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### Leveraging Professional Identity Formation in the Doctrinal Law School Class

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## LEVERAGING PROFESSIONAL IDENTITY FORMATION IN THE DOCTRINAL LAW SCHOOL CLASS

*Louis D. Billionis* \*

### INTRODUCTION

Law professors who teach traditional doctrinal classes may question whether making professional identity formation a focal point in their courses is viable. The doctrinal course, after all, is about doctrine, and concentrates on the substance of the law along with the cognitive competencies that comprise “thinking like a lawyer.” Incorporating anything else can strike professors as a diversion that sacrifices time, effort, and content coverage. Professors also may feel their grasp of professional identity formation does not meet the level of expertise they expect of themselves, or simply be uncertain about how to proceed effectively.

All of this is understandable. As Everett M. Rogers explained years ago, individuals progress through a process before adopting an innovation.<sup>1</sup> They must become acquainted with the novel idea or practice,<sup>2</sup> and have to form positive perceptions of its advantageousness,<sup>3</sup> its compatibility with their own values, needs, and experiences,<sup>4</sup> and its ease in use.<sup>5</sup> An innovation’s observability to potential adopters promotes its adoption,<sup>6</sup> and therein lies an impediment to bringing purposeful support of professional identity formation to the doctrinal law school course. Unlike innovations like smartphones and electric vehicles, new methods

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<sup>1</sup> See EVERETT M. ROGERS, *DIFFUSION OF INNOVATIONS* 11 (1962) (Free Press 3d ed. 1983) (discussing how innovation earns acceptance through “diffusion” – “the process by which an innovation is communicated through certain channels over time among the members of a social system”); *id.* at 163 (discussing the innovation-decision process of an individual).

<sup>2</sup> *Id.* at 232 (discussing the “observability” of an innovation as a key factor in its adoption).

<sup>3</sup> *Id.* at 212-17 (discussing the “relative advantage” afforded by an innovation as a key factor in its adoption).

<sup>4</sup> *Id.* at 15, 223-26 (discussing the “compatibility” of an innovation as a key factor in its adoption).

<sup>5</sup> *Id.* at 230-31 (discussing the “complexity” and “triability” of an innovation as key factors in its adoption).

<sup>6</sup> *Id.* at 232, 16.

that law professors employ in their classes are not readily observable to pique the curiosity and interest of others. Information about innovations in teaching does not disseminate so readily.

Spreading the word takes efforts like this symposium. Accounts of how professional identity formation concepts and themes can inform learning need to be gathered and shared with people who can accelerate their circulation.

What follows is a testament from personal experience. I have found that purposeful focus on professional identity formation in a doctrinal course can enrich the educational experience for students. Instead of being sidenotes that subtract from the doctrinal work, professional identity formation features can be a multiplier. They can be leveraged to promote the doctrinal learning and the sharpening of cognitive skills traditionally expected in such a course, while also contributing positively to the student's development as a professional in other ways.

It works for me and my students. I am convinced it produces a superior learning experience for my students and a more rewarding teaching experience for me. It takes no special expertise – just care in designing the course, willingness to meet students where they are, and appreciation that effective teaching can include being a guide on the side who enables students to teach themselves. Any law professor can do it.

## I. A GENERAL STRATEGY FOR INCORPORATING PROFESSIONAL IDENTITY FORMATION IN A TRADITIONAL FIRST-YEAR DOCTRINAL CLASS

### A. *The Setting*

Since 2016, I have made professional identity formation a central feature of a constitutional law course offered to first-semester, first-year students. The subject matter in this required three-credit-hour course is typical, covering the Constitution's framing, the structure of the national government, judicial review and constitutional interpretation, the scope of congressional power, federalism limitations on national power, the separation of powers, and equal protection. The text is a traditional casebook, supplemented with recent decisions available on the course's Canvas online home. Enrollment in some semesters is designedly small (24-28 students); in other semesters, the class is about twice as large (approximately 56 students). The class meets face-to-face twice a week for 85 minutes, but the

model I will discuss here also has been used successfully when classes were conducted remotely during the pandemic.

In short, the setting is a classic, standard-fare doctrinal first-year offering – no different, for our purposes, than one in contracts, civil procedure, criminal law, property, or torts. What has worked for constitutional law should be readily applicable to many other doctrinal courses.

### *B. The Goal: Doctrine and Formation, Hand in Hand*

The strategy I follow for incorporating professional identity formation in the course begins with a simple goal: To make professional identity formation a natural, integrated feature of the course, equivalent in significance to, and ideally woven into, everything we do.<sup>7</sup>

Accordingly, I look to spotlight professional identity formation competencies and values that mesh well with, and can be leveraged to support, the doctrinal learning. Settling on competencies and values that satisfy this criterion will allow doctrinal and formation efforts to go hand in hand.

### *C. Using Formation Principles to Frame the Course*

Two central professional identity formation principles frame the course for students. They are introduced on the first day and we refer to them often. The first principle goes to the professional’s ethic of care and service and a standard of excellence:

*At every stage of their careers, lawyers must own the responsibility for their continuous professional development toward excellence at*

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<sup>7</sup> Students perceive a law school’s choices as signals about what the school values and does not value. Those signals can be powerful even if they are unintended, constituting a “hidden curriculum.” Legal education’s formal curriculum – viewed from a student’s vantage point – emphasizes some dimensions of a lawyer’s development (especially the cognitive) and tends to marginalize or ignore others. Students see that as a signal that the latter are relatively unimportant to the law school and therefore should be relatively unimportant to them. Integrating professional identity formation considerations into a doctrinal course, and consciously valuing them in that setting, can counteract the hidden curriculum that has traditionally operated in American law schools. See, e.g., NEIL W. HAMILTON AND LOUIS D. BILIONIS, LAW STUDENT PROFESSIONAL DEVELOPMENT AND FORMATION 48 (2022).

*the major competencies that clients, employers, and the legal system need.*<sup>8</sup>

Lawyers have a deep responsibility to serve others that requires striving for excellence. It takes self-direction, a growth mindset, and acceptance that learning and the work of learning never end. Students explicitly are encouraged to see that their embrace of the principle also serves their immediate interests: succeeding in the course, in law school, and in their quest for meaningful employment upon graduation.

The second framing principle dovetails with the first:

*Each student is on a journey of socialization into the profession, beginning as an outsider but gradually making way to the inside, and the student forms a professional identity during this journey.*<sup>9</sup>

This concept is addressed candidly and in a coaching spirit, and in the belief that students navigate law school better if they comprehend what they are experiencing in law school and why. Over the course of the semester, we talk about their journey – a moment here, a moment there, introducing and building on the following points:

- Legal education can be seen as featuring three interrelated dimensions (or apprenticeships, to use the language of the Carnegie study of legal education<sup>10</sup>) – one involving the development of intellectual or cognitive capacities (the knowledge and way of thinking of the profession), a second involving the learning of certain skills shared by competent practitioners (the forms of expert practice), and a third involving the formation of a professional identity and sense of purpose. One can speak of the three as “thinking, doing, and being a lawyer.”
- The first-year curriculum traditionally dwells on the first dimension or apprenticeship, while also touching a bit on the second. Progressing into the second and third years, students will experience more opportunities to develop in all three dimensions.
- In our course, however, we will focus explicitly on all three dimensions.

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<sup>8</sup> See *id.*, at 1.

<sup>9</sup> See *id.* at 31-32.

<sup>10</sup> WILLIAM L. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 28, 128-29 (2007).

- The well-developed professional needs to be proficient in a wide range of identifiable competencies.<sup>11</sup> One achieves proficiency progressively, starting as a novice and moving through stages of development toward mastery. As one develops these competencies, one’s professional identity is forming. The journey starts in law school and continues throughout one’s career.
- The journey is fundamentally about *formative experiences* that bring the student further “inside” the profession in a process of socialization.<sup>12</sup> For law students, some professionally formative experiences will occur within the traditional curriculum (e.g., learning how to conduct legal analysis). But it is very important to recognize that many formative experiences will take place in other settings within and beyond the walls of the law school. They will occur in clinics and externships, co-curricular and extracurricular activities, engagements with the career services office and potential employers, summer internships and part-time work, and myriad encounters with lawyers, judges, and other professionals.<sup>13</sup>
- Many people will be supporting and influencing the student on the journey. Sometimes they will be “teaching” in a traditional sense, conveying knowledge the student needs to develop the competencies of a lawyer. Other times, they will be guiding, coaching, or mentoring. In our class together, I will be accompanying students at the outset of their journey as they cross the threshold. The support I provide will come in all of the foregoing forms.<sup>14</sup>
- The professionally formative experiences often are challenging and stressful.<sup>15</sup>
- One can travel the journey more effectively if one accepts it, accepts one’s rightful place in it, looks to make the most of it, reflects on it, and takes care of oneself.

#### *D. Spotlighting Formation Competencies That Can Be Leveraged*

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<sup>11</sup> For a review of those competencies and empirical studies supporting their relevance, see HAMILTON AND BILIONIS, *supra* note 7, at 7-27.

<sup>12</sup> *See id.* at 31-32.

<sup>13</sup> *See id.* at 37-40.

<sup>14</sup> *See id.* at 40-43.

<sup>15</sup> *See id.* at 31-32.

Within the framework established by the foregoing concepts, the course targets a handful of competencies associated with professional identify formation:

- Self-direction (i.e., ownership of one’s development)
- Teamwork and collaboration
- Communication
- Feedback (both providing it and receiving it)
- Reflection

There are very good reasons to choose these competencies for focus in a traditional doctrinal course, and especially one in the first year. They are critical to a professional’s success. They are accessible to students. They can be easily introduced in a doctrinal class. They can be leveraged to strengthen each student’s learning of the doctrine and skills traditionally prioritized in a basic first-year class, working to make the “thinking” and “doing” in the course all the better. They are empowering and will serve the student well throughout law school. They can be made an integrated part of the student’s experience.

Each of these competencies is named, discussed, and expressly valued. Each figures prominently in the activities, inside and outside the classroom, that students must undertake. They are embedded in the structure of the course.

We will see how the course engages those competencies in a moment. Before we do, please reflect a moment on why these competencies are particularly relevant to students in a doctrinal course. Tying them together is a logic that might be summarized as follows:

- To fulfill the responsibilities of service to others, a professional must strive for excellence at all the competencies needed to provide that service.
- Achieving and maintaining that excellence means a professional’s learning and development is lifelong and necessarily must be self-directed.
- Self-direction does not connote solitude. Professionals regularly draw on others – colleagues, mentors, coaches, friends, professional organizations and services – to support their lifelong learning and development. They do so regularly, in informal and formal ways that can range from quiet observation to brainstorming to the explicit seeking of advice or knowledge.<sup>16</sup>

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<sup>16</sup> On the importance of self-direction, see *id.* at 35-36

- Lawyers also frequently work in teams and collaborations with other lawyers, professionals, and clients. Teamwork and collaboration skills are important, and it pays to work consciously to strengthen them.
- The same holds for communication skills, which are vital to professional success in ways too numerous to count. These skills include not only writing, but speaking and listening. They need to be well-suited to varying contexts and collaborative settings, and to the diversity that the lawyer will encounter in life and law.
- Feedback and reflection are powerful tools for supporting development of competencies. Self-directed professionals use feedback and reflection to manage their lifelong learning – crystallizing what they have learned, identifying what they need to work on, and taking insight and guidance from others to progress to the next steps in their development.<sup>17</sup>
- The foregoing competencies can be every bit as important to success as analytical skill, even though “thinking like a lawyer” is heavily emphasized in the law school and, particularly, its first year.
- Students can begin developing these competencies immediately and improve their own law school experience and performance. They can work collaboratively in teams – learning from one another, practicing various forms of communication with one another along the way, learning to provide and receive feedback, reflecting on their feedback and their development, and deepening their appreciation for their diversity and the different strengths and perspectives that their classmates have to offer.

All this is summed up, to a fault, in one of the course’s five learning objectives stated in the syllabus: the student’s ability to “participate as a member of a professional community whose members work individually and together to continuously improve their capacities to serve clients and society.”<sup>18</sup>

## II. IMPLEMENTING THE STRATEGY

### A. *Using Teams*

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<sup>17</sup> On the importance of feedback and reflection, see *id.* at 72-75.

<sup>18</sup> A detailed syllabus of the course and its features is on file with the author and available on request.



With teamwork and collaboration central to the course's strategy, it stands to reason that teams should figure prominently in the course's design and work. Here is what the syllabus tells students about the importance of teams and their place in the course:

Like other law school courses, this course involves many activities that you will be responsible to perform personally. Many other activities will involve teamwork.

By requiring teamwork, this course offers you opportunities to cultivate professional competencies and habits that will be important throughout your career. Lawyers regularly work in teams with other professionals, and the ability to effectively engage and collaborate with others is a professional asset that appreciates over time. Effective collaboration requires an openness to one's own limitations and room for improvement, as well as an appreciation of other people and the value of differing ideas and perspectives. That frame of mind also helps one maintain habits of lifelong learning and development that are important to professional success. Lawyers have an obligation to serve clients to the best of their abilities and thus must seek excellence in the service they render – a goal that necessitates an appetite for never-ending improvement.

Each class member will be assigned randomly to a team that will work together for the entire semester. You and your teammates will have required team assignments and responsibilities, and your team's performance on them will lead to a "team grade" that will be a component of your own final grade in the course.

Before the first day of class, each student is randomly assigned to a team for the entire semester, with each team having 6 or 7 members. To facilitate in-class team activities, the team members sit as a group in seats they retain through the semester.

In every class session, two teams (three when enrollment is larger) are "on call." They are expected to be exceptionally well prepared to explore the assigned material and help all to better understand it. Students not "on call" can and do ask questions and voluntarily participate, but everyone understands that the teams "on call" will bear the laboring oar and that it is their day to shine. While the hope is that all members of the team will participate over time, teams often designate

members to speak for the team on particular issues. The teams confer prior to class, using whatever means they choose (face-to-face, Zoom, or asynchronously in writing).

Each team becomes something of a study group, with members reinforcing one another's learning. Importantly, the team responsibilities extend well beyond in-class "on call" responsibility for the daily reading. As we will see, the work students do in their teams is substantial and figures in their final grade in the course.

### *B. Incentivizing Teamwork and Collaboration: On the Matter of Grading*

Before going any further, it will be helpful to speak a bit about grading. I ask your forgiveness for talking about grading before talking about the important business that gets graded. Legal education already signals more than enough prioritization of grades, and I dislike adding to the impression. It's just that telling the story is easier this way.

To incentivize work in teams and acknowledge its significance, a measure of each student's final grade is a reflection of the performance of the student's team. Two components thus make up the student's final grade. One component is the student's personal performance on the final examination, and it accounts for 75 percent of the final grade. A second component is a "team grade" that accounts for the remaining 25 percent. This "team grade" is assigned to the team for its work throughout the semester, with each team member receiving the same grade. The members are in the same boat, and each plays a part in how well the boat sails.

The "team grade" is made up of grades that the team receives for the following activities:

- The team's in-class performance when "on call" (analogous to the class participation grade that some professors assign in a traditionally taught class),
- Numerous short writing assignments (discussed below),
- The collective performance of the team's members on two longer writing assignments (also discussed below), and
- The collective performance of the team's members on a practice exam exercise (also discussed below).

Students naturally wonder about the fairness of receiving a final grade in the course that depends upon the performance of others. I address the issue early and openly, and it affords a good opportunity for explaining the significance of

teamwork and collaboration in a professional's own personal development and success. I discuss how the course is designed to encourage students to draw on one another in their learning and development. Each has incentive to engage others to strengthen one's own personal performance. Each also has incentive to elevate the performance of others. The course thus resembles the professional world the students have entered.<sup>19</sup> The personal achievements of professionals are affected by how well they draw on others to continually improve. They also depend on how one's partners, colleagues, associates, and collaborators perform, and by how well one supports them. The explanation seems to carry the day for first-year students who generally are excited to be entering the profession. It does not hurt to add that teams have consistently performed well in the course, producing grades that differ very modestly. When all is said and done, the "team grade" tends to operate like a potential extra-credit feature that might move a final grade up a step.

### *C. Using Problems*

Let us now return to our review of the activities that students undertake in the course.

In addition to readings from the casebook and other preparation,<sup>20</sup> each daily assignment includes one or more problems that ask students to apply the law they are learning in contexts they will encounter in practice – advising a client, assessing a case, outlining an argument, planning a course of research, developing facts, arguing a motion, explaining the law to a lay group, and the like. The teams "on call" review the problems prior to class and come prepared to analyze and discuss them. Other students, independently or within their teams, are expected to have reviewed the problems as well.

The problems serve the traditional objectives of a doctrinal course, helping students sharpen their cognitive competencies. Collaboration at the team level magnifies those benefits as students learn from one another. The problems also present excellent opportunities for emphasizing other professional identity formation considerations – especially if class discussion stays situated in the

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<sup>19</sup> Literature recognizes that professionally authentic experiences can be particularly formative. *See, e.g.*, HAMILTON AND BILIONIS, *supra* note 7, at 32 and sources cited therein.

<sup>20</sup> The daily assignments also include a recorded lecture prepared using PowerPoint and its audio recording feature. The lectures run no longer than 15 to 20 minutes and highlight fundamentals best anchored before class discussion. After class, students also take a short quiz that leads them to reflect on the material just covered and confirm their understanding.

practice context. Accordingly, we often role play. I assume the role of the client (or judge, law firm colleague, or audience member, as the problem's circumstances may have it), and ask the team members to speak to me just as they would to such a person in real life. The lawyer's responsibility of deep care and service gets reinforced, and communication skills and challenges can be spotlighted. How a lawyer communicates with a client untrained in the law differs from how one speaks with a fellow lawyer, a judge, or an audience, and those can be worlds away from how a law student talks with a professor in class. Staying in role helps make the most of these exercises. To be sure, there is awkwardness because students are unfamiliar with the professional contexts they will be encountering. We talk about those varying contexts and what they will involve, and I provide examples of how a lawyer might behave in them, playing the role of the attorney.

Here are a few examples drawn from the problems used each day:

[1]

#### **CONGRESSIONAL POWER TO SPEND, TAX, AND MAKE WAR**

In an amendment added to the Consolidated Appropriations Act passed in December 2004 (the "Byrd Amendment"), Congress made it a federal law that "[e]ach educational institution that receives Federal funds for a fiscal year shall hold an educational program on the United States Constitution on September 17 of such year for the students served by the educational institution." Assume that the term "educational institution" is expansive, and includes but is not limited to any school, any school board, and any "institution of higher education" – including Jones State Law School ("JSL"). Like most state-supported law schools in the nation, JSL receives federal funds (in particular, federally funded scholarships for students). The federally funded scholarships account for approximately 25 percent of JSL's annual operating revenue.

The statute does not authorize funds to carry out the Constitution Day requirement. Nor does it detail the consequences of an educational institution's failure to hold a commemorative educational program in a given year. Suppose JSL chooses to *not* observe Constitution Day, and the federal government proposes to

cut off all scholarship funding to the school for the next academic year.

*You are a lawyer working for JSLS's general counsel. You have been asked for your advice on the question of whether the Constitution Day requirement is unconstitutional as it is being applied to JSLS. (Consider the constitutional question only with respect to Congress' authority to tax and spend.)*

[2]

### **RACE- SPECIFIC CLASSIFICATIONS AND STRICT SCRUTINY**

**A.** A public high school drama teacher is casting a play based on *Loving v. Virginia*, the Supreme Court case that struck down laws forbidding interracial marriage. The teacher is inclined to consider only African American students to play the role of Mildred Loving (an African American woman who was sentenced to a year in prison for marrying a white man). Similarly, the teacher is inclined to consider only white students to play the role of Richard Loving (Mildred's husband).

*You are an attorney for the school board, and school officials have asked you for advice. Evaluate the constitutionality of the teacher's proposed action under the Equal Protection Clause. What questions might you ask the teacher and school officials? What advice would you provide?*

**B.** On a Monday in the City of Lawrence, a white police officer shot and killed an African American citizen. For several days, protests were mounted against the police action at a number of locations in the city. In some instances, the protests were met with counter protests by citizens siding with the police. On Wednesday and Thursday, violence broke out between the two groups at three different locations, leading to numerous arrests and the deaths of two protesters. Despite the unrest, Lawrence High School officials decided to proceed with the regularly scheduled Friday night football game against a rival school from a neighboring city. At the

game, a major fight erupted between students in the stands. Many were injured and arrested, and the game was ended abruptly.

In light of the foregoing incidents, school officials closed the high school on Monday. The officials intend to reopen the school on Tuesday but with precautionary measures that will include the separation of white students from African American students except during their scheduled academic classes – in other words, during assembly periods before the commencement of classes and at the end of the day before dismissal; during lunches and recesses and open periods; and during periods reserved for physical education and other non-academic matters. These measures would remain in place for the remainder of the week.

*The school officials have asked you, their attorney, for advice. Evaluate the constitutionality of their proposed action under the Equal Protection Clause. What questions might you pose, and what advice would you provide?*

Problems also can explicitly invite reflection on the role of a lawyer, the lawyer's responsibilities with respect to bias, cross-cultural competency, and racism, and challenges that the practice of law can present for well-being.

Here are two examples:

[1]

### **INJUSTICE AND THE LAW**

Imagine it is the year 2123 – 100 years from today. Like you, U.S. law students in 2123 continue to study constitutional law. Like you, they read about practices and laws that once were constitutional in the United States but which, over the years, were found to be unconstitutional. Like you, they wonder how previous generations could possibly have believed that such practices and laws were permissible.

*Can you think of practices or laws that are constitutional today but which will be unconstitutional in 2123, and which future*

*generations will judge as so clearly unconstitutional that they draw into question the moral and legal judgment of those of us who live in 2023? Why do we permit those practices or laws today? What prevents us from declaring them unconstitutional? What arguments and narratives do we fashion to justify permitting those practices and laws to persist?*

[2]

### **JUDICIAL REVIEW AND JUDICIAL AUTHORITY**

At any point in the history of the United States, there have been lawyers who have strongly opposed some then-prevailing aspect of constitutional law, finding it reprehensible on moral, religious, legal, or other grounds.

*Please identify several examples from different points in history, including contemporary examples. What challenges or tensions (if any) might such lawyers experience as professionals and as human beings?*

As noted earlier, the team's grade includes the team's in-class performance working with the assigned readings and the problems. After each class, I record a score for the team on Canvas. At the end of the semester, these scores are tallied and make up 5 percent of the team's grade.

#### *C. Using Short Writing Assignments*

Also associated with most classes (we occasionally take a break) is a short writing assignment that all students undertake within their teams. The assignment involves two steps.

The assignment is based on a prompt directing the student's attention to one or more points raised in the material for the day. Each student drafts a short response to the prompt and posts that response to an online discussion board dedicated to the prompt. Only I and the student's team members see this posting.

The second step calls on the team to review the postings of its members and to produce a response on behalf of the entire team, capturing the best insights from its members' postings. We call this the Team Summary Response. Each team posts its summary response to a different dedicated discussion board that is open to the entire class. Everyone reads these postings, and I contribute brief notes to underscore strong responses and add additional observations as needed. I try to prioritize supportive and constructive feedback.

These discussion board assignments help students move toward proficiency in articulating, explaining, and applying legal principles and concepts in writing. The exercises facilitate peer-to-peer formative feedback about content and writing. They generate exemplars that students can use to improve their own work. Drawing from the class-wide discussion board, students can see the best work of the whole class and import it into their outlines for later review. The process also offers students regular occasions to develop collaboration, teamwork, and reflection skills.

Here are three examples:

[1]

**DISCUSSION BOARD: THE ANTICOMMANDEERING DOCTRINE**

When Congress imposes extremely costly workplace-safety regulations that apply to state governments and workplaces in the private sector, has Congress commandeered the state? If Congress imposes inexpensive workplace-safety regulations that apply only to state governments, has Congress commandeered the state? Write a brief paragraph answering each question and explaining your answers.

[2]

**DISCUSSION BOARD: DISPROPORTIONATE IMPACT**

A prospective client (not a lawyer) has sought your advice. A local ordinance requires residents to obtain a license to operate particular businesses out of the home. Your prospective client was denied such a license by the city administrative office. She is a



member of a racial minority, and she reports to you that a disproportionately large number of minority applicants similarly have been denied licenses, while white applicants are very, very rarely turned down. She asks you to explain to her the constitutional law that would apply to her case.

Write an explanation for your client.

[3]

### **DISCUSSION BOARD: ROMER-STYLE SCRUTINY**

Many commentators have described the equal protection scrutiny the Court employed in *Romer v. Evans* (1986) as “rational basis review with bite.” That kind of equal protection scrutiny – let’s call it here *Romer*-style scrutiny – also was applied in *United States v. Windsor* (2013) and *Obergefell v. Hodges* (2015).

How, in your own words, would you describe that scrutiny? What differentiates *Romer*-style scrutiny from formally heightened scrutiny (intermediate or strict) as well as from the typical rational basis review you have studied?

A short writing assignment using the discussion board also can be used to ask students to reflect on their development of skills other than the cognitive and doctrinal, such as teamwork and collaboration. Here is an example:

### **DISCUSSION BOARD: TEAMWORK AND COLLABORATION**

Law school is not just about learning cases, doctrines, rules, and standards. Professionals need a wide range of skills, and they include the ability to collaborate effectively with others. In this course, the activities that you undertake with your team are intended to help you develop those skills. To that end, here are a few questions. Please reflect on them and post a Team Summary Response.

#### Team Meetings and Communication

- How do you meet as a team? (For instance, what technologies do you use?)
- How often do you meet? When?
- How do you schedule meetings?
- How do you conduct your meetings? (For instance, does someone “lead” the meeting?)
- What other means of communication does your team use?

#### Benefits of Teamwork and Collaboration

- In what ways are you finding your teamwork and collaboration helpful? (Please identify at least two ways, if you can.)

#### Teamwork and Collaboration Skills

- What characteristics are you finding to be most important to someone being a valuable teammate and collaborator? (Please identify at least two characteristics, if you can.)

#### Opportunities for Improvement

- What could your team do to make its work more valuable and beneficial to its members? (Please identify at least two, if you can.)

#### Questions

- Does your team have any questions about teamwork and collaboration? (If yes, please share them here.)

The responses to this reflection are shared and class time is devoted to discuss them and to explore answers to the questions that have been posed.

A team’s grade includes the team’s performance on the short writing assignments staged on the discussion boards. Each assignment is scored. Their tally at the end of the semester makes up 5 percent of the team grade.

#### *D. Using Longer Writing Assignments*

Twice during the semester, the students are assigned a more substantial writing project – namely, the writing of a legal memorandum. These assignments serve as capstones to the first two major segments of the course – the scope of the national government’s powers and the separation of powers, respectively.

Teamwork figures prominently with an emphasis on peer-to-peer feedback and learning by reflecting on the work of others. Each student writes a first draft and shares it with a teammate who reviews it and returns written feedback. To promote more peer-to-peer feedback, students do not “pair up” but instead arrange so the teammate who is providing them their feedback is not the same person who will be receiving feedback from them. Every student thus engages two teammates in the process, sees how two fellow students approach the task, provides personalized feedback to one those teammates, and receives personalized feedback from the other. The drafts and feedback exchanges are submitted to me on Canvas. Once the feedback process is completed, the students revise their drafts and submit a final version on Canvas.

Here is an example of one such longer writing assignment:

#### **Writing Assignment No. 1**

[Congressional Power: Enumeration, Federalism and the  
Commerce Clause]

This writing assignment involves the drafting of a memo to a lawyer for whom you are working. There are four steps to the assignment.

**1. Write a First Draft:** The first step in the assignment is to write a first draft of the memo – which you will turn in to the professor and also give to your “feedback provider” for review and feedback.

**Feedback Providers:** Determine a fellow student on your team who will provide written feedback to you on your paper (your “feedback provider”). Arrange such that the teammate who is providing you feedback is not the same teammate to whom you will

be providing feedback. By doing so, you will benefit from collaboration with two classmates.

**Deadline: Your first draft must be submitted to the professor and to your feedback provider no later than \_\_\_\_pm on \_\_\_\_\_.**

**2. Provide Written Feedback as a Feedback Provider:** The second step is to review the draft you have received from your teammate and provide constructive feedback on the draft.

**Deadline: The written feedback must be submitted to your teammate no later than \_\_\_\_pm on \_\_\_\_\_. You must submit a copy of the written feedback to the professor by \_\_\_\_pm on that same date.**

While I encourage you to meet to discuss the feedback, you are to provide your teammate written feedback – which you may do by marking up by hand a printed copy of the draft, or by adding comments and suggestions directly to an electronic version of the draft (using the “track changes” function), or by preparing a separate document with comments and suggestions.

You are free to seek additional feedback from other students in the class, especially from fellow members of your team. Only the written feedback you must provide as a feedback provider is to be turned in to the professor.

**3. Receive and Review Written Feedback:** The ability to provide constructive feedback is an important skill for a professional. So is the ability to receive and make use of feedback. The third step in this assignment is to review the feedback you have received and consider how to put it to good use in improving your draft.

This assignment contemplates that you and your teammates (and any other classmates with whom you engage in feedback) are

exchanging drafts as professional colleagues would – collaborating to better represent a client. You are expected to benefit from seeing the work of your classmates, from providing feedback on their work, and from receiving feedback on your work. *This benefit includes incorporating what you have learned from your classmates into your memorandum to make it better.* Accordingly, for the purposes of this assignment, drawing on the ideas and words of a classmate without formal attribution in the course of revising your draft and finalizing it will not be considered plagiarism.

**4. Revise and Finalize Your Memo:** The last step in the assignment is to revise your first draft and convert it into as polished a final memo as you can.

**Deadline:** The final memo is due to the professor no later than \_\_\_\_\_ pm on \_\_\_\_\_.

### UPLOADING YOUR SUBMISSIONS TO CANVAS

Each of the three submissions – the first draft of your memo, your feedback submission, and your final memo – is to be uploaded to Canvas. You will see a separate assignment for each of these submissions.

### The Assignment

### MEMORANDUM

**To:** New Associate  
**From:** Louis D. Billionis  
**Date:** \_\_\_\_\_  
**Re:** Potential Challenge to New Federal Extortion Statute

We have been appointed to represent Dave Donaldson, who has been charged in federal court with violating the new federal extortion law. The statute makes it a federal crime to “gain property or money by the use or threat of violence, harm to reputation, or damage to property.” Our client lives in Northern Kentucky. The prosecution alleges that he extorted \$5,000 from Vincent Valdor, who lives in Cincinnati. The allegation is that Donaldson received the money from Valdor after threatening to kill Valdor if Valdor did not give him money. The threat was communicated by email.

I am considering filing a motion to dismiss the prosecution on the ground that the extortion statute is unconstitutional. Before we draft the motion, it would be helpful to have a short memo from you (500-700 words ought to be more than ample) developing the basics of the constitutional argument we might make against the statute. In addition to discussing the controlling rules and principles (and how they might apply in our favor), please mention any Supreme Court cases that you think are especially relevant and how they either support our argument or, if they seem to point the other way, are distinguishable. It also would be helpful if you could identify any potential points that you anticipate the government might make in support of the statute’s constitutionality, and how we might answer those points.

I read and score the final memorandum as well as the feedback that each student provided their teammate. The total of those scores is the measure of the student’s personal performance on the assignment, but it is not the grade the student gets. The scores of all the members of the team are added together, and the average score becomes the “team grade” that each member in turn receives. The team’s boat sails better when the crewmates help one another improve.

Feedback – giving it, receiving it, reflecting and acting on it – is a powerful professional competency. It also is valuable to law students in their coursework. I take the time to draft a brief note to each student with personalized feedback that speaks to their personal work on the memorandum, their effort to provide feedback to their teammate, strengths observed, and opportunities for improvement. When

reviewing the submissions, I take notes that will help me to write that feedback. However, I have found it more efficient to do the actual drafting of feedback after everything has been reviewed and all the scores have been compiled. Much of the feedback – although personalized – tends to fall into categories that will be applicable to more than one student, and leaving my writing until the end allows for the creation of templates that make the process go faster. With all the scores in, my feedback to each student also can include the “team grade” as well as a note that gives the student a general indication of how their personal performance on the memorandum compared to others in the class – *e.g.*, “As you know the grade entered above is the team grade. For your information, your own memo placed you just above the median of a very tightly distributed class.”

Each of the two memorandum assignments accounts for 35 percent of the team grade.

First-semester students have just begun their socialization journey into the profession, and the memorandum assignments ask them to do things many have never seen let alone done. We talk about that before the assignment starts, and about how professionals entering new terrain routinely look for models to “go by.” The memorandum assignments are designed to expose the students to potential models. I provide a template that points the way without giving the substance of the assignment away. As the students exchange drafts and conduct peer-to-peer feedback, they see what others are producing, adopting the good that they see and adapting their own work accordingly. We conclude the assignment with a debriefing in class and I post the strongest memoranda that were submitted as exemplars.

These assignments help students strengthen their writing and practice teamwork and collaboration skills, all while improving their command of subjects explored in two key segments of the course. By building teamwork, collaboration, feedback, and reflection into the assignments, students learn from and teach each other. The results are notable. The final memoranda have been very good, with comprehension, analysis, and writing markedly better than I expected. That is so for the first written assignment, which takes place in late September, and even more so for the second in late October to early November. The assignments demand more work from students, and they accept it as beneficial. They say that the assignments help them feel they are growing in their capability to *do* things that professionals do. They speak of gaining confidence. They evidence self-directedness, reflecting on their individual opportunities for improvement and seeking feedback and resources to help them. They also see that the work will pay

dividends come exam time when the same fundamental competencies of analysis and writing are necessary.

*E. Using a Practice Examination and Exam Planning Exercise*

As the semester wanes in mid to late November, no decent sense of mercy allows another long writing assignment geared to the last third of the course (covering equal protection of the law). We capstone the final segment of the course with a less onerous exercise that guides students in their review of the material while also preparing them for the exam experience. Once again, professional identity formation concepts shape the project.

This third writing assignment involves the drafting of an answer to a question taken verbatim from an old examination. The assignment ensures that students see and work with a representative exam question before taking an exam. (This provides a good occasion to discuss how professionals eliminate surprises by acquainting themselves with the unfamiliar before the moment of truth.) Work within the team magnifies the value of the assignment. Students share their draft answers with their teammates and then confer in their teams to reflect on the strengths of the various answers, opportunities for improvements, and strategies for exam preparation and taking. Each team delivers in class an oral report on its discussions and reflections. The assignment focuses students productively on equal protection doctrine and theory, but also delivers on other fronts associated with self-direction and executive function. Students are encouraged to see their upcoming exams as a project to be managed. They are asked to reflect on their strengths and weaknesses, identify the specific work they will need to do to prepare, give thought to the resources they can tap, and budget their time and energy.

Here is an example:

**Writing Assignment No. 3**

[Equal Protection]

This writing assignment involves drafting an answer to a practice exam question, providing feedback to one another, and reflecting on what you have learned in order to develop stronger



strategies for approaching your final examination in the course. There are three steps to the assignment.

**1. Write Your Answer to the Practice Exam Question:** The first step in the assignment is to write your answer to the practice exam question – which you will turn in to the professor and also give to all of your teammates for review and feedback. The question is drawn verbatim from a real final examination, except for the changing of dates and the addition of a special instruction appropriate to this exercise. The question was allocated 60 minutes. *Because you have not yet prepared for the final examination, I encourage you to not limit yourself to 60 minutes.* Rather, do the best you can to identify and thoroughly address all the issues that you think might be relevant.

You are free, if you wish, to discuss the question with others before undertaking your written answer. You also are free, if you wish, to attempt an answer and then – after discussing the question with others – add to or revise the answer. You also are free, if you wish, to write and submit your answer without any input from others.

**Deadline: Your answer must be submitted to the professor via Canvas and to your teammates no later than \_\_\_pm on \_\_\_\_\_.**

**2. Meet as a Team to Discuss and Reflect:** The second step in the assignment is to review all the answers that your teammates have shared with you, and then meet as a team to discuss and reflect collectively. Which answers, or portions of answers, struck you as most effective, and why? What recommendations can you offer each other for individual improvement? What tips can you share about identifying issues? Analyzing issues? Developing arguments? Use your meeting, as well, to explore and share exam preparation and writing strategies.

**Deadline: Your team meeting must occur before the beginning of our regularly scheduled class on \_\_\_\_\_.**

**3. Team Report to the Class:** The third step in the assignment is for each team to report to the class on its discussions and collective reflections. **This report will occur during our class on \_\_\_\_\_.**

I encourage each of you to see this as an opportunity to take stock as you head into your preparation for the final examination. Your team discussions and in-class discussions can help you better identify the matters that you need to work on most between now and the examination. What are they, and how will you work on them? What matters do you feel you have best in hand? What preparation strategies do you think might help you? What strategies for taking the examination do you think might help you? How will you allocate your time, given all your other commitments? What resources (including friends and classmates) are available to you, and how might you draw upon them? Are there resources you need but have not yet acquired? What are the most valuable things you learned from your teammates in the course of this assignment?

### **UPLOADING YOUR SUBMISSION TO CANVAS**

Your answer to the practice exam question is to be uploaded to Canvas.

### **GRADING AND FEEDBACK**

As with the first and second writing assignments, the grade you receive on this assignment will be a team grade. The grade will be based on the quality of your team's discussions and collective reflections, as presented in your team's report to the class.

### **The Assignment**

## Practice Exam Question

[60 minutes]

[The students here see text drawn verbatim from an actual final examination dealing with a range of issues involving equal protection principles and doctrine.]

### CONCLUSION

As this walk-through shows, bringing professional identity formation concepts into a traditional doctrinal class is feasible and uncomplicated. Professors need no special expertise to do what has been described here and can adapt it to suit their circumstances and preferences. It fits with the aims and means of a traditional course and the values that professors espouse. It requires no sacrifice in the coverage of material, introduces no topics or techniques antithetical to a sound legal education, and reinforces the educational and professional values that shape a basic course. All of which is to say that little stands in the way of giving it a try – even a little try, as an interested but cautious professor can take the idea for a proverbial test drive, experimenting with one or more components before making a deeper commitment to the method. Harkening to Everett Rogers, the factors of complexity, compatibility, and triability that are key to an innovation’s adoption<sup>21</sup> pose no problems here.

But what provides the positive attraction, the “relative advantage” that Rogers reported as so significant to an innovation’s adoption?<sup>22</sup> What’s in it for professors and their students? A lot.

First, and probably foremost, the doctrinal course’s objectives get better fulfilled. Students learn more and perform better. Since I revised my course around professional identity formation concepts, the final exam answers I receive have been of higher quality. In particular, the performances at the weaker end of the

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<sup>21</sup> See *supra* notes 1-6 and accompanying text.

<sup>22</sup> See ROGERS, *supra* note 1, at 212-17.

continuum have been notably stronger, evidencing few if any of the striking weaknesses that professors sometimes find in first-year examination answers. They are better reasoned and written and demonstrate more command of and comfort with the material and tasks. Students concur and approve of the method. They report that their team experiences assist them to better learn doctrinal material and advance their analytical abilities.

It ought to be enough for many professors that incorporating professional identity formation concepts can make for superior learning on the doctrinal and cognitive front. The benefits, however, extend well beyond leverage. Students have reported that their work in teams contributes positively to their confidence in themselves and their development. They express excitement about becoming a professional and the prospect of serving people and society. They recognize the fiduciary mindset a lawyer needs. They note that their team experiences lead them to new appreciations of diversity – reinforcing for them that all their classmates have strengths, that no one has all the answers and insights, that all have valuable perspectives to offer, and that their own individual development is strengthened by collaboration, feedback, and reflection. The team framework, they say, also encourages them to succeed while mitigating some of the competitiveness found in law school. These are signs that students are advancing well in their development of the range of competencies required of a complete professional that go beyond the doctrinal and cognitive. They should please a law professor.

Some rewards personal to the professor deserve mention as we conclude, and here I share my own reflections. When you have made professional identity formation a framing feature of your traditional doctrinal course, you naturally focus more than before on each individual student and that student's personal development as a lawyer. You remain the sage on the stage and lose no stature, but you become an active and purposeful guide on the side too. The podium and all it symbolizes – think Professor Kingsfield at the rostrum in *The Paper Chase* -- no longer dictates the relationship between you and your students. The distance separating you closes. Empathy heightens. Communication grows. Effectiveness sharpens. Teaching takes on greater meaning.