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MAKDISI AND JUNE MARY ZEKAN MAKDISI*

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PROFESSIONALISM FOR LAW TEACHERS: LESSONS I LEARNED FROM JOHN MAKDISI

DANIEL B. BOGART*

It is both a pleasure and an honor to contribute to this edition of the *Intercultural Human Rights Law Review*, honoring John and June Mary Makdisi on the occasion of their retirement from St. Thomas University School of Law. It is common for a law school community to honor retiring faculty members, and often this is done in a happy setting, with friends and family in attendance. I know that this will take place for John and June Mary.¹

But there is a more formal tradition that we sometimes see celebrated that demonstrates an appreciation for the contributions made by a scholar over many years to the development and understanding of the law. Put simply, the best way to honor the professional life of a scholar is to set that person up as an exemplar, and to engage in the very work that defined that scholar's life. There is no greater way to show respect for a scholar than to produce scholarship that will highlight his or her work, or perhaps challenge it, but in every case, to advance an understanding of the development of law and society. This is the endeavor of this journal—to gather scholars and scholarship. I have worked with John on several projects over a number of years, and I can think of no one more deserving of the focus of this more formal tradition. We will all be beneficiaries.

When first approached by Professors Wiessner and Pati, I explained that I very much wished to participate and honor John appropriately, but deadlines for books loomed. I would not have ready the kind of scholarly publication that would match John's accomplishments and professional life. John deserves more of me. Therefore, I must beg John's forgiveness, as this essay will depart from the law review's more scholarly agenda. Instead, this is an essay of appreciation. It is my way of saying thank you to John for the gifts

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¹ I would like to thank Professors Siegfried Wiessner and Roza Pati for extending their invitation to write this essay, and the editors and members of the Law Review for working to bring this essay to publication.

that he has given me. To the extent that there is a readership beyond John and June Mary for my piece, it seems to me that it should be law teachers, for reasons that will become clear below.

John and I first became acquainted and worked together in 2003, when I became his co-author for the fourth edition of his student study guide, *Estates in Land and Future Interests, Problems and Answers* (Aspen Publishers, 2004). It was a marriage of convenience. John must have asked the publisher for the name of a professor who might be willing to work on this project, and a representative then contacted me. I called John to introduce myself and after a conversation, John extended the offer. I am glad that he did.

We later worked together to complete the fifth edition of that book, as well as a second book titled *Inside Property: What Matters and Why* (Aspen Publishers, 2009). With the former, my job was to assist as best I could in updating and adding to a book that John had written. With the latter, we worked together to create something wholly new. These were very different projects. One required John to “let go” of a portion of his work to an author he hardly knew, and the second required the two of us to establish a common sense of purpose. Each edition—and each book—required us to talk, communicate electronically, share materials, revise pages, respond to the publisher and hit deadlines. We did this even though we only rarely met in person.

As a result, I have come to know John in the process of writing books aimed at teaching Property law to students. (Indeed, the book deadlines that I now face are to some extent a debt I owe John. These projects would not have come to be without my lucky intersection with John.) I wish to convey just a few thoughts about John and his approach to professional life that I do not wish to be overlooked (although I doubt I will be informing his friends and colleagues of anything about which they do not already know).

Property law and the Property course cover a wide assortment of doctrine. These entail ancient property doctrine, including adverse possession, servitudes, landlord tenant law, and the law of mortgages. But the course also includes tort law, constitutional law, real estate transactions and, today, intellectual property law. There was once a course in the law school curriculum called “personal property,” but we

have wrapped this material into Property as well. The older the doctrine, the more mechanical and less forgiving it seems to be. These doctrines are bounded by ancient rules, the purpose of which was to order an older world where the lives of individuals were fixed by status. Yet, Property is also one of the first areas where we confront students with the law reform movement and the tension between older common law approaches and Restatements and Model Acts. Property professors are therefore forced to consider historical imperatives and economic analysis. Making this outrageously varied collection of topics fit into a single, thoughtful four-unit course is difficult.²

My vantage point, then, is that of a Property professor. I am informed by nearly thirty years of teaching this subject matter to students. My understanding is also shaped by the many iterations of books that I have helped create that convey this subject that I love to generations of students.

I believe that there are valuable lessons to be learned from the way John approaches life as a teacher and the way that his life as a scholar affects his work as an educator. With that in mind, I intend to use this essay as an opportunity to reflect on what I might term “academic professionalism.” John’s approach to his professional life serves as an extraordinarily convenient model on which to base a few, important rules.

I served as an Associate Dean for the better part of five years, stepping down in 2017. One of my tasks was to help welcome incoming students during orientation. I suspect that this is common in law schools across the country. Although orientation fulfills a variety of mundane—but important—functions, it also provides the first real

² The coverage of the 1L Property course is a subject of interest to the wider community of lawyers. Practicing attorneys sometimes worry that the course veers too far away from the actual practice of law. Joanne Martin, now the Executive Director of the American Bar Endowment, was a researcher for many years at the American Bar Foundation. In that capacity, she surveyed American law schools on the nature and composition of their 1L Property courses. The results of that study can be found in Joanne Martin, *The Nature of the Property Curriculum in ABA-Approved Schools and its Place in Real Estate Practice*, 44 REAL PROP. TR. & EST. J. 385 (2009). As Ms. Martin notes, the problem of fitting such a wide array of subject matter under the Property umbrella has been made even more difficult, as many law schools have reduced the hours allocated to the course from six to four.

opportunity to introduce students to the idea that they are no longer merely students, as they were in college, but rather *student-lawyers*. During orientation, at least one member of the orientation team (often the Associate Dean) will ask these incoming law students to recognize the importance of ethical and professional behavior. We tell students at this moment—and many times throughout their legal educations—to view *ethical rules not as a ceiling, but rather as a floor*. In other words, we ask and demand that students training to be attorneys avoid treating ethical rules as the maximum of what is required for an attorney to practice in a manner that is consistent with the objectives of the Bar, clients or the larger community.

Yet, in a way, as law faculty, we may fail sometimes to internalize this message, and in so doing, fail to apply this idea to ourselves. I do not refer to a lawyer's professional behavior, but the behavior that we should bring to our lives as law professors. In other words, we should consider what it means to be "professional" in this specific context. During my fortunate years working with John, I have had the time to reflect from time-to-time on what these rules might be, and whether I am living up to John's example.

Let me propose three rules of academic professionalism. I believe that they form the basis for much of what we would consider the foundation for a career of effective teaching. The reader (or at least the law professor who may read this essay) might imagine other rules as well. These rules are simple and may appear to be truisms, or aphorisms; statements too simplistic to really matter. But this is true of rules that direct professional conduct generally. The Model Rules of Professional Conduct are not that different, although they are worded more carefully and in a more lawyerly fashion. The following are three possible rules of academic professionalism.

Do not view the extent of knowledge that you initially bring to law teaching as the ceiling of what you will transmit to students

To engage students, see nuance, and be able to reflect on material, as well as to add value to your students' education, it is necessary to continually learn and study. In other words, teachers must remain students. It is only in the processes of continuing to learn

and gaining expertise and insight from many fields that a teacher will be able to discern more subtle connections between topics and courses. My conversations with John always focused, at least initially, on specific matters having to do with revising texts. We may have been pushing towards a deadline, or trying to revise the language of a problem or explanation of the law to make our point more clearly to students. Yet, this was where our conversations *began*, and never where they *ended*. A conversation with John about the elements of an enforceable deed for real property would meander into a longer conversation about literacy in medieval England, and from there to the role of the Church in the development of the law, and then finally to comparative legal systems and religious law. This was a natural progression for John. John is informed by years of reading and research, as well as by his genuine and deep fascination with each of these subjects.

In those conversations, I was the student. I never had the opportunity to sit in John's classroom, but I believe that I know what it must be like to do so. It would not be possible for John simply to provide a surface layer of knowledge. John would infuse every topic in his courses with a passion for additional context and knowledge. I was fortunate to have these private tutoring sessions, and I believe that John's students must feel the same.

What John did not know—but he will discover upon reading this essay—is that, on more than one occasion, I was able to bring an insight gleaned from our conversations directly into my classroom. John's wisdom enriched my courses directly. (John should also know that I would tell my students from whom these insights originated.)

The question is, then, how is John able to see context and to connect history in the way he does? The answer is simple: John's fundamental view of his professional responsibility as a teacher is that he is required to remain a student of the law. In virtually every conversation, John would describe a newly read book, or a speech or program that he attended. These opportunities for learning were not limited to Property law, and often focused on philosophy, jurisprudence, natural law, Islamic and religious law, and so on. Eventually, as you know, he extended this commitment to continuous learning to its logical conclusion, by successfully pursuing a Ph.D. at

Catholic University. I would have been intimidated by the thought of going back to school to obtain an advanced degree, but for John it was a natural extension of his desire and commitment to remain a student.

Respect your students

A law teacher's obligation to respect students takes on many forms and appears in countless scenarios. First and foremost, we must understand and take seriously the need to train student attorneys. As a corollary, we must assume (at least preliminarily) that our students are capable and reasonable, and that they take their work seriously. Finally, we must respect the anxiety and frustration that students experience when encountering challenging material.

Abiding by this rule requires diligence and a willingness to find the right answers to difficult questions, while displaying patience and concern. It requires that a teacher think through an answer before giving it, and be willing to track down answers to questions that he or she did not anticipate. It also takes time.

John's work demonstrates a thorough commitment to this most basic rule of academic professionalism. I saw this play out repeatedly in my time working with John. It is common for authors to receive inquiries from students using our books. John's materials, particularly his material in the ever-challenging area of future interests, draw questions from students and sometimes faculty. John viewed these students as his, even if not enrolled at St. Thomas. A flippant answer to a student question is never appropriate, but it can be especially damaging to a student struggling with future interests. Students treat future interests and the Rule Against Perpetuities as a kind of terrible time and energy vortex. Whether we discussed these student inquiries by phone or email, the tone of John's interactions with students made clear to me the absolute seriousness that John accorded these questions and, as a corollary, the seriousness that he expected me to accord the questions as well. Invariably, John would respond to the student with a carefully worded answer. The answer always included an explanation of *why* John's answer was correct, and not just the answer itself.

Book authors do not have to invest time and energy in this way. Professors can choose to respond to inquiries graciously, or in a curt and cursory manner, or not at all. There is no system that tracks the willingness of a professor to answer questions posed by students using that professor's books. This behavior is hidden to deans and colleagues.

In every exchange of this kind that I observed between John and a reader, John responded in a manner that made clear that he takes this aspect of writing to be a professional responsibility, and not a mere courtesy.

John's casebook on *Florida Property Law*³ is an additional example of John's respect for students. In it, John searches for a method of presenting Property law different than the one employed by virtually every first year text. I know the Property texts in use today well and, like John, I have helped write one. But John's differs from the traditional texts. Each chapter begins with an extended hypothetical, not with the black letter law or history. He explains his pedagogy at the outset of the book, so that students will understand his approach. The problems tie together most of the key doctrines a student will encounter in the chapter. As students work through the chapter, they are able to work with more and more of the initial problem. The problem makes the issues that the law seeks to address concrete from the start. As a result, students are more likely to learn and to develop the ability to analyze a problem and to synthesize the law. *This approach respects students.* It does not feed students answers, but invites them to apply their knowledge. John's method sets out an expectation from the start that students are capable of tying law to fact patterns and engaging in true legal analysis.

John's book is the written epitome of a respectful discourse between teacher and student.

³ JOHN MAKDISI, FLORIDA PROPERTY LAW VOL. 1: POSSESSION, ESTATES, AND TENANCY (2006); JOHN MAKDISI, FLORIDA PROPERTY LAW VOL. 2: CONVEYANCING AND GOVERNMENTAL CONTROLS (2007).

*Develop professional relationships beyond the confines of
your home institution*

A scholar has the opportunity to establish working relationships beyond the walls of his or her law school. This is one of the most rewarding aspects of academic life, yet it is not always one that law faculty enjoy as fully as possible.

To truly teach well, we must engage scholars and teachers who do not share our views, or who take a path to answering and presenting material that is different from our own. I will not belabor this point. My interaction with John over 15 years is an example of this dynamic in practice.

We tell students that there is a benefit to rising above the most basic ethical rules prescribed for attorneys. In other words, we try to inculcate the idea that professionalism is not just a necessity, but also a benefit of the effective practice of law. Attorneys who conduct their practices in a professional manner reap reputational rewards. A similar benefit flows to academics who take John's lead. The most important is this: John's life will remain basically the same a day after retirement as before. He will continue to learn as a student does, and when he finds a compelling topic, he will write. This flows from the first rule of academic professionalism. Even in the absence of weekly classes (should John choose not to teach formally now and then), John will hear regularly from the many students he taught during his career. This results from the second rule of academic professionalism. Having treated his students with respect and concern, they will return John's investment in kind. Finally, the third rule of academic professionalism bestows a network of intellectually engaged friends. John will find reason to talk to his colleagues across the country and beyond, and they will continue to seek him out. Having forged connections over many years, his intellectual conversations will continue unabated.

One last thought: I do hope that John and June Mary will travel, mostly because, in time, I hope to touch base and find out what John has done following his formal retirement. After all, traveling is the activity to which many of us aspire. Yet, is there anyone who believes that, if John travels, he will do so without reading any number of

original sources about the locations, people, and histories of the places he visits? Or that John will fail to discover a particular and illuminating context for each place he and June Mary encounter during their travels? And finally, is it possible that John will do so, but then choose *not* to write and set his thoughts on paper?

Happily, we all know the answers to these questions.

