

“Humanizing the Law: Legal Challenges, Public Narratives, and Humanistic Principles”

Dr. Eric Ashley Hairston

Abstract:

Events of the early 21st century have demonstrated that Americans may experience global and national issues largely through the law. From free-trade agreements to class-actions, health care coverage, and the intricacies of the Geneva Convention, the nature of contemporary legal decision-making suggests that legal decisions can rapidly alter employment, medical care, citizenship, educational access, or the length and quality of life for millions. In this cultural moment, Elon has made two remarkable decisions: to create a law school and to reaffirm its commitment to the humanities. This project will allow our undergraduates to investigate the challenges to American culture presented by contemporary legal policy conflicts, assess their effects on groups and individuals, and evaluate how the law may resolve current conflicts while reflecting our culture’s most essential humanistic traditions.

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I. Introduction:

Events of the early 21st century have demonstrated that Americans may experience global and national issues largely through the law. From free-trade agreements to class-actions, health care coverage, and the intricacies of the Geneva Convention, the nature of contemporary legal decision-making suggests that legal decisions can rapidly alter employment, medical care, citizenship, educational access, or the length and quality of life for millions. In this cultural moment, Elon has made two remarkable decisions: to create a law school and to reaffirm its commitment to the humanities. A unique bridge between these two programs is the Pre-law program in the undergraduate college. While many pre-professional programs are insular and narrowly-focused, Elon’s focus on a new model for legal education and its commitment to the humanities suggests both that the pre-law program cannot follow this model and that it must be a site for interdisciplinary study of law and humanities. This project will allow our undergraduates to evaluate the challenges to American culture presented by contemporary legal conflict, assess their effects on groups and individuals, and boldly propose how the law might resolve current conflicts while maintaining our culture’s most essential humanistic traditions.

II. Course Content:

The first portion of the project will be the “Humanizing the Law” core course, which will introduce students to contemporary conversations in the humanities: readings

in philosophy, literary theory, law, religion, history, and the arts. Using these early readings as a foundation, students will be introduced to prominent problems in educational access, health care, poverty, globalization and free trade, international law, privacy, and free speech. In addition to readings in the areas of controversy, students will encounter the prevailing law or policy in each area. At the end of the more traditional classroom experience, students will prepare an analysis of law and policy in an area of controversy and determine its harmony or dissonance with humanistic principles derived from earlier readings (all in preparation for the research project).

The second portion of the project involves students engaging in more focused research on the effects of current practice in the policy area. It is at this stage the students will have the opportunity to take their research on the road, collecting data and narrative accounts from professionals, citizens, authors, lawmakers, and scholars involved in or affected by the legal mechanism or policy framework at issue. I envision a culminating symposium in which students will present and discuss their work and where an invited speaker conversant in the research area of one or more students can address the legal and policy concerns raised.

The third portion of the project is a project website, including a web-based bibliography of law and humanities resources, updates on policy changes and legal decisions related to current and past projects, transcripts of speeches from symposia, and a searchable archive of students' research projects. While the initial design will come from my early work, the evolution of the website and its content will depend largely on the research, ambition, and inspiration of student participants.

III. Rationale, Points of Inquiry, and Primary Goals:

Once upon a time, scholars, lawyers, doctors, clergy and others destined for cultural and political leadership studied a common body of philosophical, theological, classical epic and dramatic, historical, and scientific texts. They shared common scholarly languages of Latin and Greek, and they derived foundation concepts, standards, and traditions of their disciplines from these common intellectual experiences. This classical education evolved and expanded into a more diverse core of educational sub-disciplines called the “humanities” and finally eroded into the small and sometimes nebulous core of humanities courses available at universities across the country. The professional and leadership elites evolved separate professional training and became largely removed from the undergraduate educational experience. Moreover, they developed competing and often antagonistic positions in American political culture. For the masses caught between these powerful professional interests, it has often meant virtual voicelessness. As Mary Frances Berry has illustrated about the law, the difference between victory and defeat in legal conflict is often getting one’s narrative before the judge or the jury. However, the crude reality is that narratives of experience only emerge for those wealthy enough to pay for the professional – psychiatrist, therapist, expert witness, scientist, analyst or crack defense team – to tell the story.¹ Even when the adversaries are doctors and lawyers or politicians and clergy, victory is figured in dollar terms – who was able to pay the price to have his story told more effectively (or repeatedly) in the halls of power. In any case, Berry’s observation suggests that the notable social and moral casualties of specialization and political Balkanization have

¹ Berry, Mary Frances. *The Pig Farmer’s Daughter and Other Tales of American Justice*. (New York: Knopf, 1999).

been the multitude of voices and stories that could influence policy and legal developments.

A number of American law schools have begun rethinking the insular nature of legal education and the retreat from narrative and have begun focusing on the public policy implications of legislation and adjudication. A growing number of law schools have included law and literature and law and medicine/health care policy courses (Duke, UNC, Indiana Michigan, and NYU, for instance), and others (notably the University of Virginia and George Washington University have created Law and Humanities programs within their law schools.

Here at Elon, I think we should directly challenge wisdom of the disintegration of both the classical or humanities core of knowledge and the interrelatedness of professional cultures with intellectual life in the humanities. We might specifically ask what would happen if we took undergraduate students and gave them a common core of contemporary intellectual experiences across the humanities and let them attempt to solve the most challenging contemporary issues, armed with that common core. Could we produce undergraduate students inclined to craft law and public policy toward common humanistic goals? I think the answer is a resounding yes.

The primary goals of the project are: 1) to encourage undergraduate students to shatter disciplinary boundaries and ask broad questions about the law, literature, health care, the sciences, and politics and public policy that are usually reserved for advanced scholars 2) to create meaningful research opportunities for students both in the Elon Pre-law program and undergraduate major programs, including individual public policy research projects 3) to encourage Elon students to create meaningful relationships with

professionals, community members and scholars outside their traditional circle of engagement 4) to assemble competing and complementary narratives from people engaged in crafting legal and public policy frameworks to contend with our most pressing national issues and understand the specific effects of decision-making on groups and individual citizens 5) to understand the nature of American and Western humanistic traditions and principles and craft responses to contemporary challenges that may significantly derive from them 6) to significantly expand the intellectual breadth, depth and reach of the university's Pre-law program by making it a centerpiece for undergraduate interdisciplinary research in public policy, law, and humanities.

IV. Student Involvement:

The production of student research is a fundamental goal of this project, and each student participant will be intimately involved in choosing a research topic, assessing the legal and public policy issues involved, and locating the scholarly, institutional, and individual sources from which he or she will acquire data for the project. Students will be asked to present their research and legal or public policy recommendations and defend them during a symposium in the second year of the project.

V. Implications (for applicant):

This project in law, public policy, and humanities is central to my teaching and research. It reflects both a commitment I have made to put my energy, legal education, and humanities expertise to use in strengthening, augmenting, and increasing the profile of Elon's Pre-law program and an extension of my research into literary representations of ethnic minorities' historic experience with the law. Last year, Dean House asked me to participate in the Pre-law program as it sought the stature appropriate in relationship to

the new law school. In addition, I have long studied African-American and Asian-American experiences with the law, from *Dred Scott v. Sandford* and the Chinese Exclusion Act to racial profiling controversies and developments in affirmative action jurisprudence. I have taught courses in these areas at another institution and will now be able to put my interests and experience to good use at Elon.

VI. Implications (campus and public):

I see no reason why the model of interdisciplinary law and humanities instruction and research should not become a central part of pre-law instruction at Elon and a mechanism for interdisciplinary research for the undergraduate community as a whole. Few disciplines can claim that they are insulated from legal decision-making and public policy developments, and students from around the university should be able to take advantage of the project to research areas of public policy significance in their disciplines.

The public face of the project on campus will exist partly in the ongoing website and archive of research by students. In addition, the project anticipates students' participation in SURF, as well as the possibility of a law, public policy, and humanities symposium to showcase students' work.

VII. Timeline and Budget:

The initial stage of the project, course development and early web development, will consume at least half of the first year of the fellowship, and I anticipate that a portion of the first year's stipend will be devoted to a least one student assistant to help process initial information for the website, post scholarly resources, and archive relevant public policy and legal information. I anticipate launching a scaled-down pilot course in Spring

2008, committing part of the year's stipend to supporting student research, and possibly providing a speaker (but likely no symposium in the first year).

In the second year, I anticipate launching the fully-formed website, offering a Fall 2008 course, and supporting a full slate of student researchers. I anticipate that the bulk of the stipend will be consumed by supporting student research travel and securing a speaker for the first symposium. I would like to stretch the funding or perhaps augment it with other university resources to take some advanced researchers to the Institute for Emerging Issues, an experience likely to further spur their interest in interdisciplinary legal and public policy research.