Public Health Law as a Way to Explore and Develop Professional Identity

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Introduction
I used the fellowship year to design a hybrid three-credit public health law course (one credit asynchronous online, two credits in-person) for cross-enrollment by law, medicine, nursing, and social work students. The primary objectives of this course are the following: (1) to better understand the role of law in fostering the health of populations; (2) to recognize how each discipline/profession informs and contributes to the law governing community and public health; (3) to understand the roles of government, private sector entities, and individuals in creating and maintaining the conditions for people to be healthy; and (4) to assess multifarious legal and ethical conflicts between governmental interests in protecting the public’s health and respecting individual rights.

Hybrid Course
I chose the hybrid structure for two reasons: one pedagogical and one logistical. Pedagogically, I have struggled in the past in cross-enrolled courses to provide law students with the depth of analysis that the law requires while still keeping the non-law students engaged. Similarly, I also struggled to provide non-law students a foundational explanation of legal concepts without frustrating the law students (although law students occasionally welcomed the review). The hybrid structure for the public health law course allows me to design the online content in a way that provides both a basic foundational presentation for the non-law students and a more detailed, nuanced analysis for the law students. Additionally, relying on what is known as the “jigsaw” method of team-based teaching (where students are individually responsible for teaching others concepts and then using the concepts together to solve problems as a team), each student is able to use her own discipline’s distinct research and analytical framework as she prepares for the in-person discussion. The weekly in-class time is then spent primarily in interdisciplinary small groups working through public health law problems.

Logistically, I struggled to find a common in-person class time across four graduate programs. Our nursing, social work, and medical curricula and schedules needed a three-credit law and policy elective that met only once a week in order to fit with their off-campus clinical days. Our law school schedule tends to have three-credit courses that meet twice a week. A single three-credit block of time significantly conflicts with core law school courses, which would have precluded most law students’ enrollment. The hybrid course provides the necessary three credits and meets for two hours on Thursday afternoons, after the medical, nursing, and social work students’ morning block of classes and before the law students’ evening classes.

Team-Based Practice and Professional Identity
As part of the fellowship program and my attempts to “advertise” the course before registration, I invited my faculty colleagues (from the law, health sciences, medical, nursing, and business schools) to a lunchtime mock public health law class. I sent them representative readings and a video in advance with the request that they consider whether lawyers should be incorpo-
rated as members of case management teams for complex patients. This team-based practice model would be a departure from the typical structure of medical-legal partnerships where lawyers remain employed within legal services firms or law school clinics to one where lawyers are integrated members of a case management team employed by the health care system.

To my colleagues’ credit, lunch was well attended and sparked a conversation about the current financing of legal services and the potential effect of management of legal services by non-lawyers. A number of my more senior colleagues actively tracked me down afterwards to thank me for providing them a chance to revisit what the profession’s relationship to the community might be, the potential value of the work we do as lawyers, and the number of community stakeholders (and other professions) who have an interest in the legal system working well for all members of the community. With a bit more context and background on the social determinants of health, my colleagues are starting to see more ways that zealous interdisciplinary advocacy may improve health (and when it may not), hopefully narrowing the gap between the dominant vision for the legal profession as independent advocacy (with litigation as the dominant paradigm) and an alternative vision of law as a healing profession with a holistic approach to client representation and attorney health (where litigation shares the stage with mediation and other problem-solving processes).

Within the context of the lunchtime conversation and several personal conversations afterwards, it became increasingly clear that many of my law school colleagues are concerned that certain forms of collaboration with other professions and disciplines may start to chip away at a foundational quality of the legal profession — that of lawyers’ exercise of independent judgment as zealous advocates, beholden to nothing and no one but the law and their clients’ interests. This strong sense of professional legal identity as a champion willing and able to fight against a biased, fearful, or otherwise corrupted institution or community runs deep in our popular and historic narrative. Less familiar and celebrated are the efforts by myriad lawyers as counselors, mediators, policymakers, and problem solvers. Even less discussed in law school, lawyers are not the only professionals who pride themselves as powerful advocates. As one who also teaches professional responsibility at both our law and medical schools, I am truly enjoying the conversations about what it means, and what it should mean, to practice a profession.

**What Does It Mean to Be a “Professional”?**

While a professional has historically been one who made a “profession of faith” in the midst of a disheartening world,” Parker Palmer suggests that every professional should be “a moral agent with the power to challenge and help change the institution[s]” in which he or she practices. In her essay in this supplement issue of *JLME*, Sarah Davis provides one powerful way of how she, consistent with Parker Palmer’s vision, educates public health professionals to have the will to deal with the institutional pathologies that threaten the professions’ highest standards. As a part of this larger effort to effectively prepare our professional students to navigate and move institutions, I use my public health law class to provide our future professionals opportunities to grapple with and internalize these “highest standards” in the context of institutions, systems, and communities charged with improving health.

**What Does It Mean to “Practice” Law/Medicine/Nursing/Social Work?**

The semester opens with this question as part of the first online module. I ask students to reflect on what drove them to graduate school to study social work, medicine, nursing, and law. I also ask them to post online how they would explain to someone unfamiliar with their field what it means to practice their profession. What do they expect to learn in their graduate program?

The lack of a simple or clear definition for what it means to practice a specific profession (whether due to state-by-state variation in definitions, ongoing debate about scope of practice, or a wide array of practice settings) provides ample space for discussion. An interdisciplinary public health law class allows students multiple opportunities to reflect upon and try to name just what it is they are devoting years to study. For example, a law student and medical student had the following exchange on the course discussion board in response to the question, “How would you explain to someone unfamiliar with your field what it means to practice your profession?”:

**Second-year law student:** “I plan to practice health law but I am not 100% sure what setting, be it law firm, medical group or hospital or for a company. Regardless, my focus should be on advocating for my client, whether that is the clients of a firm, doctors, or the employees of the company, my main goal is to advocate for them and to be the buffer between their actions, potential business decisions, etc. and liability. To me this means to first listen: What are my clients looking for? What are their needs? While I may have an idea of what they want or need, that may not always be the case so I want to have a rap-
port with them that allows for communication back and forth to be honest and continuous. The moment that connection is lost I think problems could arise. I need to be credible. I want them to trust in me and the information that I bring back to them. This means I must stay up to date on what is happening in the industry and also be able to provide them with only the pieces of that information they may need based on our discussions. Lastly, I want to strive for positive change through my actions and the actions of my employer.

Second-year medical student: “Wow, when I was reading this this could have sounded exactly like what it means to be a physician. We’re taught to advocate for our patients, to find out what their needs are instead of superimposing our own ideas about what they should have, and to form a therapeutic alliance with the patient so we can work on their health together. We also have to keep up to date on the latest research, stay on our employers’ good side, and think about student loan debt. I think that means that there’s lots of similarity when it comes to professions that in some way want to save the world: Even though we sometimes struggle with the mundane aspects, our professions attract those with big ideas and big hearts.”

In most professions, a “practice” implies counseling and caring for individuals or organizational clients using extensive specialized knowledge, training, values, and independent judgment. How, though, to briefly explain what law schools aspire to teach students? How might one explain the similarities and distinctions between social work and law? Is the difference in the guiding values of the professions? Is it a difference in the problems addressed by each? Or is it the difference in the kinds of research and experience are considered authoritative or relevant for decision-making, counseling, or treatment? Over the course of the semester, I ask students to revisit their reflections and start identifying situations when they might approach the limits of their profession and reach out to other differently trained colleagues for help caring for an individual.

One of the advantages of a public health law course is that it readily lends itself to shifting students out of the traditional professional-client/patient dyad relationship into a position where the larger public or community is the intended beneficiary of their professional research and analysis. For many of my students, this is one of the first opportunities they have in the course of their studies to consider what happens to their professional identity when working outside of the context of treating and advising individuals. If they do not treat individual patients or clients, are they still physicians, nurses, social workers, and lawyers?

Social workers recognize that a community can be a client deserving of all the same respect and diligence as an individual client. Similarly, the nurse’s primary commitment is to “the patient, whether an individual, family, group, community, or population.” These two professions recognize fluid movement between individuals and communities, and deliberately situate their individual clients and patients within larger family and community systems. By contrast, physicians are expected “to participate in activities contributing to the improvement of the community and the betterment of public health” but “must recognize responsibility to patients first and foremost.” The practice of medicine, like law, recognizes that physicians are likely to be seen as community leaders by dint of their advanced education, but generally separates and raises the needs of the individual patient above those of the larger community.

What Does It Mean to Be a Lawyer?
According to Black’s Law Dictionary, a lawyer is “[s]omeone who, having been licensed to practice law, is qualified to advise people about legal matters, prepare contracts and other legal instruments, and represent people in court.” This definition may be descriptive, but scarcely hints at a meaningful sense of professional identity. Like the other professional associations (i.e., the American Nursing Association, American Medical Association, and National Association of Social Workers), the American Bar Association (ABA) has spent much time and energy working on a set of rules meant to describe what it means, or should mean, to practice the profession.

Unlike the other professions, though, the ABA’s rules have been largely adopted as the law governing state legal licenses, enforceable through disciplinary actions. While the other professions have the luxury of articulating aspirational standards without considering how they might be enforced, the ABA’s Model Rules of Professional Conduct were created with enforceability in mind. The Preamble attempts to provide a framework for the highest standards of the profession, recognizing roles for lawyers as representatives of clients (whether as advisor, advocate, negotiator, or evaluator), officers of the legal system, third-party neutrals, and public citizens.
Rules themselves provide more concrete, more easily enforced standards for the practice of law.

In the first in-person class, I am able to use this distinction between the various codes of ethics and the ABA’s Model Rules to illustrate the difference between normative and descriptive standards. I also raise for the first time (often revisited over the course of the semester) the concept that “law” is not solely a matter of standards, but also requires consideration of enforcement mechanisms and just consequences.

Regardless of role, lawyers have a unique responsibility for the quality of justice. There is an underlying assumption in the ABA Model Rules, however, that the lawyer’s responsibility to a larger community is met through work to improve the law, access to the legal system, the administration of justice, and the quality of service rendered by the legal profession. Strikingly, these expectations are attributed to lawyers as “public citizens,” not as “representatives of clients.”

**Reconsidering the Role of “Zealous Advocate”**

When framing the concept of attorney as “Advocate,” the Model Rules primarily envision a litigation or adversarial context. Much of law school, especially those courses which focus primarily on reading, analyzing, and applying judicial opinions, provides law students with the opportunity to try on the litigator hat, thinking through and trying possible oral arguments. By contrast, public and community health advocacy happens more often outside the courtroom and is not limited to attorneys. Indeed, many non-lawyers advocate in the public health sphere. Part of “being a nurse” is being an effective patient advocate, which requires understanding “patients’ context, their world, and their experience.” Social workers, too, are expected to “advocate for living conditions conducive to the fulfillment of basic human needs and should promote social, economic, political, and cultural values and institutions that are compatible with the realization of social justice.”

While the concept of advocacy is newer to the practice of medicine, it is quickly gaining ground.

Given the shared professional value of advocacy, it is not enough for lawyers’ professional identity to be merely “zealous advocates,” as powerful and necessary as that may be. An interdisciplinary public health law course provides students an opportunity to revisit their assumptions about what it means to be a zealous advocate and think about the law’s role in creating systems, relationships, standards, and policies in a community. Much of the work in this sphere is collaborative and creative, requiring maintenance of relationship where objective third-party decision-makers are non-existent. What, if any, unique value do lawyers bring to this sphere? What skills should lawyers have to do this work effectively?

**Considering Lawyers’ Role in the Community**

Using the law to implement changes in a community has the potential to drive systemic change (whether through legislation, regulation, or impact litigation), affecting more people than possible through representing individual clients. Of course, the “law” is never just a single statute, regulation, or court opinion, and lawyers are uniquely trained on how constitutional, common, and statutory law interacts on federal, state, and local levels, across the executive, legislative, and judicial branches of government, and into the private sector. No other profession can bring this skill set to the table.

As an “Advisor,” lawyers are required to exercise independent professional judgment and render can-
did advice.\textsuperscript{27} While attorneys may consider moral, economic, social, and political factors in addition to the law when rendering this advice, they are not required to do so.\textsuperscript{29} This is in stark contrast to social work's defining feature: “the profession's focus on individual well-being in a social context and the well-being of society. Fundamental to social work is attention to the environmental forces that create, contribute to, and address problems in living.”\textsuperscript{29} Perhaps there is an assumption that the law, as part of an ostensibly representative democratic government, inherently reflects the social context and ideals for the well-being of society. Given the recognized need for perpetual legal reform, though, it seems unlikely that this assumption is valid.

While law schools should continue to provide students foundational knowledge of extra-legal factors necessary to evaluate the quality of justice, law students and lawyers also need to appreciate that other professions are well qualified and well situated to evaluate the practical impact of laws. For laws meant to improve public and community health, it is critical that lawyers, health care providers, public health workers, and social service providers learn to work together effectively despite the different, and often conflicting, vocabularies, cultural norms, values, and assumptions.\textsuperscript{30}

**The Challenges of Interdisciplinary Education**

When I first envisioned this course, I had hoped to include graduate business students in it. For many, the link between public health law and business may seem attenuated, at best. From my perspective, however, community health and well-being depends as much on the decisions made in the for-profit private sector as those made by governmental agencies and courts, if not more so. Even so, the relationship between the public health and business communities is hardly warm or collegial. Both are suspicious and skeptical of the other, and the tension often results in unhelpful “either/or” framing of issues — i.e., either we regulate products/practices/policies or we have a healthy economy. I was hoping to have a chance to see whether professionals and business-minded folks might move towards a “both/and” default — e.g., we can both regulate and improve productivity (because our workforce is healthier). I was also looking forward to hearing how business students perceived social work, law, medicine, and nursing professions (more likely a client and patient perspective) and whether the law, nursing, social work, and medical students perceived business students equally as “professionals.” Lastly, I tend to believe that public health efforts could benefit tremendously from the organizational leadership, financial savvy, and management know-how in which the for-profit sector excels.

Unfortunately for cross-enrollment purposes, our business school is moving towards a fully online graduate curriculum. Rather than designing a fully-online course for all five schools, I decided that the hybrid design for four schools was better suited to provide the students a meaningful opportunity to work on their interprofessional collaboration and problem-solving skills, especially law students’ ability to present, discuss, and negotiate the law with non-legally trained colleagues. Going forward, I will continue to look for opportunities to bring the business community into the conversation to provide yet another perspective on what it means to be a professional.

That said, the sustainability of this class depends heavily on the willingness of my non-law faculty colleagues allowing and actively advising their graduate students to cross-enroll in the course. Without their continued support, the richness of the online and in-class discussions will be diminished. As much as I try to read, write, and collaborate with my colleagues across campus, my attempts to provide their voices pales in comparison to their students’ contribution.

Similarly, the course depends heavily on the support of my law school colleagues and administration. Only as long as they see the value in thinking about advocacy far beyond individual representation in courtrooms and transactions will this course continue to be offered. This is no sure thing. Like most law schools, mine is being asked to do more with less revenue and fewer students. Each year, faculty and administration review our course offerings and decide whether or not the overall goals of the school are being met. Only as long as this type of interdisciplinary opportunity is seen as critical for new professional education will this class be possible.

**References**

2. The syllabus for this course is available through the fellowship program's online teaching resources library. See Network for Public Health Law, "Public Health Law Faculty Teaching Resources," available at <https://www.networkforphl.org/faculty_teaching_resources/> (last visited January 13, 2016) (this site is password protected; faculty may request a password from the Network on the site) (see “Public Health Law” in the Syllabi section of this website).


6. See, e.g., Olivia Pope & Associates in ABC’s Scandal and Atticus Finch in Harper Lee’s To Kill a Mockingbird and the national angst created by the author’s recently released Go Set a Watchman.


9. American Bar Association, Model Code, Canon 3, EC 3-5 (1983) (“It is neither necessary nor desirable to attempt the formulation of a single, specific definition of what constitutes the practice of law.”), available at <https://www.law.cornell.edu/ethics/aba/mcr/MCPR.HTM> (last visited January 13, 2016); Restatement (Third) of Law Governing Law Practice, Preamble (2000) (“What constitutes the practice of law for the purposes of defining unauthorized practice by a lawyer varies with the reason for which the lawyer is no longer authorized to practice.”) and § 4, comment c (“The definitions and tests employed by courts to delineate unauthorized practice [of law] by nonlawyers have been vague or conclusory, while jurisdictions have differed significantly in describing what constitutes unauthorized practice in particular areas.”).


12. The original student responses from which these quotes are excerpted are on file with the author. Permission has been granted to reproduce them in this essay.


20. Id.

21. Id.


28. Id.
