

Economic Analysis of Law Review

Role-Playing Games as an Alternative Method for the Crisis in Legal Teaching: the Case of the Prohibition of Torture and L&E

Jogos de RPG como um método alternativo para a crise do ensino jurídico

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RESUMO

O ensino jurídico tem sido muito criticado. Este artigo argumenta que o uso de métodos de aprendizagem ativos pode reformular a experiência de estudantes de Direito e oferece uma solução alternativa para a crise do ensino jurídico. A experiência descrita é um jogo de *role-playing* (RPG) que lida com uma questão interdisciplinar em matéria de direito e economia: a proibição da tortura. Uma crise criminosa grave ocorrida em 2012, no Estado de Santa Catarina, inspirou o jogo. Este autor aplicou o jogo, juntamente com outro professor, em uma simulação dentro do Programa Integral de Lei (PRODI) pelo UniCEUB, Brasília. O PRODI tem como uma de suas preocupações a preparação de aulas inovadoras para estudantes de Direito. O nível de engajamento dos alunos ao longo da simulação e os debates que seguiram reforçam a percepção do uso do RPG como um caminho alternativo na aprendizagem legal. Como desafios, a preparação do RPG requer maior nível de dedicação dos professores para modelar a questão legal e o comportamento menos previsível dos estudantes.

Palavras-chave: Ensino Jurídico, Metodologia, *Role-Playing*, Direito e Economia, Tortura.

JEL: K0, K42

ABSTRACT

Legal teaching has been under fire. This paper argues that the use of active learning methods may reframe the experience of law students and offers an alternative solution to the legal teaching crisis. The described experience is a role-playing game (RPG) dealing with an interdisciplinary issue concerning law and economics: the prohibition of torture. An escalating criminal crisis occurred in 2012 in the State of Santa Catarina inspired the game. This author applied the game, together with another professor, in a simulation within the Integral Law Program (PRODI) at UniCEUB, Brasília. PRODI has as one of its concerns providing innovative classes for law students. The level of engagement of the students along the simulation and the following debates reinforce the perception of RPG as an alternative path in legal learning. As challenges, RPG preparation requires higher level of professors' dedication to model the legal issue and less predictable behavior of students.

Keywords: Legal Teaching, Methodology, Role-Playing, Law and Economics, Torture.

R: 29/9/14 **A:** 17/2/15 **P:** 30/3/15

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1. Introduction

The crisis of legal teaching has been a frequent point of interest in the Brazilian academy. Roberto Lyra Filho has long argued that not only Law itself, but also the teaching techniques were wrong in Brazil (Lyra Filho, 1980, p. 5; Freitas Filho & Musse, 2013, p. 44; Marinho & Ribeiro, 2013, p. 361). This paper concerns the latter point: teaching methods.

Though the legal profession demands the capacity of complex problem-solving skills, memorization predominantly informs legal teaching. Many times, law schools leave the development of core analytical skills adrift. This is partially a reflex of a reproduction mechanism: law professors tend to repeat the methods of learning that their schools exposed them. In Brazil, particularly, law degree is also a requirement for highly demanded and well-paid civil servant positions. As the entrance exams for these positions privilege memorization of content, law students appreciate courses that focus this aptitude. At large, the national bar exam is another example of memory-based test. One would point out the existence of a comfort zone among faculty and students regarding traditional methods of learning: professors describe and explain the content of the rules and students passively assimilate them. Generally, the traditional method of “one-voice speaks” is a disseminated and valued practice among law professors. (Demo, 2008, p. 11; Marinho & Ribeiro, 2013, p. 361).

This paper mostly argues that the use of methods that put the student in active learning positions may reframe the experience of law students and offers an alternative solution to the so-called legal teaching crisis. New methodologies that help in the development of legal reasoning and approaches to complex issues can enhance the quality of legal teaching and learning. Among the new methodologies, one can discuss active learning approaches, such as role-playing games, seminars, case studies and problem-solving studies (Sica, 2009; Silverman, 2012; Araújo & Sastre, 2009).

This paper reports an experience with RPG. Initially, it explains the method itself. Second, it contextualizes the broader project called “Integral Law Program” (PRODI) of the Centro Universitário de Brasília (UniCEUB), Brazil, under which this author construed the RPG. Third, the paper introduces the problem modeled by RPG, the prohibition of torture, followed by the dynamic itself and observable results. Finally, it concludes for the overall utility of the method as one response for the crisis in legal teaching.

2. RPG as a Learning Method

RPG has the nature of a performance method (Sica, 2009) in which students play relevant roles for the solution of a legal problem in an environment of simulations. The method goes beyond the traditional pedagogical practice since it is not only informative, but also formative. While traditional methods tend to present the study of law in a segmented way, RPG privileges interdisciplinary approaches and the development of not only legal skills but also interpretation, argumentation, persuasion and critical sense. Once living the simulation of the legal problem, the method reaches three areas: cognitive, affective, and psychomotor. The learning process developed by RPG works with the concerned subject, though it can target a specific legal institute or concept, besides all areas that students associate with the simulated situation (Sica, 2009; Marinho & Ribeiro, 2013, p. 362; Rapoport, 2013, 1417; Lettieri et al, 2011).

As suggested, the method’s core principle is the active participation of the students, which, at the same time, does not necessarily fetter teacher’s roles. The construction of the simulated scenarios, the selection of the legal problems, and the assigned roles of the students depend on the pro-

fessor. It is very convenient that she/he also assists the development of the activity and explores the players' roles and the legal problem itself. Professor must follow the playing.

The choosing of the legal problem should take in consideration its degree of complexity, allowing the students to relate different content and ponder solutions that are beyond all-or-nothing solutions. A potential objective of the practice is to identify different points of view coming from diverse sources, aside from Law.

On the side of shortcomings, the method may require significant prior devotion of faculty time to transpose an issue of law into a RPG, as compared to traditional courses. This may represent a challenge for teachers who did not have exposure to the practice while they were students. Moreover, editing videos and constructing computer-based scenarios may require prior skills from professors. Once the whole game is ready, since students are acting, the dynamic comprehends a higher degree of emotional behavior and unpredictable outcomes. Furthermore, there might be managing difficulties. The game is likely to offer less places than roles to play. This is particularly a problem in Brazil, and arguably, globally, since Law courses are commonly packed. Yet, RPG may require intense use of audiovisual and apparels depending on its sophistication.

However, this paper posits that the benefits of the practice, such as student's engagement and learning, overcome these inadequacies. There are gains of scales that mitigates the learning curve and higher allocation of time preparation by faculty, once courses repeat the RPG. Well-established rules of the game lessen inconvenient behavior and may guide conduct. As to the number of roles to play, one can consider dividing the students into groups simulating the same situation or grouping students in a specific role with a leading player to represent them. Yet, setting shifts or changing the assignments of students along the game.

Finally, an important step to recall relates to the evaluation of the activity. As RPG is very different from exams, the appraisal can come in different ways, such as self-assessment and peer-review among players. Together with teachers' assessment, this set of evaluations allows the student to double check its own impressions. This increased feedback, it is arguable, would allow the student to better feel deficiencies and emotional responses in law practice.

3. The Context of the Dynamic: the PRODI Project and the Law and Economics Module

The described RPG took place in the first semesters of 2013 and 2014, under the so-called PRODI, at UniCEUB, a university center founded in 1968 and located in Brazil's capital.² The following sections present the PRODI and the module of Law and Economics (L&E) in which this author, together with another faculty, applied the game. As the paper suggests, the application of methods focusing active learning suits projects such as the PRODI.

3.1. The PRODI Project

In 2012, the formulators of the PRODI built on eight informing elements, as one possible response to the legal teaching crisis in Brazil:

² University Center are types of Higher Education Institutions in Brazil, distinguished by multicurriculum in one or more areas of knowledge, excellence on offered courses, proven faculty quality, in accordance with art. 6 of Brazilian Decree n. 2.207/97.

the availability of a time slot (afternoon) for complementary activities; (b) a pedagogical proposal based on knowledge and practice; (c) the availability of full-time faculty dedicated to teaching and research; (d) a matrix concept of management of academic activities; (e) focus on new paradigms of teaching-learning, with emphasis in participative techniques that stimulate critical and autonomous learning among the students; (f) the insertion of new content to courses besides a traditional curriculum; (g) the increase of content from legal, philosophy, economy, sociology, English language, and so on; (h) a view of the student in a triple dimension, in accordance with the Brazilian Law of Guidelines and Grounds for the National Education: person, citizen, and professional (Freitas Filho & Musse, 2013, p. 50).

They also took into account the particular position of Brasília as an administrative and judicial decision center. In the capital, the public administration demands high-level professionals with sophisticated interdisciplinary knowledge: law, economics, management, and so on. Law firms in the region, due to the advocacy in the Superior Courts and the Administrative agencies, also request that sort of professionals (Freitas Filho & Musse, 2013, p. 51-52). Indeed, PRODI targets potential future leaders to act both in public or private realms. Congruently, it selects students under three main criteria: academic performance, interest, and availability (Freitas Filho & Musse, 2013, p. 52-53).

PRODI offers courses divided in modules on a semester basis. Each module evolves under three pedagogical actions or axis: structured thinking (ST), thematic teaching (TT) and mandatory follow-up (MFU). ST comprehends the study of relevant legal issues in which the method of approaching is the core point. It aims at developing skills related to critical thinking that outdoes memorization and reproduction of knowledge. TT comprehends the study of areas of law by themes. A regional, national or international specialist conducts the discussions. Students intensively engage in questioning, commenting, and discussing with the specialist.³ MFU consists of support activities to students. They can discuss doubts, ask for clarification or obtain information on how to deepen knowledge. It is also a time for open and continuous feedback among professors and students. (Freitas Filho & Musse, 2013, p. 55-56). Just for illustration, in 1.Sem.2014, PRODI offered four modules within the following axis: (1) ST: Jurisprudence, Logic, and Argumentation; TT: Civil Law; (2) ST: Legal and Social Subjects; TT: Criminal Law; (3) ST: L&E; TT: Constitutional Law; and (4) ST: Fundamental Rights and Public Policy; TT: Access to Justice and the Protection of New Rights.

As to the concerned RPG experience of this paper, it took place in the ST component of Module “3”.

3.2. The Structured Thinking: Law and Economics

As known, L&E, as a discipline, has its roots mainly from north-American schools in the 1960s and 1970s (Posner, 2010; Cooter & Ulen, 2008). In Brazil, one can track a more vivid development of the discipline in the last twenty years (Timm, 2014; Ribeiro & Gico Jr., 2013). In one perspective, L&E provides a framework to analyze consequentialism arguments and its relation to the law. For instance, whether the legal response is also an efficient solution, from an economics (positive) perspective. In another perspective, L&E can help the design of rules (normative). The discipline, as many others, has been under criticism. A common one ponders whether efficient amounts to justice or fairness. Yet, and related to the latter, whether law should take efficiency as a

³ This author suggest that the idea is closest to the Socratic method which is not a traditional one in Brazil.

principle. L&E scholars, on their turn, replies whether a rule or a decision promotes justice while their economic outcome represents waste (inefficiency).

Besides philosophical aspects that entangle the discipline, in the two semesters that PRODI offered the L&E module, the responsible professors distributed activities in twelve meetings, under three blocks of knowledge: (1) State Models, Law and Economics; (2) Economic Analysis of Law; and (3) Law and Development. Though the professors applied more than one RPG dynamic along the module, this paper discusses only the one pertaining to block “2”, which this author had the leading responsibility to elaborate it.⁴

4. The Issue: the Absolute Prohibition of Torture and the Ticking Time Bomb Situation

The prohibition of torture pertains to a classic debate involving law, moral, and, one would say, cost benefit analysis (economics). The dilemma normally involves, in one side, the preservation of the integrity of a suspect that theoretically has relevant information on future criminal actions; on the other side, the application of torture to obtain – allegedly - useful information. Though the academy in the United States has been discussing this situation under the “ticking time bomb problem”, invigorated under recent episodes concerning detainees and the war on terror (Luban, 2005; Sandel, 2010), the Brazilian academy has not given a specific label to it.

However, facts that took place in the State of Santa Catarina, in the summer of 2012, inspired the creation of the RPG and the transposition of the problem to the domestic reality. The inspiration also comes from classic Zimbardo’s (2007) experience at Stanford in the 1970s, in the sense that it intended to create a “perfect storm” scenario for simulation. However, differently from Zimbardo’s case, this simulation did not contain actual physical contact.

In this “nationalized” setting, the problem involved the custody of a suspect part of an organized criminal group called “Primeiro Grupo Catarinense” (PGC) that, in theory, would propagate new impacting criminal actions in that region. The issue at stake: should one allow torture on PGC members?

The Brazilian Constitution⁵ and the Convention on Torture⁶, also ratified by Brazil, ban torture and cruel and degrading treatment. That is the plain legal response to the question. However, the point to make was whether in extreme circumstances, players (students) would resort to arguments to justify torture. In addition, if that is the case, in what grounds.

Students could choose several roles available in the game: the suspect, the Secretary of Public Security, the Chief of the Police Department, or the Attorney of the suspect. At the end of the RPG, the group should be ready to discuss the raised arguments, as well as the relation with the studied concepts.

⁴ For the other dynamic, see Marinho & Ribeiro, 2013, p. 366-368.

⁵ Article 5, III of the Brazilian Constitution provides that “nobody will be either submitted to torture or inhuman or degrading treatment”.

⁶ United Nations. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984). A/RES/39/46.

Students (S) were put in a “U” shaped darkened and acclimatized room with a larger screen, connected to a data show, located in front of them. Professors (P) were positioned along the sides of the room. Players could use microphones.

A diagram of a square arena. At the top center is a horizontal line labeled "Screen". At the top left and top right corners are labels "P1" and "P2" respectively. Along the left and right vertical walls, there are five "S" labels each, spaced evenly. At the bottom center, there are three "S" labels.

This first edited video, of approximately three minutes, reported that, in the summer of 2012, violence took over public safety in twenty cities in Santa Catarina. Criminals burned buses and attacked public authorities. Population is under siege and angry. Population cannot go to work because of fear. More than half of the bus companies suspended transport due to lack of safeness, which reinforced frustration in the population. The video also testified that enforcement authorities have arrested some people and that public prosecutors gathered information about potential new

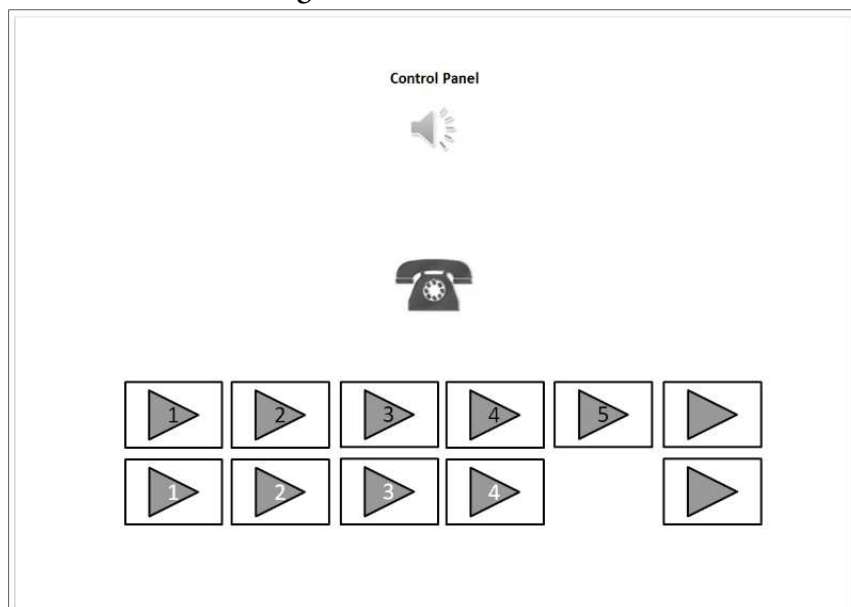
attacks. The next slide shows a fictional edition of a local newspaper. The edition contained lots of information concerning dates, number and types of attacks, victims, and so on. It intended to persuade the players about the installed chaos and to internalize the environment of the game.

The following slides, also based on edited journalistic videos, displayed the capture of a suspect: an ordinary Joe. Likewise, the videos shows police authorities' and sheriff's interviews pointing Joe as one of the main leaders of PGC. In the sequence, an interactive slide releases a police wiretapping that recorded unclear communication between criminals. Sometimes one can hear the name of Joe, codified language, and criminal slangs that one could relate to new attacks. This part of the game takes roughly 15 minutes. Professors stimulated students to take note of all the information.

After that, students should choose available roles: the suspect, the Secretary of Crime Prevention, the Chief of the Police Department, or the Attorney of the suspect. Along the practice, however, professors could reassign roles and incorporate new players, giving a good level of opportunity for those who wanted to participate. The professors played the roles of State Governor, whose popularity was low in pre-elections times, and a member of the family of the suspect, looking for information.

Once students picked up roles, professors were ready to present the main slide of the dynamic: a dashboard containing a set of numbered situations that only professors could trigger, in accordance with the game progression. The dashboard also had a telephone icon that professors could use to inform, along the game, incoming calls to players. One pressed, the icon released a bell ring and professors could announce new information or incidents.

Figure 2 – The dashboard



The first event of the game consisted of an initial call from the Governor of the State, played by a professor, to the Secretary of Crime Prevention (student). The Governor asked for more effective results in relation to crime prevention against PGC. The student playing the Secretary of Crime Prevention faced two alternatives: (a) keeping custody of the suspect and trying to obtain information in accordance with the Law; or (b) enhance interrogation techniques to the point of authorizing torture or similar methods over the virtual suspect (as said, this was only a matter of asking what to do, without any physical contact). If the students chose alternative “a”, professors could

release scenarios on the main screen of incremental social disorder: torching of more buses, ATM explosions, looting and spread robbery, bombing, among others. The Governor could also increase the pressure on the player, with new incoming calls, to pressure for further action, since its popularity was decreasing. On the other hand, whether the player chooses cruel and degrading treatment, professors could unleash virtual scenarios of torture of the suspect on the screen: loud speakers on the ears of the virtual suspect, water bordering, and physical force, among others. Professors, playing the suspect family member, could increase tension on the player acting as the Secretary of Crime Prevention, such as asking for information about the overall conditions of the suspect.

4.2. Results

In the two semesters that the students played the RPG, the game ended differently. In one semester, the students refrained from authorizing torture and the game ended with the Governor loosing elections. In another semester, students chose to enhance interrogation techniques.

The role of students changed randomly along the game and in fact, there is no need to neither analyze individual behavior nor speculate about the profile of the group playing. The main object of the RPG was to stimulate the students to model and understand the dynamic in terms of L&E theory, after the practice. Worth noticing, clear statement about the game rules helped on the overall performance of the dynamic. Random behavior came, as an example, in the form of students wanting to ring the telephone icon themselves to talk to each other and with professors' characters.

After the game, Professors invited the students to think about the types of arguments that the simulation raised. For instance, whether picking up the torture road was part of a cost and benefit analysis, as well as the potential criticism regarding this calculus. A recurrent argument mentioned that "sacrificing one life compensated the saving of hundreds", a traditional utilitarian argument in which benefits surplus costs. Just to illustrate, Professors could then ask whether (i) life costs can be compared; (ii) whether the suspect really had reliable information and what changes if he did not; (iii) what could be the consequences of allowing torture in the long run; or (iv) should torture be rejected as a matter of principle, in any case.

As shown, the game has no winner or loser, but a sequence of facts and decisions that students took and one could model under L&E theory.

5. Conclusions

Legal teaching in Brazil crosses a period of crisis. The complexity of today's legal problems barely represents pure legal issues. In addition, games and virtual interaction are very much parts of the way students interact nowadays. The PRODI project intends to offer a response to this overall environment.

Under the PRODI, the professors responsible for the L&E module advanced an RPG to discuss the issue of the prohibition of torture. This author credits the successful of the dynamic to specific factors. First of all, the existence of a project where this sort of practice completely suits its purpose. Second, the beforehand dedication to develop the sequence of events and the assembly of the interactive slides. In this stage, the clear determination of the issue, the assignment of roles to play, and the possibility of triggering pressuring scenarios were relevant. Finally, the "after game" moment turned to be crucial to close the process of learning and allowing multiple feedback among the group.

As suggested, one of the great merits of the RPG is to provide students with a simulated environment as compared to plain reading of a bookcase. It is arguable that the traditional method of reading or listening to a lecture would not render the same engagement among students nowadays. The RPG is certainly a useful tool that legal educators should take seriously.

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