MOSKOVITZ ON APPEAL

Joe, part 1

By Myron Moskovitz

W
tile a law prof, I taught constitutional law. One of the most influential articles in this field was written decades earlier: "The Equal Protection Clause of the Constitution," by Myron Moskovitz. The article has since become a cornerstone of constitutional law.

The Supreme Court seems to be struggling to find a way to apply the equal protection clause in a way that is consistent with the Constitution. The case that seems to be the most important is the case of Roe v. Wade. The Supreme Court upheld the constitutionality of the abortion law in the United States.

Joe had little interest in the classical philosophical questions of law and politics. He was more interested in the practical aspects of legal practice. He was a brilliant scholar and a brilliant litigator. His cases were always well-prepared and well-presented. He was a true master of the law.

Despite the fact that Joe was not interested in the philosophical aspects of law, he was still able to make important contributions to the field. His work on the equal protection clause was a landmark in constitutional law.

In his later years, Joe continued to be active in the legal community. He was a professor at the University of California, Berkeley, and was a member of the American Bar Association. He was also a member of the California State Bar Association.

Joe's influence on the legal community was profound. He was a true giant of law and politics. His legacy will live on for generations to come.
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Joe, part 2

By Myron Moskowitz

My last column was about Joe Tusman, a friend of mine who was chair of the Philosophy Department at U.C. Berkeley.

Though he never went to law school, Joe co-authored one of the foundational pieces underlying the Supreme Court's expansive use of the equal protection clause during the latter half of the 20th century. See Tusman v. Tabakoff, "The Equal Protection of the Laws, 37 C.J. L. Rev. 341 (1980).

Joe's contribution to the development of the law was impressive, but not quite as successful (yet). Joe taught introductory philosophy courses to undergraduates, and he slowly came to the conclusion that the prevailing system for educating undergraduates was dead wrong. The core defect was the "course system" -- where young students were invited to select from a menu of offerings. This model bowed to student "consumerism" -- and to the convenience of professors who specialized in narrow subjects. Joe didn't like it: "The course is not the marketplace that it has come, all too often, to resemble. Professors cry out their separate wares in their separate stalls, student customers wandering and haggling through the maze, consulting private shopping lists. We like the marketplace; it strikes us as an ideal situation -- a social institution that caters to private desire. Let us have the market it we must, but let us not confuse it with the college. Free men are not produced in stores."

Joe believed that the faculty, not the students, should decide what the students need to study. And the final product should be a single, coherent whole -- rather than a collection of pieces. This was especially needed in the first two years of college ("low-level" students would be deemed "educational wasteland.") Because a "prefactory" faculty saw the undergraduates as so much more than a source of potential grad students, the university had become no more than "a glorified trade school."

So Joe developed an experimental program. Under his leadership, he would accept 150 lower-division students, to be taught by six professors for two years. A few lectures, many discussion groups, much writing, and regular tutorials. No tests and no grades.

The key to the program was a fixed curriculum, which gobbled up almost all of the students' credits in the first two years. No electives and no choices, because young college kids should not be expected to choose which intellectual resources would be best for them. As Joe put it, "Effective teaching should be a vacation, not a way of life."

All students and the six professors would read, discuss, analyze and write about the same handful of books (selected by Joe: the Bible, Greeks (Homer, Plato, etc.), Hobbs, Milton, Burke, and several constitutional cases from the U.S. Supreme Court ("A sort of Gentle-Manners of Talmudic studies.") Joe considered these works to be "the basic moral curriculum of the West."

They were classics. A classic "escapes from or transcends its generative context. It retains its intelligibility and significance when it is taken out of context. It is self-contained, a world of its own." To young radicals who questioned "the past," Joe replied, "When you listen to a symphony, what is the present? All you hear is any fragment there is in the moment is an individual note, which is meaningless. The present is the whole -- and then gave it up."

The obstacles were formidable, perhaps insurmountable. When Joe ran his program, I wasn't there (I wish I were), so I don't know for sure why it failed. While many of the students loved it, the profs' "centrifugal forces" kept sticking to the fixed curriculum, and they wanted to get back to their own departments and research. And they might have bristled at Joe's insistence on the books he preferred.

And the first time around, he couldn't get enough grogs, so he used some graduate students, who under mined the program by deviating from the fixed curriculum. Joe had started his program at an inappropriate time and place. Books on the 60s was "about student freedom" -- not the best fit for a top-down faculty temperament.

For Joe, "enjoyment" and "leisure" were not enough. He wanted to preserve the traditional liberal education as it was carried out by the experienced professors, who understood the program by deviating from the fixed curriculum. Joe had started his program at an inappropriate time and place. Books on the 60s was "Nothing is as irresponsible as an error whose time has come."

The second time Joe ran the program, he hand-picked the other professors from his own former students, sociologists who had already bought into Joe's choice of reading materials. They shared his"common things" and were willing to expand the program. Joe was the only one who was interested in the program, he stuck to his belief that he was right and the powers that be were wrong. His concern for the undergraduate students had been in vain, and he was certain that his method was the best way to educate undergraduates:

"Something has happened when you can grasp the threat that runs from Gretees and Antigone to West Virginia v. Barnette (the compulsory flag-salute case) and the presidential campaign of 1988. When you can see that the attempt to impose the tables of the law upon the worshippers of the golden calf is the same struggle as is involved in our attempts to make the constitutional covenant and the law prevail over our heretic impulses and narrow partialities."

The failure to provide this great context is something to send our students, robbed of their proper clothing, or their proper minds, naked into the jabbering world. It is stupidly irresponsible of the university to allow this to happen. It is a betrayal of its trust."

As I get older and kwech about this or that ache or pain, I'm often reminded of one of Joe's more profound insights: "After the 70s, the sum of the alliments is constant."

So, when one health issue fades, another invariably takes its place. Joe's mind stayed sharp to the end -- though a quote from Yeats crept into his conversation more and more: "Sick with desire and fastened to a dying animal."

Joe is gone -- he passed away in 2005. But I don't want his idea about restructuring undergraduate education to go, too. Many of us get a big idea, but few of us spend the time fighting to make it become real. Joe battled inert administrators, resisting professors, and unwieldy students -- all in an effort to show that universities can provide a more meaningful education for thousands of American undergraduates.

Joe had little taste for self-promotion, so I'll take up the cause. His books have gone out of print, but you can find used copies on the line. Most of his articles appear at https://joeptusman.wordpress.com.

Each one is a gem -- lucid and muscular.

Joe cared about doing the right thing. It would be a shame if we forget him and his ideas. ■

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