HOLISTIC APPROACHES TO CLASSROOM INSTRUCTION, A PRECURSOR TO MORE COLLABORATIVE LAWYERS: REFLECTIONS OF A PROFESSOR AND COLLABORATIVE LAWYER

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Holistic Approaches to Classroom Instruction, a Precursor to More Collaborative Lawyers: Reflections of a NUSL Professor and Collaborative Lawyer

Northeastern University School of Law’s Co-operative Legal Education

This summer I had the opportunity to teach a course called “Legislation” at the only law school in the country that combines teaching in the classroom with a comprehensive co-operative legal education program – Northeastern University School of Law (NUSL). Basically, NUSL’s co-operative legal education program (co-op) provides all law students, throughout the course of their law school career, with a full year of hands-on legal experience gained through four, three-month internships in law offices, judicial clerkships and other organizations throughout the world.¹ By participating in co-ops with four different legal employers, students have an opportunity to experience the actual practice of law. NUSL students’ practical co-op experience is complemented by classroom study primarily focused on legal theory.

NUSL’s coupling of academia and practice in this way makes its program of law study more holistic than those at other schools in that NUSL’s program encourages students to learn in more than one way – from practicing law and in the classroom. Students, thus, are not treated as one-dimensional learners or beings. Thus, when I began planning a holistic curriculum for my Legislation course, I was not starting from nothing. I could build on NUSL’s program of study by adding even more holistic ideas in designing the course for many reasons. First, as a collaborative lawyer I have a vested interest in increasing the numbers of lawyers who choose collaborative practice. Second,

¹ First-year law students do not participate in the co-op program. The first year at NUSL is similar to that of other law schools with core courses like Torts, Civil Procedure, and Property offered in the first semester and, Contracts, Constitutional Law and Criminal Justice offered in the second semester. NUSL also offers a year-long legal research and writing program called Legal Skills in the Social Context.
I believe that peaceful, more co-operative ways of practicing law (like employing collaborative principles) can create future lawyers and a legal profession that’s healthier and happier.

Planning a Holistic Classroom/Curriculum

The following is a summary\(^2\) of three concrete ways in which I set out to have a holistic class/curriculum:

(1) The course material drew from my practice experiences as a corporate lawyer, agency lawyer and domestic violence attorney, and also included some elements of a more traditional nature like law review articles (among other things) which were used as a framework for discussions about new ideas in legal theory. In this way, my plan was to stay true to the experiential (holistic) learning model that the school had already established. Encouraging students to apply life/legal experiences to help them better understand legal philosophical principles and vice versa - to think about how they can use academic thought to advance legal practice. Law review articles were also used to engage students in critical analysis, which in turn instilled the material more fully into the students’ legal repertoire.

(2) Since all the students in my course had already completed at least one co-op, I wanted to be intentional about bringing those experiences into the classroom. Doing so, I believed, married the two main parts of NUSL students’ legal education experience – the academic and the practitioner. Using a more integrative and less

\(^2\) The three ideas summarized are explicated later.
compartmentalized approach to law study, thus, made the course more consistent with principles of holism.\(^3\)

(3) Students were encouraged to dialogue with themselves about who they are as individuals, exploring the values and beliefs that are important to them, and figuring out how to hold true to those values as they move through law school and become lawyers. Knowing oneself lies at the core of holistic practices of all kinds – including the study of law.\(^4\) Law schools traditionally focus on being objective, giving students the message that it is not appropriate to think of oneself in the classroom. Furthermore, lawyers are expected to put others needs, interests and desires ahead of their own. But, even though lawyers are fiduciaries and logical analysis of legal precedent is a significant part of learning to be a lawyer, law school classes should not (for many reasons that are discussed later) lead students to lose their identities. Students should be encouraged to be mindful of ways in which legal culture, both practice and study can be oppressive to their sense of self as whole.

**In the Classroom: Implementing a Holistic Plan**

One of the key principles of holism is that a system is not merely a sum of its component parts. Its function can only be understood by considering the whole and the whole determines in an important way, how the parts behave.\(^5\) The parts are

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\(^3\) At least one definition of holism describes it as the theory that the parts of any whole cannot exist and cannot be understood except in relation to the whole.

\(^4\) See generally, David Hall’s *The Spiritual Revitalization of Legal Profession: a Search for Sacred Rivers*, Chapter Six, New Dreams and Old Dams: Holistic Forms of Practice.

\(^5\) The general principle of holism was concisely summarized by Aristotle in the *Metaphysics*: "The whole is more than the sum of its parts."
interdependent. NUSL students’ entire legal experience is not merely limited to their classes or even to NUSL. While almost all law schools and law professors appreciate students bringing their own personal experience to bear on their legal studies, many are hard-pressed to really weave the students’ out-of-classroom world into the limited time that students and professors share in class. It is challenging to do this kind of blending, not only because law practice and legal academia have historically existed in separate, distinct realms, but also because professors often do not have the time or resources to gather enough information about each student’s experience to understand how it would specifically add to what they may already have planned as far as curriculum.

To overcome the usual obstacles to integrating students’ experiences into the classroom then, I had to be intentional. I believed that if I didn’t, at the time that I was planning the syllabus, plot ways in which I would bring students into the content, it wouldn’t happen. Because NUSL provides students many different co-op opportunities, I knew that my students would have worked in many different legal arenas. Thus, I chose one day’s discussion, when the curricula planned for that day was broad enough to encompass almost any experience, to call upon students to discuss their individual, unique experiences. Doing so, I believed, enabled the students to connect their out-of-classroom legal experiences not just to the class but with the class. Students, then, would not view co-op and classroom study as separate but that each works with the other. Moreover, from a holistic perspective, their understanding of law and legal principles are enhanced when they can understand that the parts don’t function separately.

The curriculum included practice-based assignments (one of which I discuss later) and law review articles. Using articles on topics that complemented the legislation and
decisional law that we were studying gave students a sense of where the law might be moving, as well as how legal scholars are thinking about the current state of the law in a particular area. The final law review article that was assigned, in which a Yale law professor discussed the possibility of codifying rules of statutory interpretation, was used as a mechanism to combine and review statutory interpretation, one of our course topics. An additional benefit of using this piece for discussion is that it allowed students the opportunity to take what they’d learned in the course, question it and personally decide whether codification is a good or bad idea. In this way one of the main substantive areas of the course, statutory interpretation, was incorporated even more into the students’ repertoire. Engaging the students in critical analysis review of the course probably made the material more personal and, therefore, incorporated into the students’ long-term memory. Thus, the material, going forward, should become a more lasting part of students’ legal knowledge. It became their own.

Almost every lesson in the syllabus, including the final assignment for the course was based on a situation or issue that I had encountered in the legal world, came from ideas that informed my approach to law study or was new, significant thinking in the academic legal world about which I wanted to my students to know. Drawing from my experience as an agency lawyer, for example, my students were assigned the task of being assistant general counsels having to research a novel legal issue, one on which there was no existing case law or any other decisional law in the agency, then, present the results of their research to the general counsel of the agency. To the extent that students had not had a similar assignment in the prior to the class, either in a co-op or in any other
realm, I saw it as incumbent to have them learn (1) that this kind of assignment occurs and, (2) to develop the skills that a new lawyer should have in these kinds of situations.

\textit{Lawyers as Fiduciaries and Knowing Oneself}

Lawyers are fiduciaries; a word generally understood as meaning that lawyers are agents who bear special and onerous duties toward clients. As fiduciaries, lawyers are meant to put their clients’ interests ahead of their own. This does not mean, however, that lawyers must neglect themselves and ignore who they are in order to be a good fiduciary. Although, it may seem that many lawyers have done just that. All one has to do is look at several bodies of recent medical or socio-psychological research or just look at the face of the profession portrayed in the popular media to see lawyers struggling with alcohol addiction, depression or some other form of psychological distress; we know that lawyers are not taking care of themselves and this, at least in part, has led to the current mental health crisis in the profession.\textsuperscript{6} The legal model of education promotes objectivity and detachment. In learning to think like a lawyer, students are encouraged (and often times required) to cast aside their pre-existing values, beliefs and ideas in order to think analytically. It is not surprising, thus, that law schools graduate people who have, in many ways, become less in touch with themselves.

Law schools, starting with Harvard in the 1930s, primarily use the Socratic method to engage students in analytical, anti-emotional thinking. While just about every law student is familiar with this Socratic concept, fewer probably know about one of the other philosophical ideas attributable to Socrates, “Know thyself.” While engaging one’s

\textsuperscript{6} See generally, How to Succeed in Law School and Beyond, a bulletin published and disseminated by Massachusetts’ Lawyers Concerned for Lawyers, Inc. (website at www.lcma.org)
critical mind in the law and being objective in such a pursuit may be necessary to learning how to think like a lawyer, equally as important to law students is knowing their own feelings, behaviors and attitudes especially given the toll that that kind of disconnection and cerebral pursuit seems to have on the emotional and psychological well-being of law students and subsequently lawyers.\textsuperscript{7}

In creating a holistic classroom I sought to foster this connection in two ways. First, I tried to model the behavior. Developmental psychologists have long touted the value of modeling in learning environments.\textsuperscript{8} In the course of classroom discussions I presented examples to reinforce students’ understanding of a particular case, a piece of legislation or theory of statutory interpretation/construction by citing examples that were personal. For example, when discussing how certain kinds of statutory interpretation theories were influenced by law and economics’ free-rider concept. I told my students that my daughter would understand this theory as similar to the tale of “The Little Red Hen.” One reason I chose to draw this analogy was to let my students know that I am a mom; I am not just a law professor. Being a mom is an important part of my identity and I did not want to keep it out of the classroom. It was my hope that my students would learn from my example, and, therefore, feel comfortable to share aspects of their identity as it related to class discussion.

To further encourage the students to model the behavior themselves, I requested that they bring in a 3X5 card with their picture and name, as well as a statement about who they are something I could not know from looking at them. I then used what I

\textsuperscript{7} Understanding the Negative Effects of Legal Education on Law Students, Kennon Sheldon and Lawrence Kriededer, originally published online at http://psp.sagepub.com/cgi/content/abstract/33/6/883

\textsuperscript{8} See generally, William Crain’s Theories of Development: Concepts and Applications Fifth Edition, Chapter 9, Bandura’s Social Learning Theory.
learned on those cards to draw students into the class discussion based on what I knew about them. For example, one student shared that his last co-op was at the EPA, so when we discussed a case about certain Federal environmental legislation and regulations, I encouraged that student to add to class discussion by telling the class about his experience, and why he thought, based on his insider knowledge about the EPA, why the court interpreted the legislation in the manner that it did.

Discussing the special ethical considerations of government lawyers provided a second method for encouraging students to connect with themselves. In discussing the legislation, case law and law review articles assigned on this day, I directed the students to think about what kind of future lawyers they envisioned themselves being, and how they would personally decide, in the midst of seemingly conflicting ethical guidance about to whom a government lawyer is accountable. This helped students reflect on their own, personal values and belief systems. It took them out of just engaging objectively about what the rules say and forced them to think about themselves – thereby reconnecting each of them to his/her identity.

**Collaborative Practitioners in Training**

The current adversarial structure of law school, with its one-sided approach to advocacy does little or nothing to advance collaborative practice. Law schools do not graduate students who are prepared to think about practicing law collaboratively, to focus on the whole client, the whole problem and problem solve with (and not against) parties who may have disparate interests; to approach the practice of law with a sensitivity to broader emotional, personal and interpersonal issues that may be present in any given
case or transaction. One of the ways that the holistic model used in the course helped further the ideas found in collaborative practice is that the course was more cooperative than the traditional law school class. By encouraging students to bring their own co-op experiences into the classroom, for example, the model aimed to more deeply connect students’ personal, unique knowledge about the world of law into class discussion, thereby increasing students’ confidence in what they know about legal practice. It also fostered a spirit of sharing (not competitiveness) in the class. Ideas were exchanged and students were not pitted against each other. The class environment was, thus, collaborative.

In practicing collaboratively, lawyers must believe in a process – a different way of being. Lawyers who choose the collaborative model are often those who are in part academics and in part practitioners. Their academic side finds the theory of collaborative law appealing – the idea that there is at least one way of thinking about the law that’s different and cutting-edge. The practitioner part of their being, in some ways diametrically opposed to their academic self, may “buy into” new notions in the law only if they make practical sense. Choosing to include both in the classroom, heightened students’ awareness that both of these are valuable and can co-exist alongside each other. Choosing to present them as interdependent parts of classroom study was more analogous to the foundation of collaborative law as a new approach to practicing law based on a critical, intellectual analysis of how law had been practiced up until that time.9

9 When Stu Webb founded collaborative law in the late 1980s, academic thought met legal practice. He re-conceptualized and challenged legal practice, which is primarily what legal scholars do with cases and statutes.
Collaborative legal practitioners tend to be those who know themselves and the legal profession well. They have a keen sense of who they are and aren’t afraid to be different from other lawyers. I modeled this for my students by bringing other parts of my own identity (like being a mother) into class discussion. Students were encouraged, likewise, to remain true to who they are outside of the law and, moreover, to bring those portions of their identity into their lawyer-selves. As well as self-knowledge, a deep, thorough understanding the profession usually leads lawyers to choose a collaborative legal approach because they have seen and understand the ways in which traditional legal practice has failed. NUSL students, given the nature of the co-op program, presumably have a richer, deeper understanding of the legal profession than their counterparts at other schools. They are, therefore, better positioned to consider different ways of practicing law like collaborative practice.

Towards a Future Filled with Collaborative Practitioners

As a professor and collaborative lawyer, I hope that the course I taught at NUSL this summer leads my students to at least explore collaborative practice in addition to the more traditional practice of law. I believe (albeit based on my limited experience) that if law professors structure their courses in a way that leads their students to consider more peaceful ways of practicing law like collaborative practice, the legal profession will be improved. Lawyers and their clients are suffering in part because our profession has become one that does not promote peace and healing. However, I feel hopeful when I think about how collaborative practice continues to transform the world of law into a place where lawyers feel whole and clients find more peaceful solutions to their legal
problems. As sentimental as it may seem, the more law students graduating with a sense that the law has room for cooperation alongside advocacy; that lawyers can bring all of themselves to the table and still be effective fiduciaries for their clients; that academic thought and practice are not separate, but equal parts of the whole legal system, the more wonderful the world of law will be.