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Simulations and Games for Teaching Law: What's Possible?

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July 28, 2012

Paper submission (Extended Abstract)

Category: Exploring meaningful applications of games:
Games to build knowledge and skills (games for learning)

Meaningful Play 2012: Designing and Studying Games that Matter
Michigan State University, East Lansing MI
October 18-20, 2012

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(Extended abstract)

The on-going digital media revolution has put the world of information at our fingertips but many institutions of education remain at the far end of the technology adoption curve. This is especially true in legal education where tradition and precedent are prized above all else. It is not an exaggeration to say that since the late 1800s law schools have relied on the same tried-and-true methods to teach students legal doctrine: The so-called case or Socratic method where the primary classroom activity is the careful analysis of judges' decisions and reasoning in specific cases through a structured dialogue led by the professor (Vladeck, 2012, p. 186).

Indeed, some informed observers have gone so far as to say that inability of American law schools to change and adapt to the information age has created crisis conditions. For example, law professor Gregory Silverman (2012) recently offered this dismal assessment:

Our students tell us that they are bored and unhappy. Judges and lawyers tell us that our students are not adequately prepared to practice law. Our colleagues from other parts of the University tell us that our teaching methods are antiquated (p. 132).

What's more, the problem of modernizing legal education is especially acute because it has given such a central role to time-honored tradition of the legal casebook. Indeed, one would be hard pressed to find any field of education where there is a closer connection between old-school teaching methods and old-school textbooks. Despite all of the varied tasks that lawyers fulfill in our society, such as negotiating deals, drafting legislation, gathering facts for litigation, managing institutions, and spearheading social reform, law school still primarily focuses on teaching students how to read and analyze judicial decisions.

This means that despite huge advances in publishing that allow for the creation of authoritative and dynamic information, the massive and static printed legal casebook still defines the dominant mode of teaching in law school (Rubin, 2012, p. 200). To put this in perspective, consider that a typical law student using typical casebooks could spend up to \$1,000 on books for her first-year classes, that, all combined, would weigh-in at approximately 30 pounds. But all of these reading materials and more could fit on a 15-ounce iPad-like tablet, and nearly all of the law content of these books is freely available on the Internet. You no longer need to own a library of expensive books to study the law.

With these observations as a starting point, this paper addresses the question: What is the potential of simulations and serious games for improving or reforming law school instruction?

Three Principles for Using Games and Simulations in Legal Education

Over the last decade or so, there has been a growing interest in so-called serious games as tools for teaching and learning (e.g., Aldrich, 2004, Gee, 2003, McGonigal, 2010, Prensky, 2001, Reeves, 2009, Salen & Zimmerman, 2004). Drawing on this literature, this paper identifies three principles for using simulations and games to teach law in a way that addresses some of the critical shortcomings of current methods and pedagogy. In addition, it sets out and discusses three cases studies of games and simulations that teach law in a way that embodies these principles to varying degrees. The three principles are:

1. Hard fun

(a) In terms games and simulations, *hard fun* is an idea advanced in the 1980s by MIT researcher Seymour Papert, who characterized it as “the kind of fun you have when you work on something difficult, something that you care about, and finally master it.”

(b) Following up on this insight, game designer Ralph Koster (2004) suggests that under optimal conditions, "Fun is just another word for learning" because fun arises out of mastery; it arises out of comprehension. To be an effective learning tool, the game mechanic of a simulation or serious game must itself have the qualities of hard fun.

2. *You can't play in the classroom*

(a) The traditional law school classroom is an austere lecture hall, with a 100-1 faculty to student ratio. It is an environment particularly unsuited for playing.

(b) The classroom-teaching of law itself is problematic. By comparison to what is possible, the "law school classroom experience" is a slender reed of learning. The law school lecture hall is an *instructionalist* environment, designed for the one-way delivery of information to the mostly passive student note-taker. However, there is an emerging consensus about the value of a *constructivist* approach to education, where the student is an active participant in learning. Constructivists assert that we need to teach "learning by doing" and this is facilitated and not hindered by our present conditions of ubiquitous information and global networked collaboration, two qualities that are specifically applicable to teaching law beyond the context of the lecture hall (e.g., Dewey, 1900, Viogotsky, 1978).

3. *There is no finish line*

If it came in a box, law school would be advertised as "A game that is difficult to learn, and takes a lifetime to master." (a) The learning of law in law school is hindered by the fact that contemporary legal education often does not deliver accurate and timely assessment to the student. In most law school classes, there is little opportunity for feedback from professor to student. For example, one recent report says that heavy reliance on a single summative assessment -- the final exam at the end of semester -- "forecloses the possibility of giving

meaningful feedback to the student about [his or her] progress in learning”. By contrast, the kind of in-game assessment delivered by simulations and serious games is a kind of helpful and non-threatening criticism that is immediate and better allows for a student to achieve a “midcourse correction during a semester of learning.” (Silverman, p. 149).

(b) Even in light of the digital media revolution, it is important to re-emphasize that in law school, the case method will remain an essential teaching tool and all law students have to learn the skills of close readings of texts and rigorous analysis. (Vladeck, p. 187.) However there is increasing awareness that traditional case analysis is not the only analytical tool that is required to “think like a lawyer”. Mastering the rules of law is just the beginning of a lawyer’s education.

Before passing their state bar exam, soon-to-be lawyers need to be challenged to think through what it will mean to actually practice law in a vigorously competitive society. Will it matter to them what clients they choose to represent? Where do their conceptions of justice fit in? What are his or her obligations to society as a lawyer? Games and simulations are ideally suited to helping a law student engage and resolve these difficult question, questions are largely unaddressed by legal case books but fundamental to legal education.

Thee Cases Studies of Serious Games and Simulations

The paper discusses three case studies that embody to some extent each of these three principles, and offers some observations (and tentative conclusions) and using games and simulations to teach law.

1. Objection (2009, Transmedia Productions)

In the *Objection!* game, you play the role of a defense attorney at virtual murder trial, and your client is on the stand. You must protect her from state prosecutor’s occasionally over-

zealous or overreaching questions during direct examination. The game is not based solely on memorization, but on learning to identify and understand the proper courtroom objections, and to actually make them in a timely fashion. This was the first video game to ever become professionally certified to offer continuing education credits for practicing professionals (Dizon, 2009).

2. *Woburn: A Game of Discovery* (2006, Fiss & Berger)

In *Woburn*, a game developed for continuing education credit by law professors, students are challenged to master the Federal Rules of Civil Procedure regarding discovery in the context of a concrete, real-life case. Assuming the roles of plaintiffs' and defendants' attorneys, the players make decisions about when and how to disclose or request discovery of certain pieces of information, as well as when to cooperate with and when to oppose their opponent's discovery efforts. The simulation is highly interactive, with the computer taking the role of Judge Skinner, who occasionally intervenes to rule on discovery motions.

3. *The Game* (2010, Ranj Serious Games)

Created as a recruiting tool for a major Dutch law firm, the design of *The Game* challenges would-be lawyers cope in real-time with realistic and stressful situations. In its current form, players of *The Game* work in teams that are then placed in a legal scenario where they must represent a Chinese state-owned company as it plans to take over a Dutch family-owned company. The players must deal with legal problems as they arise, based on changing information. For examples, during the game, players must react to news disseminated by CNN-type news flashes, e-mails and more than 100 fictional documents. Once the game ends, the results are displayed, and each team is given the opportunity to justify their solutions. (Jaber, 2011)

Conclusion

In sum, the overarching problem with American legal education is that its principal pedagogical practices generally do not fit the learning styles and preferences of the current generation of law students, nor does it make best use of the available technologies. The information technology revolution that began with the personal computer and the Internet continues to disrupt the monopoly of knowledge and information that the traditional institution of Law School previously possessed, and that in turn that is creating new possibilities for collaborative and constructivist approaches to legal pedagogies. Drawing upon the foundation of above-stated three principles and an analysis of the cases studies, the paper's final section draws out possible conclusions concerning the use of simulations and games for teaching law.

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