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Grasping the Nettle: Policy Issues for University Dispute Resolution Programs

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Editor's Note: University academic programs in dispute resolution have continued to proliferate since Dr. Macfarlane wrote this 1999 article speaking to her Canadian colleagues, readers of Canada's long-running Interaction Quarterly publication. While the range and scope of programs continues to grow (see a related article summarizing the situation in the United States as of 2000 here), the issues raised by this piece are still central concerns for programs new and old. We appreciate Dr. Macfarlane's and the Network's permission to reprint the piece, to further the dialogue "south of the border."

While still limited in volume and scope compared with university programming in the United States, Canada university programs in dispute resolution are proliferating. Responding to the upsurge in interest in dispute resolution as a prospective professional activity, many universities are developing courses which enable individuals with careers in other fields to acquire a (part-time) qualification in dispute resolution at the same time as they get a 'taste' of what working in this area would involve. While there are also many more dispute resolution courses now than five years ago, which form a part of full-time degree programs as well as some new full-time conflict resolution degree programs, it is in the area of part-time and 'continuing' studies that the most significant development has taken place. By responding in this way to perceived market demand for dispute resolution education and training, the universities face a number of critical questions about curriculum policy.

Reinforcing the Skills/Knowledge Dichotomy - or Challenging It?

The first question is whether the universities see themselves as in the business of vocational skills education. The word 'business' is used intentionally because selling courses which promise practical skills

training in dispute resolution is increasingly a business proposition for many institutions. My own work as an educator has convinced me that there is a complex relationship between the learning of practical skills and the development of theoretical ideas and knowledge - and that university programming should, at best, strive to integrate these twin dimensions of learning. It is probably the case that university education has neglected the skills dimension of learning, branding them as 'anti-intellectual', throughout most of the 20th century. This was a mistake, but so would be swinging the pendulum over so that skills are taught without conceptual analysis, reflection and critical thinking. The standard for university dispute resolution courses should be set higher than nicely packaged recipes for 'how to negotiate' or 'how to mediate'. Instead, they should review a range of theories, arguments and practical strategies.

This is a fundamental course design issue, which should be the subject of thorough debate in each university considering programming in this area. There is a further problem, however, in raising the level of debate within the university on this question. Many institutions are relying on private-sector instructors for the delivery of part-time and continuing programs, who are not university teachers and who would consider themselves to be practitioners first and academic teachers a distant second. While such individuals undoubtedly have much to offer students of dispute resolution, it is unlikely that they have any experience confronting considerations of pedagogy, curricular balance, academic rigor and critical thinking.

Showing Up - or Meeting the Standard?

Another consequence of the apparent marketability of part-time programs in dispute resolution is an increasingly casual approach, it would seem, to the question of student evaluation. When students are paying full cost for profit-making courses there is a reluctance to 'fail' anyone. The result is that many of the newer dispute resolution programs operate on the basis that attendance ensures a certificate of completion, with no effort made to evaluate students or assess whether or not they meet the objectives set for the course. This makes internal standard-setting within such courses redundant - very bad news for an area of professional activity seeking credibility and so far without any nationally recognized standards for accreditation.

Failure to set clear and meaningful standards for satisfactory student completion aggravates another problem for university programs. This is the vexed question of whether a course should be described as 'basic' or 'advanced'. It is often unclear just what delineates these two descriptors. The most common distinction drawn is that many advanced courses will only accept a student if she has already taken a (or 'their') 'basic' course. Given that there was probably no evaluation of her performance in that program, it cannot be asserted that 'advanced' courses are only open to those who have demonstrated a given level of knowledge or skills. This is significant for the instructor

who is told to teach to an 'advanced' level (rarely defined) as well as for the participants, many of whom will be hoping to learn from their peers.

Allow the Law Schools to Take Over - or Forge Multidisciplinary Partnerships?

A final issue I shall touch on here is the positioning of the law schools in the delivery of dispute resolution teaching and learning in the university sector. As a law professor, I believe dispute resolution education to be extremely important and relevant for both undergraduate students and those already practicing law. However, I resist the idea that the law schools are the 'natural' site for dispute resolution programming. What is more, legal education is notoriously isolationist from other disciplines and often elitist and exclusionary. What is needed instead are some multidisciplinary partnerships that allow for more creativity and stimulating program development and reflect more faithfully the coalition of professionals and disciplines involved in dispute resolution. Of course, the 'recipe' course design model alluded to above clearly discourages such an approach as highly labor-intensive (and therefore less profitable). It is exactly such commercial pressures that the universities should be resisting in taking a lead in developing and encouraging a multidisciplinary approach to the study and practice of dispute resolution.

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