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Adrienne Baker

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Adrienne Baker
Professor Duhl
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Radical Imagination: Fostering Community in Legal Education

As a former high school teacher, I came to law school with an educator's lens. I was amazed at how quickly I felt small—that I didn't know enough, wasn't certain enough, that somehow, frankly, I wasn't enough. My self-expression quieted and I became more tentative. During my 1L year, I was a dogged rule-follower, reading assignments and annotating the casebooks feverishly, yet I still felt adrift. I felt like a hamster on a wheel: moving quickly but going nowhere. Moreover, the sole measure of all my effort would be distilled to one final test.

As a result, I became more and more anxious. I felt my apprehension rise and my breathing shallow. In my front row seat, I became vigilant. Was I ready to be called on? In the library I began wondering: are my peers understanding more than me? Are they working harder than me? I was consistently evaluating myself and others. I soon realized that I couldn't study in the school library because I wasn't at ease. Professor Kalman described her own law school experience as: "a jungle through which one proceeded warily, always anticipating a pouncing. Though I never actually suffered a traumatic experience because of the Socratic method, I assumed I risked one daily."¹ I find this comment hilarious. And sad. How true! Law school facilitates a hyper vigilance—and this is disorienting. What is at stake? Not much! If I don't know the answer – or I'm not prepared one day – or I don't ace my final exam, what happens? Is it all ego? Some of it is, surely. But the physical effects are real: our brains cannot discern a real

¹ Jeannie Suk Gersen, *The Socratic Method in the Age of Trauma*, 130 HARV. L. REV. 23220, 2325 (2017).

threat from an imagined one² – and so the “anticipated pouncing” that Kalman describes is just as harmful.

The concept of Juridogenic harm is “harm that law may generate as a consequence of its operations.”³ It’s an emerging concept born from psychology and medicine in which they refer to as iatrogenic harm—otherwise characterized as harm that professionals cause clients. For example, if a person goes to therapy to gain a sense of openness and understanding, but instead leaves feeling guilty and filled with shame, then that would be an example of iatrogenic harm; or, if a medical professional makes a mistake and hurts the patient because of medical error, that too would be an example of iatrogenic harm.⁴ The phrase draw attention to the harm done by the professional. It can be extrapolated to include the harm done by the system as a whole—and so law schools may unintentionally create a form of juridgogenic harm.

Study after study alerts us to concerns about law student wellbeing. Statistics are staggering, and law students are more likely to become anxious, depressed, and turn to substance abuse. Moreover, researchers have concluded that “law student distress was tied explicitly to the educational enterprise.”⁵ Harm is a broad term. However, it seems apparent that law school is causing harm. One such study measured students’ psychiatric distress before, during and after law school—noting that pre-law school, the students psychiatric distress symptoms were similar to the normal population, but “six months into law school, after the results of their first exams, 1L students reported significant levels of distress across *every* symptom category . . . Moreover, they found that student psychiatric distress levels increase steadily throughout law school, with

² Alex Korb, *THE UPWARD SPIRAL: USING NEUROSCIENCE TO REVERSE THE COURSE OF DEPRESSION, ONE SMALL CHANGE AT A TIME*. (New Harbinger Publ’ns, Inc., 2015).

³ Autumn R. Ascano & Joseph A. Meader, *Juridogenic Harm and Adverse Childhood Experiences*, 62 S.D.L. REV. 797, 800 (2017).

⁴ *Id.*

⁵ Ronald C. Tyler, *The First Thing We Do, Let’s Heal All the Law Students: Incorporating Self-Care into a Criminal Defense Clinic*, 21 BERKELEY J. CRIM. L. 1, 10 (2016).

no signs of diminution in the two years after graduation.”⁶ While law schools intend to and of course do promote legal learning, they must also be cognizant of the potential harms that they inflict.

Western culture lauds individualism, and although the Enlightenment “brought forth democracy, public education, and human rights,”⁷ some posit that individualism cannot guide us “successfully through the 21st century.”⁸ According to the macro social constructionist theory, individualism is misguided; instead we must look to the webs of relationships and broader context. For example, “If my job is boring and my boss a tyrant, why should I be treated for my feelings of depression? Why not change the workplace? In broader terms the individualist presumption operates like a blinder.”⁹ In the macro social constructionist theory, the onus is not solely on the individual to be responsible for complex problems. Rather, some degree of responsibility is placed on the system as a whole. The gravity of the problem does not sit squarely on a person’s shoulders—instead, the weight is shared.

Schools have since noted the importance of “self-care,” and encourage students to take breaks from school, to eat well, to get enough sleep, and to get exercise. Some law schools require students to create a self-care plan. The premise seems so simple, so easy. Yet, these measures fail because the expectation is that the individual responds to a system-imposed harm. It is not enough to promote “self-care.” Self-care is framed as an antidote, but the individual responsibility is still placed on the *student*. Rather, the issue is better resolved upstream. Law schools must transgress and transform.

⁶ *Id.* at 10 – 11 (where researchers measured nine areas of psychiatric distress: somatization, obsessive compulsivity, interpersonal sensitivity, depression, anxiety, hostility, phobic-anxiety, paranoid ideation and psychoticism).

⁷ GERGEN, KENNETH. AN INVITATION TO SOCIAL CONSTRUCTION: CHAPTER 5, TOWARD RELATIONAL SELVES 138 (Thousand Oaks, CA. Sage. 1999).

⁸ *Id.* at 118.

⁹ *Id.* at 121.

There are many people from many backgrounds who have been working to transform legal education for a long time—in both big and small ways. As I graduate in a few short weeks, this is a way to reflect on and record my own insights into the field of legal education.

When I think about reimagining law school, Paulo Freire¹⁰ and bell hooks¹¹ are my guiding lights. Freire emphasizes the importance of co-creation through dialogue—and creating engaged pedagogy through cycles of action and reflection, a practice he calls *praxis*; bell hooks dares to invite excitement and enjoyment into the classroom by emphasizing the importance of creating a classroom community in which all people are seen and valued. As a former Outdoor Educator and High School English teacher at independent schools, my work with students has always involved small class sizes and an emphasis on team building. Philosophically and pedagogically, I believe that being is primary, and doing is secondary; if we allow students to bring their whole selves into the classroom, they will naturally be better positioned to “do” the learning. Moreover, if we can access *engagement* and *excitement* – then the learning is dynamic, nuanced, and fulfilling.

Transforming law school pedagogy is no simple task. I recently spoke with Rebecca Lucerno, the Commissioner for the Minnesota Department of Human Rights, and shared my idea about re-envisioning law school. She said, “Good luck with that. You have a better chance of ending racism!” To which I answered, “Good—we should definitely end racism.” Her point was that legal education is a deeply entrenched system and it is not likely to ever change, no matter the degree of effort. While there is little one can do about the historical narrative embedded into law school—hard work, stress, and competition—there are both pedagogical and

¹⁰ PAULO FREIRE, *PEDAGOGY OF THE OPPRESSED* (New York: Continuum 2000).

¹¹ BELL HOOKS, *TEACHING TO TRANSGRESS: EDUCATION AS THE PRACTICE OF FREEDOM* (Routledge New York 1994). (Note: bell hooks’ name is purposely lowercased).

structural adjustments that can create transformative learning experiences. I anticipate pushback in a few areas, particularly regarding (1) legitimacy of the institution and (2) preparation for the work force. First, a culture-shift toward community does not mean that a rigorous legal education is abandoned; rather, I'd like to suggest it would deepen the networks of learning. Second, while being an attorney is notoriously stressful – and so some may argue that law school stress is necessary to prepare students for the onslaught of challenges in the workforce – there is something to be said for transforming legal education in order to lay the groundwork for transforming the legal profession. Afterall, “The classroom remains the most radical space of possibility in the academy.”¹² Below are some suggestions.

Pedagogical Tips

Classroom Introductions

During the first class professors can make time for everyone to introduce themselves. This allows everyone's voice to be in the room early, signifying to students that their presence in class is valued. While this can be time consuming, it allows students the opportunity to start a casual conversation later – exchanging common interests or asking follow-up questions. This small act also emphasizes that the learning relationship is not only teacher to student, but also student to student. As bell hooks says:

As a classroom community, our capacity to generate excitement is deeply affected by our interest in one another, in hearing one another's voices, in recognizing one another's presence. Since the vast majority of students learn through conservative, traditional educational practices and concern themselves only with the presence of the professor, any radical pedagogy must insist that everyone's presence is acknowledged. To begin, the professor must genuinely *value* everyone's presence. There must be an ongoing recognition that everyone influences the classroom dynamic, that everyone contributes. These contributions are resources.¹³

¹² *Id.* at 12.

¹³ *Id.* at 8.

Here, hooks leads with two values: (1) classroom as community and (2) “These contributions are resources.” In order to enact such pedagogical choices, these values have to resonate with the professor. However, what follows from a classroom community is an engaged student body—and I have found that this makes classes more enjoyable for the students and the teacher.

Professor Expectation Setting

Another helpful framework is for professors to be clear about the objectives of the class. It’s valuable for professors to remind students that learning is an iterative process – and that perfection is not the goal. Better yet, it’s beneficial to have professors reflect uncertainty about positions—this helps to illustrate that competence is not always arriving at an answer, but rather thinking through questions thoughtfully. Right now, much of the legal education is hierarchal such that the teacher is framed to have the knowledge and the student is constantly reaching for it; moreover, some teachers carry carrots, others carry sticks. Regardless, most teachers are the ‘masters’ in the room: they are in control.

What would it look like for legal education to de-amplify hierarchy? The Socratic Method at its best encourages open discourse, and at its worse instills anxiety. Without first establishing mutual respect, the Socratic Method can become a tool that perpetuates power dynamics. In my view, the Socratic Method works when there is already an established relationship, or where a foundation of trust has been created in the classroom. Personally, I liked the classes that created an on-call list, assigning students to specific readings each week. This distributed the responsibility of the work among my classmates so I heard everyone’s voice; it also allowed us to feel prepared (and competent!) when presenting.

Integrate the Body

Law school continues to uphold rational analysis, emphasizing the mind-body split. However, research disrupts this dichotomy – recognizing that somatics affect our ability to learn and retain information. There are many ways to integrate the body into the classroom, and the ways in which a teacher does this will likely depend on what they are comfortable with; for example, I had a graduate professor that started each class with a two minute grounding exercise where we just closed our eyes to orient and become present for class. Other ways to integrate the body would be facilitating small group work where students get up out of their seats, or take guided stretch breaks. Or, professors can try using embodied pedagogy: can acting be an element incorporated into the lesson?

Cultivate Community

Although “community” is not a well-defined term, we all have some sense of what it is. To be in a supportive, collaborative, and inquisitive classroom setting is to be part of a learning community. A professor can promote community through small measures, like classroom introductions, modeling uncertainty, and bringing peoples’ whole bodies (and selves!) into room.

Structural Tips

Grades & Feedback

At a structural level, it’s worthwhile for schools to inquire about the effectiveness of grading on a curve. What is the rationale? Is the sole argument that students need to distinguish themselves to their employees? If that’s the case—are there alternative ways to do this? If

grades were a sign of competence instead of comparison—would the curve look all that different?

Another question is, what is the value of grades—what would it look like for a school to go gradeless?¹⁴ What if feedback was given more often instead? This would likely influence students' mindsets. In *The Jury is in: Law Schools Foster Students' Fixed Mindsets*, the authors note that their findings suggest that “the culture of an organization that one wishes to be part of influences one’s behavior. Therefore, it can be suggested that law students will adapt to the cultural mindsets emanating from fellow students, faculty, and the academy.”¹⁵ We all recognize that law school has a far-reaching cultural mindset of challenge, rigor, and competition. Yet, one result of this cultural mindset is that law students are less likely to believe that intelligence is malleable. However, mindsets are linked to resiliency, persistence, and ethical behavior—all things that are necessary in the legal profession.¹⁶ Additionally, the article suggests that (1) the increased rates of depression of law students and (2) their decreasing likelihood of reaching out to mental health professionals may be linked to students’ cultivated mindsets: “The coupling of these two constructs provides further impetus to transform the law student experience.”¹⁷ If learning is understood as process, then how might law school emphasize process over product (i.e. grades)?

Classroom Structure & Class Size

Most law school classes have infrastructure that support hierarchy. For example, having students sit in raised auditorium while the professor is on the ground level is a manifestation of

¹⁴ See JOE FELDMAN, GRADING FOR EQUITY: WHAT IT IS, WHY IT MATTERS, AND HOW IT CAN TRANSFORM SCHOOLS AND CLASSROOMS. (Thousand Oaks, CA. Sage, 2019)

¹⁵ Shapcott, Susan and Davis, Sarah and Hanson, Lane, *The Jury is in: Law Schools Foster Students' Fixed Mindsets* 42 Law & Psychol. Rev. 1, 14 (2017-2018).

¹⁶ *Id.* at 31.

¹⁷ *Id.*

the professor as the central figure; it is a performer - audience relationship. This orients students to the professor as the knowledge-keeper and minimizes the importance of other students as resources. Embedded in the physical space is subject-object orientation versus a community-based approach to learning. While this lecture set-up is very common in university settings, what would it look like to reimagine the classroom structure? In tandem, what might it look like to reimagine legal class sizes? For example, what if 1L class sizes were smaller—or if seminars were seated at a Harkness table?¹⁸

Small class sizes emphasize the relational aspect of learning, which for many—including myself—can be a driving force. Clinics do a good job of this. They tend to have small class sizes and require students to have a weekly check-in meeting with their professor. In some ways, the clinic model resembles Oxford’s Tutorial model in which small class sizes and individual time with professors guides the learning.

Cultivate Community

At a structural level, law schools are invested in creating a resilient student body. It is important to note that law school will continue to be rigorous, and the lawyering profession will continue to be challenging. By valuing community, law schools are not “going soft.” Rather, they will recognize that relationships are the fabric of our society—and that by creating opportunities for students to see their fellow students as allies rather than competitors, this will

¹⁸ Harkness tables were developed at the well-known private school, Philips Exeter Academy. A Harkness table is one in which wherever you sit you can see everyone else. This helps to foster community. (Admittedly, this is more challenging suggestion to implement during a pandemic). “Exeter’s Harkness method, established in 1930 with a gift from Edward Harkness, a man who believed learning should be a democratic affair, is a simple concept: Twelve students and one teacher sit around an oval table and discuss the subject at hand.” See Philips Exeter Academy (May 6 10 a.m.), <https://www.exeter.edu/excellence/how-youll-learn>.

create a more vibrant learning community. No one is saying that law school will be easy—but it’s important for students to feel like they’re not doing it alone.

There are many versatile ways to create community. Looking back, I would have enjoyed participating in some non-law related activities and clubs. What does a running club, biking club, or an outdoor club look like? What about a monthly trivia night? Can the school offer discounts to extracurricular classes like cooking classes, dance classes, or ceramic classes? Can the school secure discounted tickets to the theater or music shows? These activities are an investment in the student body: physical exercise gives the added bonus of endorphins, social activities promote oxytocin, and music lowers stress.¹⁹ While in many ways these are “self-care” activities, by having the school incentivize them in a community setting, the school begins to emphasize wellbeing at a structural level.

Conclusion

In the children’s book *Harold and the Purple Crayon*, Harold draws adventures: he draws ocean waves; then a shark; then the shark’s teeth; the shark comes to life; he then draws an oval; he climbs through to safety. Whatever Harold draws comes true. Harold wields the purple crayon—showing that whatever he draws comes to be. I’ve always loved this children’s book. It seems to emphasize how we can create anything—we hold the crayon—and our minds invent possibilities. But, this children’s story also celebrates individualism. It’s Harold the individual that is responsible for creating his own world.

Law school has historically, and continues to be, individually focused. Common discourse around law school is competition—a driver of individual ambition. Law school is

¹⁹ Korb, *supra* note 2.

steeped in a culture of comparison. Most schools grade on a curve, highlighting not a competence of material, but rather comparison. Look to your left; look to your right. Our general culture is already rife with this orientation. Yet, if “comparison is the theft of joy,” then no wonder there is so little joy in law school.

This culture of comparison is hurting our law students, who become hyper-vigilant and more self-deprecating. The statistical outcomes should be alarming, and the onus should not be placed back on the individual to simply “create a self-care plan.” Instead, law schools must reimagine their function. There are simple classroom pedagogical ways to do this, and also more intensive school-wide administrative and structural ways to adjust, too.

Law schools cannot keep doing the same thing over and over again expecting different results: that is one definition of insanity. Instead, law schools must radically reimagine their role in legal education. It is clear from decades of studies that law student wellbeing will not magically resolve itself. And so, lingering questions remain: will law schools critically examine the role they play in causing harm? If so, will they transform through small pedagogical choices *and* institutional structural change? Will legal education be bold enough to transgress beyond individualism and instead cultivate a community of engaged learners? Law schools have a lot to reflect on—and it’s my hope that they adopt Freire’s *praxis* model of reflection *and* action. At the end of the day, I am so grateful for my legal education. I do, however, believe that a culture of comparison is insidious and would like to see law schools further encourage a culture of community and collaboration.