities is not appealing to every student. Those students who finish the course give it high ratings, but a substantial number of students withdraw from the course because of the amount and difficulty of the work. These students typically enroll in another section of the course which is taught in a more traditional way using lectures and essay exams. But the overwhelming majority of students stay in the course, accepting the challenge and benefitting from it. Thomas Cronin has recently written: "Expect students to hold themselves to standards of discipline and precise thinking, rigorous analysis and to question, propose and challenge ideas, and you increase the likelihood they will excel" (1991, 485). All of these ideas were summed up nicely in a wall hanging given to me recently by one of my students who took this class and did a subsequent honors thesis with me:

> The teacher said to the students: "Come to the edge."
> They replied: "We might fall."
> The teacher again said: "Come to the edge."
> And they responded: "It's too high."
> "COME TO THE EDGE!" the teacher commanded.
> And they came, and he pushed them. And they flew.

References

Claude, Richard, and Paul E. Parker. 1984. "A Moot Court for Constitutional Issues." *News for Teachers of Political Science* 43: 7, 12.

Collins, Edward, Jr., and Martin A. Rogoff. 1991. "The Use of an Interscholastic Moot Court Competition in the Teaching of International Law." *PS: Political Science & Politics* 24(3): 516-20.

Cronin, Thomas. 1991. "On Celebrating College Teaching." *PS: Political Science & Politics* 24(3): 482-91.

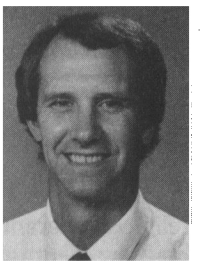
Fishman, Ethan M. 1984. "Some Thoughts on the Socratic Method." *News for Teachers of Political Science* 43: 6-7.

Guliuzza, Frank III. 1991. "In-Class Debating in Public Law Classes as a Comple-

ment to the Socratic Method." *PS: Political Science & Politics* 24(4): 703-05.
Hensley, Thomas R. 1980. "*Krause v. Rhodes*: The Kent State Civil Trial Simulation." In Charles Walcott, *Simple Simulations 2*. Washington, DC: American Political Science Association.
Lenchner, Paul. 1989. "Introducing American Government Through a You-Be-the-Judge Exercise." *The Political Science Teacher* 2: 1-12.
Pacelle, Richard L. 1989. "Simulating Supreme Court Decision Making." *The Political Science Teacher* 2: 9-11.
Pohlmann, Marcus D. 1986. "Simulations: Urban Fiscal Crisis." *News for Teachers of Political Science* 51: 15-16.
Selcher, Wayne A., and E. Fletcher McClellan. 1990. "Sequential Writing Assignments in International Relations and American Government Survey Courses." *The Political Science Teacher* 3: 14-16.
Walcott, Charles. 1976. *Simple Simulations*. Washington, DC: American Political Sciennce Association.
Walcott, Charles. 1980. *Simple Simulations 2*. Washington, DC: American Political Science Association.
Whitaker, Steve. 1973. "A Role-Playing Simulation of the United States Supreme Court." *Teaching Political Science* 1: 47-53.

About the Author

Thomas R. Hensley



Thomas R. Hensley is a professor of political science at Kent State University, where he has taught for 24 years. He has won the Arts and Science College's Outstanding Teacher Award, the Alumni Office's Distinguished Teaching Award, and the Honors College Distinguished Teacher Award. He was named Ohio Professor of the Year in 1991 by the Council for the Advancement and Support of Higher Education. He is currently working on a book about the Rehnquist Court and civil liberties.

Why It Is Difficult to Teach Comparative Politics to American Students*

Robert Cox, *University of Oklahoma*

As we move through the last decade of the century, one of the most encouraging developments on university campuses is an effort to internationalize curricula. In political science this trend has fostered improvements in comparative politics course offerings. Yet comparative politics is a difficult subject to teach to American students. Perhaps this is because Americans have little contact with and therefore little reflexive understanding of different political systems (see, for example, Diamant 1990). But I think there is a more pernicious problem in teaching comparative politics to American students. It is too easy, indeed inappropriate, to dismiss the problem by blaming people in their late teens for their lack of life experience.

Despite their limited exposure to other countries, I have found American students extremely curious about other parts of the world and eager to learn more. The difficulties they have are with the concepts used in comparative politics, not the subject matter. For example, terms like *government, regime, the state,* and *liberalism,* which are all central to any political system (and in the case of liberalism, at least to advanced democratic societies), are used by the rest of the world in ways unfamiliar to the average young American. Consequently, even an introductory comparative politics course can be a confusing and frustrating experience.

This is because in the United States the terms and concepts have developed a meaning of their own. On the surface this does not present a problem. We could say it is a function of linguistic differences, a problem of translation. But the failure of this line of reasoning becomes apparent when we consider two issues. First, concepts such as those listed above have a generally accepted international usage. It is only when this international usage creeps into American discourse that it fosters confusion.

The second, and more pernicious problem is that the experts on American politics use concepts in ways that are faulty or misleading when compared to international usage. This second problem is the focus of this article. In what follows, I outline what appear to me to be some of the major problems in this respect. One is that American political scientists use concepts differently than do their colleagues throughout the world, and often improperly at that. Another is that American scholars generate new concepts that lack scientific content. These problems would not exist if we stop treating the study of American politics like a biosphere project, hermetically sealed against the rest of the world.

Examples of Problems in Conceptual Usage

On any given day, one can pick up a newspaper and on the same page read about the Bush Administration, the Kohl Government, and the Shamir government. In each case, the stories discuss the activities of a handful of individuals who in each country are vested with a certain degree of political authority at one point in time. Yet the terms used to label them are different. Some are called governments while one is called an administration. A political scientist can explain this by saying that presidential systems are different than parliamentary systems, therefore the terms *administration* and *govern-*

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