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## Teaching in a Larger Social Context: Using Simulations to Demonstrate Socioeconomic Principles and Their Relevance to Law

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# Teaching in a Larger Social Context: Using Simulations to Demonstrate Socioeconomic Principles and Their Relevance to Law

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## I. INTRODUCTION

The socioeconomic paradigm asserts that individual rational choice occurs within a larger social context. Under this paradigm, individuals' actions can best be understood through a multidisciplinary analysis that takes account not only of rational self-interest, but also of emotions, social norms, beliefs, and morality. The law is not merely a one-dimensional

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\* Professors of Law, Indiana University School of Law-Bloomington. Both thank their parents, their first and best teachers.

pricing mechanism to which people respond with efficient self-interested behavior, but a multidimensional effort at encouraging social cooperation, or, if need be, asserting social control.

Taking this as true, why should we confine ourselves to sterile, rational discussions about the rule of law and the need for encouraging social cooperation or control? Would it not be useful for students to explore the need for encouraging the impact of social context on individual decisionmaking and the role of law through their own problem solving and interaction? Perhaps it might even be fun.

We have found it both useful and enjoyable to engage our students in learning about applications of socioeconomic theory to law by undertaking simulations that require student competition or cooperation and which demonstrate problems that our areas of the law are designed to address. In this Article, we will describe these simulations, which we have applied in areas as diverse as property law and labor law, the principles they are designed to teach, and a little of our experiences in using these simulations. Jeff teaches property law, and in the examples that pertain to that subject, the use of “I” refers to Jeff. Ken teaches labor and employment law, and accordingly, in the examples that pertain to those subjects, “I” refers to Ken. We hope that our suggestions will inspire others to undertake similar or perhaps even more inventive simulations in their teaching.

## II. SIMULATIONS

### *A. Property and Rent Seeking*

The Socioeconomics Charter says that it “assumes that . . . societal sources of order are necessary for markets to function efficiently.”<sup>1</sup> I attempt to demonstrate the importance of this assumption in the very first lesson of my property course. I spend that day setting out the rules for and then playing what I call “the whaling game.”<sup>2</sup> To start, I present to the class a fugitive resource, the great whale, Moby Dick. For this game, Moby Dick takes the slimmer form of a twenty dollar bill, provided by me, Mother Nature. Suspending disbelief for an hour, each member of the class has an opportunity to capture Moby Dick by investing resources in the chase. To roughly approximate economies of scale, the number of chances to win acquired by each a student is equal

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1. See Society for the Advancement of Socio-Economics, *About SASE*, at <http://www.sase.org/aboutsase/aboutsase.html> (last modified Nov. 27, 2003).

2. Because the game is in some ways quite different from real whaling, I have also called it the “dime game,” but telling the whaling story seems to be more entertaining for the students.

to the square of the number of dimes invested by that student in the game. I teach the students how to calculate their odds of winning depending on assumptions about what other members of the class will do. They learn that the optimal investment runs in a circle. If everyone else invests nothing, the student should invest a dime. If everyone else in a class of one hundred invests a dime, the last student should invest about thirty-two dimes.<sup>3</sup> If everyone invests ten dimes, the last student should invest one hundred dimes. If everyone else invests one hundred dimes, the smart student should invest nothing. Everyone has essentially equal information, and that information is complete except regarding what the other students will do and, of course, the random outcome of the lottery. I urge them all to invest and play the game with their own selfish interests at heart.

Does the invisible hand lead this little society of students to prosperity? Obviously not. The result, at the end of the day, is that the class has invested about forty dollars to get the twenty-dollar whale. In more than ten years of teaching this lesson, the class has never invested less than the twenty dollars, the group always ending up a net loser when individual students attempted to increase their wealth. It is usually apparent to the students that their behavior, as a group, has been inefficient because they spent more than they gained. But the degree of inefficiency is even higher than that because a mere dime would have been enough for the class to capture Moby Dick. The class typically spends four hundred times as much as is necessary to acquire the resource. Depending on the rules of the game, self-interested behavior can lead to socially insane results.

I note that this socially suboptimal result does not depend on irrationality. Each player can invest in a totally self-interested and rational manner. This exercise teaches the lesson that a system of ownership that depends on the first-grab principle coupled with self-interested individual behavior can generate socially wasteful behavior. Societal sources of order are needed for people and markets to function efficiently.

Some student might complain that the rules I created are defective.

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3. These numbers depend on the number of students in the class. Before the first class, I find out the number of students enrolled and tailor the lesson to that number. I can share a spreadsheet I constructed to make these calculations easy. After hearing me present this lesson at the 2003 Association of American Law Schools annual meeting, Eric Talley formalized the math.

But that just reinforces the point that the rules of the game, the rules of law, matter. If someone says that this could never happen, I respond that it just did. I also point out that huge amounts of oil in Texas were wasted through this sort of first-grab system for allocating rights in assets. The students and I then come up with other examples of rent seeking, from lobbying to the nuclear arms race.

How can the waste be stopped? The students quickly recognize that some sort of coordination is needed. But they also recognize that the coordination of so many players is difficult.<sup>4</sup> It takes only one renegade player to dramatically increase the optimal investment for others. After investigating a number of potential solutions, the students usually come to recognize that if there is some sort of government, some body that can exercise control and impose law on others, one solution is to allocate property rights in the whale before it is captured. If that were done, only the owner would have any interest in capturing the whale and would spend the optimal one dime in doing so. This property in the whale does not have to be private property; it just takes some allocation of rights such that only one player (including the government) has any interest in sending out the whaling boats.

### *B. Adverse Possession and Loss Aversion*

Socioeconomics holds dear the belief that not all human behavior is rational in the economic sense. The doctrine of adverse possession provides a wonderful opportunity to make this point and bring into the classroom the concepts of loss aversion and the endowment effect.<sup>5</sup>

After teaching the traditional elements of adverse possession, I go through some of the standard explanations of the doctrine and suggest that none of them is very satisfactory today, however well they may have served to justify the doctrine in the past. Having set many of the rationales aside, I offer Justice Holmes's explanation: "[M]an, like a tree in the cleft of a rock, gradually shapes his roots to his surroundings, and when the roots have grown to a certain size, can't be displaced without cutting at his life."<sup>6</sup> Judge Richard Posner has interpreted this as a point

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4. To bring this lesson home, I once agreed with students that if they all answered *A* on all the questions on my multiple choice exam, I would have to give them all Bs for the course. Despite a few days of effort just before the final, the students were unable to get the agreement of the other students needed to make their scheme work.

5. My description of this lesson tracks the lesson as I have taught it. However, I plan to try a simulation in the future. For that simulation, I will use Indiana University Law bookmarks, or some similar trinket, in place of the mugs used in the experiments described here.

6. Letter from Oliver Wendell Holmes to William James (Apr. 1, 1907), in *THE MIND AND FAITH OF JUSTICE HOLMES: HIS SPEECHES, ESSAYS, LETTERS AND JUDICIAL*

about diminishing marginal utility.<sup>7</sup> I prefer a psychological explanation.

A number of studies from experimental psychology, including some carried out by Nobel Prize laureate Daniel Kahneman, have shown what is sometimes called the endowment effect. My favorite involved coffee mugs.<sup>8</sup> College students were divided into three groups. Some students were given mugs and a chance to sell the mugs, some were given the chance to buy mugs, and some were given an option to obtain a mug or to obtain money. The students told the experimenters their price for a mug. Sellers indicated the least they would take for their mugs, buyers indicated the most they would pay for mugs, and choosers indicated the price at which they would rather have cash than mugs. Subjects had an incentive to price their mugs honestly because trades would be consummated if a buyer's stated willingness to pay was higher than a seller's stated willingness to accept.

The results of two experiments were as follows:<sup>9</sup>

Value of a mug, in dollars	Study 1	Study 2
To buyers of mugs	\$2.87	\$2.00
To chooser	\$3.12	\$3.50
To sellers of mugs	\$7.12	\$7.00

The interesting results of the experiments were that the people who started with mugs valued the mugs more highly than those who did not, and the people who started with money valued the money more highly than those for whom it was only a prospect. A thing possessed was worth more.

We can compare the endowment effect for mugs to the endowment effect for dollars by converting the values of mugs in dollars to values of dollars in mugs. The buyers of mugs can be seen as sellers of dollars. Focusing solely on the subjects as sellers (of dollars and of mugs) and choosers, the results are as follows:

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OPINIONS 417, 417–18 (Max Lerner ed., 1943).

7. RICHARD A. POSNER, *ECONOMIC ANALYSIS OF LAW* 89–90 (5th ed. 1998) (citing Oliver Wendell Holmes, *The Path of the Law*, 10 HARV. L. REV. 457, 477 (1897)).

8. Daniel Kahneman et al., *Experimental Tests of the Endowment Effect and the Coase Theorem*, 98 J. POL. ECON. 1325 (1990).

9. *Id.* at 1329–39.

Value of a dollar, in mugs (M)	Study 1	Study 2
To choosers: 1/3.12 or 1/3.5	M.32	M.29
To sellers of dollars: 1/2.87 or 1/2.00	M.35	M.50
Endowment effect ratio for dollars (sellers of dollars divided by choosers)	1.09	1.72
Value of a mug, in dollars	Study 1	Study 2
To choosers	\$3.12	\$3.50
To sellers of mugs	\$7.12	\$7.00
Endowment effect ratio for mugs (sellers of mugs divided by choosers)	2.28	2.00

The endowment effect was stronger for mugs than for money.

A few students can immediately see the application to adverse possession. In adverse possession cases, the decisionmaker is forced to deprive someone of land. One person, the Adverse Possessor, if she is in good faith,<sup>10</sup> thinks it is her land and is in physical occupation, actual possession. The other contestant, the Record Owner, thinks it is his, but perhaps only in a financial sense because he is not in possession and has not been in possession for many years. The mug experiments tell us that the person in physical occupation will feel a greater loss than the person who experiences only a financial loss, the loss of an option. If that is so, the doctrine makes sense in that it places the loss on the person who will suffer less from bearing it.

I also recur to this lesson on loss aversion when we study the law of eminent domain and the Just Compensation Clause.<sup>11</sup> The compensation for takings is fair market value. Fair market values are based on prices offered by willing participants, while eminent domain condemnations are situations with unwilling sellers. They are likely to be attached to their lands more deeply than the owner who sells through the market. Therefore, it might be a good idea to offer compensation of more than fair market value when the government takes someone's land through the exercise of eminent domain.

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10. There has been much debate as to whether the doctrine requires good faith by the adverse possessor, and the point has not been fully settled. For citations to that debate and a more detailed discussion of the degree of fit between this loss aversion rationale and the elements of adverse possession, see generally Jeffrey Evans Stake, *The Uneasy Case for Adverse Possession*, 89 GEO. L.J. 2419 (2001).

11. U.S. CONST. amend. V (“[N]or shall private property be taken for public use, without just compensation.”).

*C. Neighborhood Association Voting and Mechanisms  
for Eliciting Preferences*

Socioeconomics emphasizes the importance of expanding the analytical framework beyond ordinary economics. One of the issues that cannot be resolved from within standard economics is the question of what definition of efficiency to use. An analyst must step outside that system to get a grip on the issue of how to choose among competing definitions. She must rely on other values, balancing those values in a way that cannot be done within economics. I plan to demonstrate this to students in my Land-Use Controls course by examining two voting systems that might be used by a homeowners association.

Different uses of land conflict, and lawmakers have developed various ways of solving the conflicts, including public and private mechanisms for controlling the use of land. Public controls include zoning and environmental regulations. Private controls include contracts, but those tend to be personal and do not last long enough. For that reason, the courts have recognized running covenants and equitable servitudes, forms of obligations stuck to land. A promise by the owner of Cattleacre that he and his successors will keep their livestock off Cornacre might be enforced in court against a subsequent owner if it satisfies the requirements for a promise to run with land as a covenant or servitude.

Often, agreements between two neighbors will not suffice, however, and covenants are used to create binding agreements between larger sets of neighbors. For example, a developer will subdivide land into residential parcels and get agreements from all of the buyers that they will not use their lots for business purposes.

The potential scope of such agreements has grown beyond the original uses, and in some cases covenants have become a form of constitution, binding a set of landowners not only to predetermined rules, but also to decisionmaking mechanisms for the creation of additional rules in the future. If they only went that far, we might see a homeowners association as a form of corporation that has the power to control certain assets relating to land. But these agreements go even further than that. These agreements can give the association the power to tax its members, as well as to spend, with the threat of expulsion for those who refuse to pony up. In other words, homeowners associations have the power to tax for the provision of public goods.

Once a homeowners association has the power to tax and spend, how



should it go about deciding what public goods to provide? How ought we allocate voting power within the association? There are a number of possibilities. Many associations allocate one vote to each parcel of land within the jurisdiction. Other methods include voting according to the assessed value of the parcels, or square footage, or division of the votes into classes according to the types of parcels owned. The problems of any such voting structure are well-known to all students of democracy and can be divided into the general classes of distributional and efficiency problems.

The efficiency problem stems from the absence of any way for voters to express the intensity of their preferences. Let us suppose that there is a proposal to install streetlights. To keep things simple, assume the proposal includes the revenue measure for funding it. Twelve owners favor it greatly and thirteen are against. Those in favor would, if they were being honest, each be willing to pay \$500 to have the lights installed. Those against would pay \$300 each to stay in the dark.

Because the majority likes being in the dark, majority rule will reject the lights even though that result is not efficient in the Kaldor-Hicks<sup>12</sup> sense because the losses outweigh the gains. The twelve persons would have paid \$500 each to install the lights, whereas the thirteen would have paid only \$300 each to reject the lights. Coasean bargaining might be unable to come to the rescue for two reasons. First, there might be a legal or social rule against selling votes. Second, some of those in favor might attempt to free ride on the efforts of others, or those opposed might hold out for more than their reservation price, with the result that those in favor fail to offer enough compensation to buy out the position of one opposed.

Moreover, even in those cases where the neighborhood reaches the right decision in the Kaldor-Hicks sense, installing the lights will not be a Pareto improvement<sup>13</sup> if anyone is against the decision. The losers will not be compensated and will be worse off than before the lights were installed. Majority rule assures us of neither Kaldor-Hicks nor Pareto efficiency.

What would happen if we could make the voters put their money where their mouths were? What if the voting procedures for the association said the following:

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12. See BLACK'S LAW DICTIONARY 1587 (7th ed. 1999) (describing Kaldor-Hicks efficiency as "[a]n economic situation in which a change in the allocation of resources benefits the winner . . . more than it harms the loser").

13. See *id.* at 1138 (defining Pareto superiority as "[a]n economic situation in which an exchange can be made that benefits someone and injures no one").

Submit a check for the amount that you would pay to get your result, and tell us what result you want. The association will add up the amounts and the higher dollar amount wins. The association will cash the checks of the winners and return the checks to the losers. Then, with the proceeds, the association will send the losers a check equal to what they sent in. The extra amount will be split equally among all owners.<sup>14</sup>

If owners are honest and forthcoming, each person in the majority says \$300, for a total of \$3900 to reject the lights. Each person in the minority says \$500, for a total of \$6000 to install the lights. The minority wins easily and the lights are installed, which is the right decision. They pay \$500 each, and each person in the majority gets paid \$300 each. That leaves \$2100 left over, which is divided among all twenty-five, who are paid \$84 each, so all come out ahead. This little society has made the right Kaldor-Hicks decision and made a Pareto superior move to boot.

But honesty was a problem in the first place; we do not need the market mechanism if the voters can be surveyed and will tell the truth as to how much they care. What happens if we relax the assumption of honesty? Can owner "YEA1" do better than the \$84 gain? Yes, if YEA1 knows the facts in this example, he offers nothing for the lights because the others will carry him. YEA1 gets the streetlights without having to pay for them. For those on the winning side, there is an incentive to understate price.

Consider instead a person who is on the side of darkness. "NAY1" votes \$2000 against the lights instead of only \$300. His side still loses, and he still has to put up with the streetlights, but now he gets \$2000 in compensation instead of only \$300. For those on the losing side, there is an incentive to overstate their price.

But this raises the obvious possibility that, in the attempt to game the system, both will lie at the same time. If that happens, the decision goes for darkness, and we fail to reach the result desired according to the Kaldor-Hicks criterion. Note, however, that it is still the case that

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14. This is an adaptation of an idea presented in the context of elections of national presidents by Vernon Smith at a Gruter Institute conference in the summer of 2002. See Christine Brockett & Jarrod Burch, *Highlights of the 2002 Squaw Valley Conference: Investigating Justice*, at <http://www.gruterinstitute.org/news/fall02/highlights.htm> (last visited Oct. 12, 2003).

everyone except those two owners are better off than they were before the ballots were cast. The only losers are those who tried to outwit the others. If we can treat the strategic behavior of those two as essentially voluntary gambles, we could say that by their own choices they were, at least in an ex ante sense, better off than they were before the votes were taken. They have traded in a guaranteed gain for a chance of greater gain. The bottom line is that, in a sense, everyone is made better off by this decisionmaking process.

Despite the fact that the process leads to gains for all participants, the outcome is troubling because we know that the total stock of happiness would have been greater if the other result, in favor of streetlights, had been reached. We have made a Pareto improvement, but we have not reached the Pareto frontier; indeed, we have made a decision that will prevent us from reaching that frontier.

Now try a different voting scheme, one sometimes called the “demand revealing process.”<sup>15</sup> Suppose that each voter again votes an amount of money equal to the difference the decision makes to him, the association adds up all the money, and the side with more money wins. That much is the same. But, after determining whether to install streetlights, the process differs. The association does not cash all of the checks. Those counting the votes consider what would have happened if each voter had been separately omitted from the process, subtracting the amount he voted and determining whether the outcome would have been the same without him. Checks are returned to all persons that had no effect on the outcome. If any person did have an effect on the outcome, that person must pay the difference between the two totals that would have occurred without him. Essentially, under the demand revealing process, each person is allowed to buy the result away from the other side by paying that difference.

Obviously, none of the losers ever has any influence on the outcome, so they will never pay anything. In the example above, no single winner had any effect either, so none of them would pay. Suppose, however, that we change the facts a bit regarding one of the twelve votes favoring streetlights. Eleven of those in favor still vote only \$300 each, but one in favor votes \$1000, for a total of \$4300. Because those opposed voted \$3900, eleven of those in favor made no difference to the outcome. But the one winner who voted \$1000 did make a difference, for without him, the vote would have gone against the streetlights. Under this voting scheme, that one voter must pay the difference between \$3900 and

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15. For a short explanation of the demand revealing process and its history in the work of William Vickrey, Theodore Groves, Edward Clark, Martin Loeb, John Ledyard, and Gordon Tullock, see T. Nicolaus Tideman, *Introduction*, 29 PUB. CHOICE 1 (1977).

\$3300—\$600—and that money is then thrown away.

It has been shown that there is no way for a voter to gain by lying under this system of voting. Thus, the neighborhood will always reach the decision that is correct according to Kaldor-Hicks. Note, however, two things. First, the losers do not get any compensation for their loss, so this method of voting, unlike that above, does not guarantee that the position of every voter is improved. The losers will not get the decision they want, and they will also get no compensation for having to live with the result forced upon them by the others. Second, assets are sometimes thrown away, which means the process is not, in one sense, Pareto optimal. However, all decisionmaking processes cost something to carry out, and if that is allowed to count against a process, it is impossible for any process ever to reach the Pareto frontier.

Of course, there are other important issues, such as whether it matters that richer persons end up with more control, but even leaving those aside we see difficult problems, problems of social preferences that cannot be solved from within economics. One method of voting, the traditional method, gives all owners the same amount of power, regardless of their wealth. Another method assures that everyone has a chance to be better off than before the decision, but sometimes leads to decisions that are clearly inferior in the sense that the opposite decision would have created more wealth. And finally, the third approach, the demand revealing process, creates incentives that assure the Kaldor-Hicks decision will be reached in each instance, but fails to satisfy the Pareto criterion for making changes because it offers no compensation to those who lose. It is as if there are two goods, Pareto superiority and Pareto optimality, and we cannot have both; we can only trade some of one for some of the other, and the degrees fall on a curve—one might call it another Pareto frontier.

I presented these voting systems at the Second Annual Meeting of the Midwest Law and Economics Association. After explaining the demand revealing process, I asked the participants to vote on whether I should continue this project. The majority, under both majority rule and the demand revealing process, voted in favor of continuing work. With that encouragement, I plan to employ the process in my teaching. I will set aside one week of classes at the end of the semester, leaving undetermined what the class will study during that week, and I will allow the students to come up with proposals for that week's work. Once the proposals are in, I will let them vote on the proposals, with the

winner being determined with the demand revealing process.<sup>16</sup> The students will actually have to vote with dollars, putting whatever dollars voted at risk. I will tell them in advance that any dollars sacrificed under the system will be given to a charity or the government, with the recipient to be determined by some fairly random process.

One primary point of this lesson is that economics cannot tell us whether we prefer a system in which all citizens gain with each new step, an alternative system under which the total gains are maximized, or yet another system in which all have an equal vote regardless of the effect on net wealth. It takes a political and philosophical discussion to resolve the question if it can be resolved at all. Unfortunately, the way in which that discussion will occur and be resolved is the fundamental issue under debate. Fortunately, in the classroom, I resolve that by acting the dictator.

*D. Labor Law I, Inc. and Employment Law, Inc.: Exercises  
in Socioeconomic Principles*

If simulations with respect to particular legal problems can be useful in allowing students to explore socioeconomic principles, perhaps structuring an entire class as a simulation might also prove useful. This idea occurred to me after I had achieved my tenured appointment at Indiana University and had time to reflect on how I taught students about the employment relationship and labor and employment law. Up until that point, I think I had done a good job lecturing students regarding the intricacies of the relationship and the laws that governed it. I always got good student evaluations and was considered a good teacher by my colleagues. However, I wanted something that would excite my students about the employment relationship the way I was excited about it, engage them in the study of labor and employment law the way they might be engaged in the practice of such law after graduating from law school, and demonstrate to them some of the real life dilemmas of the employment relationship and organizing and running unions. After attending a law conference session by Roberto Corrada on his use of simulations in teaching labor law, and discussing the problem with my colleague Jeff Stake, I decided that perhaps I could best teach labor and employment law, and actively engage my students in their studies, by making my entire course a simulation. Students would be employees, or corporate counsel, and I would be the employer. The students would

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16. I might also try leaving the method of determining the winner up to chance. The benefit would perhaps be getting the benefits of both systems. But that approach might also yield the costs of both systems.

have the objective that they would address their interests by filing mock causes of action and organizing into a union to collectively bargain with me. This method of teaching would not only actively engage my students in class, but also allow me to take advantage of my own love of game playing and strategy.

I first applied my idea to my labor law class. The first day of class, I give my students an application for employment with “Labor Law I, Inc.,” my closely held corporation that “subcontracts” with Indiana University for the production of knowledge in labor law. On the basis of these applications, I “hire” about eighty percent of the class, with the remainder joining the ranks of the unemployed, who sit off to one side of my class and vie for positions as they come open. In addition, the students are assigned turns in groups of five to sit at my right hand and act as corporate counsel for me for a week at a time.

All students are given my “employee handbook,” which sets out the terms of employment, including production expectations, compensation, and work rules. Production expectations include writing at least one short paper, participating in class, and taking my exam. The students’ “compensation” depends on their performance in these regards and the class curve, which I initially set at a mean of 2.8—the lowest allowed by the law school’s rules. The handbook expressly states that the students are employees at will who can be fired at any time for any reason or no reason. Only students who are employed are eligible for class participation points, which I award for superior performance during class. I then tell the students that if they want to change the terms of the class and our relationship, they will have to organize and collectively bargain with me for a change. All of the materials they need to organize, including forms and outlines of the relevant law, are placed on reserve in the library. However, I leave it up to the students to step forward and undertake the work of organizing a union by securing signed representation cards, petitioning for an election, electing officers, and representing the students’ interests in collective bargaining sessions with me.

I conduct my classes according to whatever best serves my interests as the president of Labor Law I, Inc. If students are late or unprepared, they are “fired” and replaced with students among the unemployed who can answer my questions. If the low curve and arbitrary power I possess are not enough to motivate the students to start organizing, pop quizzes can be relied on to do the job.

Once the students start organizing, more interesting opportunities arise

for the exercise of my power as employer. President Dau-Schmidt has been known to poll his employees as to whether they support the union organizing efforts, with ramifications for the employment of those who admitted they did. One year I successfully identified the members of the union organizing committee and made them all foremen in an effort to remove them from the bargaining unit. I have also used corporate counsel to produce anti-union literature and speeches, to object to the bargaining unit established by the union in their petition for an election, and to file unfair labor practice charges against the union. Of course, the students can produce their own pro-union literature, file briefs in support of their petition for election, and file unfair labor practice charges against me. Any literature, petitions, or briefs the students write on their behalf or as corporate counsel on my behalf count as their papers for the course.

The materials for my class<sup>17</sup> progress in a step fashion through the process of union organizing, from securing representation cards and conducting an election to collective bargaining. Thus, it usually works out that the class is reading cases about representation cards, petitions for elections, appropriate bargaining units, election campaigns, or collective bargaining when we are contesting issues concerning these subjects in class.

To adjudicate the disputes that arise between myself and the students, I use my alter ego, “Den Dan-Schmidt,” who is the “Regional Director” for the National Labor Relations Board. Den, or one of his administrative law judges, fairly decides the issues presented based on the briefs that are filed and has been known to order reinstatement of dismissed employees with full back pay for missed class participation or to order me to bargain with the union. Due to time constraints, I never appeal, and always comply with, Board orders.

The organizing campaign results in the conducting of a “board” election in my class by Kevin Robling, our Dean of Admissions, complete with ballots listing the choices of the students’ organization and “no union.” One year I had the good fortune that Bill Gould, the real Chairman of the National Labor Relations Board, was visiting the law school in early April to give a speech. As a result, I was able to schedule my class election for a time when Bill was here and could conduct the election.

Once the students have elected a union, we begin collective bargaining. I leave it to the students to select their bargaining committee, determine their bargaining objectives and draft their proposals. I have corporate counsel sit with me at the bargaining table and draft proposals on my behalf. Bargaining is usually conducted in a series of meetings

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17. ROBERT J. RABIN ET AL., LABOR AND EMPLOYMENT LAW: PROBLEMS, CASES AND MATERIALS IN THE LAW OF WORK (3d ed. 2002).

over lunch at Nick's, Bloomington's quintessential college bar.

I begin with proposals that are so one-sided that it forces the students to draft their own version of the contract. I usually give the students some small concessions through our discussions, but if they want major concessions, they have to show me they have some real bargaining power and enough support among the students that they can shut down my class. In the four years I have taught labor law as a simulation, I have locked out the students twice and they have struck me twice. When I see that the students are really united in their demands, I make major concessions and sign an amended form of their agreement. The agreement usually specifies union recognition, certain management rights, a "zipper clause," conditions for the conduct of class, standards for employee discharge, a system of arbitration for employee discharge, the form of the exam, and the curve for the class. In negotiating the curve for the class, the students are limited by the maximum 3.2 allowed under law school rules.

Once I am under contract, I try to behave myself and follow its terms. There are usually only a few class meetings left in the semester at that point, and contract breach and arbitration is a different course. Besides, when I have had the good fortune to be invited to teach at Friedrich-Alexander-Universität Erlangen-Nürnberg or Christian-Albrechts-Universität zu Kiel in the spring, I have been known to permanently close Labor Law I, Inc. or move operations to Germany as part of the final exam. The final usually consists of hypotheticals concerning Labor Law I, Inc. or restatements of some of the issues that arose during the course of the class simulation. Reusing some of the issues previously raised in class rewards those who showed initiative and undertook to litigate those issues with me when they arose during the semester.

In response to student requests, I have recently tried to extend this simulation format to my employment law class with the founding of "Employment Law, Inc." In my employment law class, I teach the law governing individual employment contracts and individual rights in the employment relationship. Accordingly, the simulations revolve around individual rights rather than collective bargaining, and have involved hypotheticals such as the discharge of employees for refusing to falsify documents, to pressure friends of theirs to admit to nonexistent thefts, for being married to a fellow employee, and for violating prohibitions against off-duty drinking and smoking. I also have had corporate counsel draft noncompetition clauses and intellectual property "follow-



on” clauses for my employees to sign. Students are encouraged to “sue” me in any jurisdiction they prefer for any causes of action that arise by filing short briefs asking for summary judgment. Students are assigned as corporate counsel to defend me and respond to these suits. Once again the wise and fair Den Dan-Schmidt, now sitting as a trial court judge, decides each case and can award back pay and other damages in the form of class participation points. Because there is no opportunity for the students to address their grievances through collective bargaining in my employment law class, at the end of each section of the book I briefly convene them as the legislature to allow them to debate proposals by fellow students for amending the law that governs our employment relationship.

In addition to actively engaging the students in class and teaching them substantive law and practice skills, I think that these simulations give the students first-hand experience with several economic problems that are important to labor and employment law. As the students struggle to overcome the problems posed by the simulation, they get a chance to experiment with the socioeconomic solutions to these economic problems.

For example, the students suffer from a public good problem or dilemma game in organizing.<sup>18</sup> It is clearly in their collective interest to organize and negotiate with me, but it is in each of their own individual interests to hold back and let someone else do the work and take the wrath of President Dau-Schmidt. However, the students solve this problem of promoting cooperation among themselves through the same social mechanisms that people commonly use to solve such problems; a few stout souls step forward to do the work and are rewarded with group recognition and some deference in the future running of the union. The students also learn the importance of the rule of law in promoting social cooperation and order in that they come to appreciate the fact that the National Labor Relations Act<sup>19</sup> prohibits the employer from exacerbating their dilemma game by requiring yellow dog contracts or discriminating against employees on the basis of union support and provides at least modest penalties against such activities.

The students face another socioeconomic problem in formulating their bargaining demands. The students, of course, have divergent interests in various issues of concern to them, including the form of the final and the relative weight of the final, the paper, and class participation in their grades. Nevertheless, the students must come up with a proposal that

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18. See Kenneth G. Dau-Schmidt, *A Bargaining Analysis of American Labor Law and the Search for Bargaining Equity and Industrial Peace*, 91 MICH. L. REV. 419, 493 (1992) (describing the benefits of collective bargaining as a public good susceptible to free rider problems).

19. 29 U.S.C. §§ 151–69 (2000).

they all support enough that they are willing to strike my class in order to enforce their bargaining demands. Last year, the President of the students' union, the "United Mind Workers," confided in me that it was very hard to get the students to agree on anything, that it was like "herding cats." I told her that these problems were very similar to the problems experienced by real unions in formulating bargaining demands. Despite these problems, the students used their political processes and moral suasion to resolve their differences and negotiate perhaps the best agreement any class has achieved in the four years I have operated Labor Law I, Inc.

The students in my labor law course also get to experience the conflict between collective and individual interests inherent in collective bargaining. Like real employees and employers, the students and I have a collective interest in bargaining cooperatively and continuing "production" to finish the syllabus before the final exam, but each side also has an individual interest in being recalcitrant in bargaining and holding out in the hope that the other side will give in.<sup>20</sup> Just as in real life, we resolve this dilemma through the dynamics of bargaining and the application of bargaining power, processes that can be analyzed usefully under disciplines such as sociology and psychology as well as economics.

Finally, in my employment law class, the students learn something about some of the shortcomings of individual bargaining and how these are addressed through the common law and regulation. The employment relationship takes place within a context of social norms concerning "public policy," "good faith and fair dealing," "extreme and outrageous conduct," and the "duty of loyalty."<sup>21</sup> Although each of these concepts has an important economic rationale, it seems impossible to fully understand them without examining, and partaking in, the larger social context in which they are developed.

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20. See Dau-Schmidt, *supra* note 18, at 447 (examining payoffs to employers and unions resulting from various combinations of bargaining strategies).

21. I refer here of course to employment law actions of discharge in violation of public policy, breach of the implied covenant of good faith and fair dealing, intentional infliction of emotional distress (which is extreme and outrageous), and breach of the employee's duty of loyalty.

### III. CONCLUSION

It is both useful and fun to use class simulations of legal problems that demonstrate the socioeconomic paradigm of economic decisionmaking within a larger social or psychological context. Such simulations actively involve the students in the class and the examined problem. Moreover, they call upon the students' own resources and creativity to address the problem in ways that will stand them in good stead when they are confronted with similar problems after they graduate. We recommend that faculty members use their own creativity to construct other simulations for their students' benefit and their own teaching enjoyment.