A portrait of the law school as realist kindergarten

Professor Paul Maharg
Northumbria Law School
1920s at Columbia University Law School

John Dewey at Columbia:
- legal logic
- legal curriculum

Dewey & E.L. Thorndike

Law school as kindergarten
‘The curriculum of the American law school is in some respects a makeshift, the resultant of forces many of which bear little logical relation to each other. The exigencies of the personnel of the teaching staff, the form and scope of particular text or case books, the constant tendency manifest in most educational enterprises to multiply courses, the undue overlapping of courses and the failure of any school in recent years to make a systematic revision of its curriculum are some of the elements contributing to the failure of law school curricula to realize to the fullest extent the needs and tendencies of present day legal education.’

(Harlan F. Stone, Columbia University Bulletin of Information, Annual Report of the Dean of the School of Law, 1922)
‘the problem of simplifying our law in its statement and in its mechanism is due not alone or principally to the volume and character of its literature. It is one which is inherent in the nature of the common law and the method of its creation. The common law doctrine of precedent, whereby the judicial decision not only determines the rights of litigants who invoke it, but becomes the authoritative source of legal precepts to govern future cases, is at once the secret of its strength and the source of some of its weaknesses.’
At Columbia, he was involved in...

- Special Conference on Logical and Ethical Problems of Law (1922), and conducted 1925-30 jointly with Edwin Wilhite Patterson
- Student course, entitled Logical and Ethical Problems of the Law.

‘A democracy is more than a form of government; it is primarily a mode of associated living, of conjoint communicated activity.’

*Democracy and Education* (1916)
Standard classroom c.1908. Would you like to learn about measurement and volume this way?

Thanks to Mike Sharples, http://tinyurl.com/6bzdgx
...or this way?
(Dewey’s Laboratory School, U. of Chicago, 1901)

http://tinyurl.com/6onvjp
Would you like to learn about history and town planning this way?
... or by building a table-top town for a social life history project?  
(Dewey’s Lab School)

http://tinyurl.com/59c93q
‘Dewey, through his primary interest in education, stresses the adaptability and latent capacity of mankind rather than its limitations. ... Once I asked Professor Dewey “Why do you talk only of the influence of the social environment on the individual and not about his inborn traits, which limit and determine his destiny in life far more than his education or other environmental influences?” After a pause, he replied ‘I suppose it’s because we can’t do anything about them.’”

‘It is believed that, if we are really to get at the fundamentals, the organization of the curriculum must be more in terms of the human relations dealt with and less, as largely now, in terms of the logical concepts of the conventionally trained legal mind.’

Herman Oliphant, ‘The Revision of the Law School Curriculum’, p.6
‘A somewhat radical change in the model effected by including other materials than decided cases and by using problems or skeleton, *sic* cases, promises sufficient results to warrant careful study by the Law Faculty. It might well consider modifying the use of the case method in some of the advanced courses. But these changes if made would not constitute an outstanding development. Moreover, this mechanical problem cannot be the center of interest in a study of the curriculum.’

Herman Oliphant, ‘The Revision of the Law School Curriculum’, p.3
‘Many years ago, Mr Justice Holmes in classic phrase reminded us that 'the life of the law is not logic but experience'. ... But can we in any proper sense speak of the application of this principle as a 'method'? Has sociological jurisprudence any methodology, any formulae or principles which can be taught or expounded so as to make it a guide either to the student of law or to the judge? .. If not, then sociological jurisprudence will not tend to reduce the accumulation of anomalous doctrines; it may even add to it.’

two origins of contemporary learning theory

E.L. Thorndike

John Dewey

‘One cannot understand the history of education in the United States in the twentieth century unless one realizes that Edward L. Thorndike won and John Dewey lost.’

<table>
<thead>
<tr>
<th><strong>E.L. Thorndike</strong></th>
<th><strong>John Dewey</strong></th>
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<tbody>
<tr>
<td>1. Educational psychologist</td>
<td>Philosopher &amp; educationalist</td>
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<tr>
<td>2. Theoretician &amp; experimentalist</td>
<td>Theoretician and practical implementer</td>
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<tr>
<td>3. Explored the dyadic relationship between mind &amp; the world</td>
<td>Interested in the arc between experience &amp; the world</td>
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<td>4. Adopted as precursor of a behaviourist approach to learning: assessment-led; laws of effect, recency, repetition</td>
<td>Pragmatist approach to learning: prior experience, ways of contextual knowing; democracy &amp; education</td>
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<tr>
<td>5. <strong>Emphasised teaching strategies</strong></td>
<td><strong>Emphasised learning ecologies</strong></td>
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Legal education has a weak socialising affect, much weaker than the centripetal power of the job market.


Legal subjects studied affect career ambitions, but had a neutral, short term or negative impact on the public service orientation of law students.


A study on socio-economic & ethnic diversity in Scotland found similar results.

kindergarten approaches

- First kindergarten – opened 1837, Friedrich Fröbel
- Children played freely with blocks, bricks, tiles, shapes: his school was designed for designers
- Developed the idea of freiarbeit and the educational value of games.

Other approaches
- Montessori method
- Waldorf education
- Sudbury school
- High/Scope method
The finest crew of rollercoaster builders I have ever had the pleasure to work with. Ladies and gentlemen, the Tinkering School Class of 2005.
Open-plan education where spaces support activity & thinking

School as teacher

Vertical groupings, 5-11, instead of classes

Articulated a pedagogy of six selves & three I’s...

‘I am sure that teaching is an art and that teachers are artists. The teacher teaches what he is, more than what he knows, and as an artist, involved and giving of himself with love.’

George Baines
characteristics of the Eynsham school

1. Open-plan building (the ‘articulate school’)  
2. Integrated day  
3. Family groupings of 40 children, aged 5-9  
4. Team/co-operative teaching
All learning areas divided into bays:

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<td>Withdrawing room</td>
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No national curriculum, no LEA curriculum, no school curriculum

Periods are blocks of time that are flexible if required. Breaks are flexible: play and work are intertwined.

Setting out and clearing up were part of the day’s activities for both children & staff.

‘There is every effort made for the school to be a real community group and to develop skills and abilities of individuals and help them develop attitudes to enable them to be individuals yet concerned with the other individuals in their community.’

Eynsham teacher
Family groupings of 40 children, aged 5-9.
Vertically organised (so that children could take mentoring roles) + parental conferencing & teacher observation. Children from same families included in the group (unless requested out) and the group became a family that moved through time.

Teachers roles were radically altered. They:
- facilitated
- helped organise future work
- gave feedback to individuals & small groups
- reviewed progress with children
- suggested project work
- ensured principles were implemented
Teachers formed a co-operative:
- helping each other teach
- meeting regularly to plan & discuss activities and resources

All teachers recorded their practice in daily diaries, which for some became a record that fed into writing about school activities.

Teacher practice exemplified Dewey’s democratic practices: ‘associated living’ & ‘associated thinking’
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Prepared by George Baines

Curriculum Objectives for meeting...
### Curriculum Methods & Techniques

**Experiential Variety of Materials**
- Experiences & Relationships
- Vertical Grouping
- Integrated Studies
- Visits
- Discovery
- Construction
- Time Structure
- Space Structure
- Pleasure
- Involvement

**Methods and Techniques Used for Meeting Needs**

1. **Stimulation & Displays**
   - Observations
   - Experimentation
   - Integration
   - Analogous Thinking
   - Reasoning
   - Verification
   - Memorization
   - Questioning
   - Thinking Strategies
   - Problem Solving

2. **Knowledge**
   - Direct Teaching
   - Instruction
   - Heuristic Approach
   - Reading
   - Projects
   - Research
   - Discussion
   - A.V. Aids
   - Building
   - Memorizing
   - Integration
   - Use of Environment

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**Social**
- Vertical Grouping
- Co-operative Learning
- Group Activities
- Re-Grouping Across Classes
- Meal Times
- Classrooms
- Day Times
- Residential Field Study Weeks

**Curriculum Methods**
- Atmosphere
- Role
- Displays
- Discussion
- Assemblies
- Music
- Poetry
- Art
- Biographies
- Religious Knowledge Books

**Curriculum**
- Organization
- Development

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**Recommended by**

George Baines
The aims of the School are based upon the following principles:

1. **Knowledge.**
   a) That each child is uniquely different from all others, particularly in respect of personality, character, experience, response and reaction.
   b) That a stimulating concory environment is required for the development of normal intelligence, whatever its potential.
   c) That despite a common sequential order of maturation, each child has his own rate of development.
   d) That Primary-aged children cannot, generally, form abstractions from abstractions but learn through activity and experience.
   e) That a doctrinaire insistence on any one approach, method or technique is unhelpful.
   f) That motivation is fundamentally derived from emotional responses.
   g) That children have an emotional need to "grow".
   h) That "schooling" is only part of "education" and is a continuance of "education" which started at conception.
   i) That satisfying human relationships are essential for normal development.
   j) That other agencies for learning influence children as
six selves, three I’s

Cf Gardner’s Five Minds – disciplined, creative, synthesizing, respectful, ethical.
http://tinyurl.com/357seww
‘Curriculum is everything that happens to a child’
SIMulated Professional Learning Environment enables students to engage in online simulations of professional practice. Its special pedagogy is based on transactional learning:

**active learning**

through **performance in authentic transactions**

involving **reflection in & on learning**,  
deep **collaborative learning**, and  
holistic or **process learning**,  
with **relevant professional assessment**  
that includes **ethical standards**
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Ardcalloch directory

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Ardcalloch map of Ardcalloch Country Park
We require from each student firm a body of evidence consisting of:

- **fact-finding** – from information sources in the virtual community
- **professional legal research & comms**
- **formation of negotiation strategy** – extending range of prior learning in a curriculum spiral
- **performance of strategy** – correspondence + optional f2f meetings, recorded
PI project:
(some of) what students learned

- extended team working
- real legal fact-finding
- real legal research
- process thinking in the project
- setting out negotiation strategies in the context of (un)known information
- writing to specific audiences
- handling project alongside other work commitments
- structuring the argument of a case from start to finish
- keeping cool in face-to-face negotiations
- more effective delegation
- keeping files
- taking notes on the process...
key issue: simulation tempo & complexity
– GGSL curriculum map

1. Personal Injury Transaction
2. Tax*
3. Christmas Holiday
4. Conveyancing Transactions (Sale & Purchase)
5. Civil Court Action
6. Practice Management

Professor Paul Maharg
feasibility?  cost?  impact?

Feasible...?
- Very: lots of experience out there in Strathclyde, Northumbria, Glamorgan, ANU, UNH. Once sims are created using the SIMPLE Toolset, easy to maintain.

Cost...?
- Development of sims; learning support for students
- SIMPLE is open-source and freely available – there is technical support (funded by CALI) till June 2011
- SIMPLE blueprints & guidance documents are freely available under Creative Commons licences.

Impact...?
- on students: ethical performance, learning legal argumentation, practice of skills within professional value contexts; critique of professionalism; formative and high-stakes assessment; transactional learning
http://simplecommunity.org

http://www.simshare.org.uk

other models of legal ed kindergartens?


- Hasok Chang: published research and writing by successive yeargroups of undergraduate students as a book.
  
  - ‘Directed community principle’ + ‘inheritance principle’
  