AP-LS Teaching Techniques

A Sociologist Looks at the Field of Forensic Psychology

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Nearly 10 years ago, John Brigham (1999, p. 283) wrote in "What Is Forensic Psychology, Anyway?" that "psychologists and lawyers often have great difficulty respecting or even understanding each other" due to essential differences in education, philosophy, approach to common problems. In summarizing the work of others that delineates the gulf between law and psychology, Brigham succinctly concludes that "psychology tends to be creative, empirical, experimental, descriptive, theory-driven, probabilistic, and academic while law "is more conservative, authoritative, adversarial, prescriptive, case-specific, and reactive. It emphasizes certainty and is less academic" (1999, p. 283).

The field of forensic psychology has evolved in the past decade, but the underlying philosophies of psychology and of law have not. Psychology continues to be largely empirically driven and law continues to be precedent driven. While courts certainly entertain amicus briefs from psychological and other professional associations, and while psychologists and other behavioral scientists continue to be called as experts for defendants, the state, and the court, the basic foundations of both professions remain true to their history and roots. So, while successful practitioners of psychology in legal arenas have learned the terminology, rules, and procedures of law, their professional alliance still rests in psychology as a science. To reiterate Brigham's "warning," the two fields have troubles when trying to work together.

Students drawn to courses or programs on law and psychology are self-selected. To be sure, some may be mistakenly taking a course on "forensic psychology," imagining themselves as a badge and gun-carrying forensic scientist or as a police profiler, but most students have some inkling about the two fields. Or at least they think they do. Few students will actually find themselves in a "forensic psychology" class that begins with a clarification and discussion about why law and psychology disagree so much. One reason for this omission might be that most such classes are, in fact, taught by either a psychologist or a lawyer. The differences between law and psychology are so basic and fundamental to who the instructors are as professionals that many do not "see" them, let alone teach them. The advantage, then, in being a sociologist who occasionally teaches criminal justice and mental health in the same course is that it helps to have a broad understanding of the two fields while at the same time an allegiance to neither. This is not to suggest that psychologists should not be teaching forensic psychology. I am simply encouraging both psychologists and lawyers to provide their students with an examination of both disciplines that form the foundation of forensic psychology.

One approach to leading students – graduate or advanced undergraduates – to an understanding of how law and psychology might approach the same set facts in a different manner is to provide hypotheticals, asking them to construct an argument from either the perspective of a lawyer or of a psychologist when provided a set of facts. The problem with this approach is that it assumes a degree of sophistication that most students do not have. An approach to illustrating the conflicts between law and psychology that I have found useful is to provide a set of documents from a real case in which the two professions disagree on the fundamentals of the facts, the understanding of the case, and the recommended outcome.

The 2005 U.S. Supreme Court case of *Roper v. Simmons* that reconsidered the juvenile death penalty provides an excellent example. First, few topics are as universally interesting to students as the death penalty, especially when it is about the execution of defendants under age 18. Second, the APA Amicus Brief for the Respondent (Simmons) and the Alabama et al. Attorneys' General Amicus for the Petitioner (state of Missouri) Brief very clearly and thoroughly lay out the basic premises of the fields of psychology and of law. Third, the U.S. Supreme Court's decision strikes down the juvenile death penalty but remarkably strays from the arguments presented in each brief, arriving at its own intermingled decision, providing another interesting vein of discussion and instruction. The reading of these three documents provides a lively and educational class exercise.

General Instructions:

1. This exercise is very effective as a first full-class (1.5+ hours) meeting for an advanced undergraduate or graduate class on topics related to law and psychology.
2. At the prior class (e.g. course introduction), students are given a broad overview of what the major differences are between how law and how psychology approach common topics. There are a number of authors who have examined this issue – make sure to hit on the concise differences mentioned above in introduction as this provides the framework for the exercise.
3. Students can participate from any discipline – in fact, diversity adds to the discussion.
4. Distribute all 3 documents (2 briefs, 1 Court opinion) to students either in paper or electronic form at least 1 class period before intended discussion.

Specific Instructions:

Students are instructed that they must thoroughly answer the discussion questions in writing before class. Collecting the questions after the discussion allows the instructor to develop a sense of the academic backgrounds of the students:

APA Brief:

What are the 3 major arguments that the APA makes for eliminating the death penalty for juveniles?

1. What type or evidence do they give for their positions?
    a. Here you would expect a discussion of the specific research studies to support the positions.
        i. At this point (in class) students often suggest that "in my experience, there are some adolescents who are 'more mature' than adults I know."
            1. Opens discussion about observation, mistakes in everyday observation, probabilities, etc.
            2. Provides opportunity to ask about maturity and culpability.
            3. Allows discussion about limited adolescent privileges (e.g. driving, drinking, voting, consenting to medical treatment)
        ii. Discuss any "subtexts" or nuance that is con tained in the APA brief.
            1. Is there an overarching "reason" the APA might oppose the death penalty for juveniles?
            2. What about the foundation to psychology and psychological practice makes it seemingly incompatible to support the death penalty.
            3. Raises ethical issues that clinicians generally face when treating/assessing persons of all ages who face possible execution.

2. How does the APA brief demonstrate that the field of psychology is, as Brigham describes, "creative, empirical, experimental, descriptive, theory-driven, probabilistic, and academic?"

AGs' Brief:

1. The Attorneys General suggest that the death penalty be permitted for some 16 and 17 year olds. What evidence do they present to support their argument that some adolescents are "morally culpable" and deserve the death penalty?
    a. What type of evidence is it? How is it derived? Is it similar or different from evidence used in the APA brief?
        i. Allows the introduction of "idiographic" causation used by police and lawyers.
        ii. Provides opening of discussion on the "telescoping" or "tunneling" of police interrogations – the tendency of investigators to follow "one" lead to what seems to be its logical conclusion, when in fact the lead itself is wrong.
        iii. This also provides an opportunity to discuss the differences between deduction (psychology) and induction (law).
    b. This often opens up discussions about the (mistaken) rise in juvenile crime (good to have evidence to the contrary available).
2. How does the AGs' brief document that the field of law is, as Brigham describes, "conservative, authoritative, adversarial, prescriptive, case-specific, and reactive…. certainty and is less academic"?

Supreme Court Decision:

1. What are the 3 foundations to the Court's decision to prohibit the death penalty for all defendants under age 18?
2. What evidence from the APA brief is included in the decision? Omitted?
3. What are the arguments for/against the juvenile death penalty based on an international perspective?
4. How would you characterize the Court's decision – did they follow a social science or legal argument in finding in favor of the respondent Simmons? Give support for your conclusions (e.g. read the dissent).

General Questions:

1. Which type of evidence is more convincing to you? Why?
2. Which type of evidence is more convincing to a jury? Why?
3. Keeping both briefs in mind, what about the criminal justice system might enhance concerns about juveniles being tried in a death penalty case?
4. What are the 8th amendment *and* 14th amendment concerns about the juvenile death penalty?

References

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The Teaching Techniques column, sponsored by the AP-LS Teaching, Training, and Careers Committee, offers useful ideas for those of us who teach (or who plan to teach) courses in Psychology and Law, Forensic Psychology, or more specialized areas of legal psychology. We hope that the Teaching Techniques column of the Newsletter will become the best place to find activities, simulations, and demonstrations that engage students in the learning process and help professors to teach important content in psychology and law.

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