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Using Interculturally Aware Teaching Methods (in Revisiting the Characteristics of Effective Education)

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2. USING INTERCULTURALLY AWARE TEACHING METHODS
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a. Introduction

Teaching interculturally was not addressed in BEST PRACTICES FOR LEGAL EDUCATION.[1] Legal scholars have studied how legal pedagogy both reflects the values and approaches of dominant groups within legal academia (i.e., privileged white men), and also how these approaches to teaching can alienate students — such as women, students of color,[2] and gender and sexually diverse[3] students, among others — who do not share all of the dominant group's traits. However, more research is required to help law teachers fully understand the extent to which the structures of legal education affect non-dominant groups and how legal education may be changed to address such impact.

This section explores why the use of interculturally aware teaching methods is a best practice for law teachers, and provides general suggestions for how to do so. The section below on intercultural effectiveness for lawyers[4] and the preceding section on humanizing legal education[5] provide more detailed suggestions relevant to using interculturally aware teaching methods.

Three main aspects of legal education contribute to disparate impacts on non-dominant groups. First, the presence (or lack) of faculty diversity, and the concomitant effect on the ability of faculty to serve as role models and mentors for students; second, course materials that either elide the experience of women and students of color directly by omitting them as actors with legal issues, or the failure of faculty to present problems in a way that is fully accessible to all students; and third, the ways in which faculty do (and do not) interact with female students and students of color, both in and out of the classroom. It is a best practice to address each of these issues.

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[1] ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP (2007) [hereinafter BEST PRACTICES].

[2] *See, e.g.*, Adam Neufeld, *Costs of an Outdated Pedagogy? Study on Gender at Harvard Law School*, 13 J. GENDER, SOCIAL POLICY & THE LAW 511 (2005) (studying Harvard Law School); Celestial S.D. Cassman & Lisa R. Pruitt, *A Kinder, Gentler Law School? Race, Ethnicity, Gender, and Legal Education at King Hall*, 38 U.C. DAVIS L. REV. 1209 (2005) (studying University of California — Davis Martin Luther King Jr. School of Law); Allison L. Bowers, *Women at the University of Texas School of Law: A Call for Action*, 9 TEX. J. WOMEN & L. 117 (2000) (studying the University of Texas School of Law).

[3] Gender and sexual diversity (GSD) refers to all people who identify as one or more of the following: lesbian, gay, bisexual, transgender, queer, questioning, intersex, and asexual, with the acronym LGBTQQIA. The shorter term LGBT is usually used colloquially but arguably does not reflect the fully inclusive range of gender and sexually diverse people.

[4] *See* Chapter 6, Section E, *Intercultural Effectiveness*, below.

[5] *See* Chapter 4, Section B, Subsection 1, *Humanizing the Delivery of Legal Education*, above.

b.   Why Interculturally Aware Methods Are Needed

Faculty diversity is a challenge for many law schools. Law schools have made some strides in diversifying their faculties,[6] and the presence of female and LGBTQQIA faculty, and faculty of color, at the front of the classroom, of itself, helps minimize the alienation of similar students.[7] It seems that diverse faculty members are more likely to develop materials and approaches that foster an atmosphere of inclusion and to use teaching methods that help students feel connected to the subject matter.[8] Equally importantly, having a diverse faculty allows diverse students to visualize themselves in positions of authority within the law.[9] It also shapes the views of non-diverse students by allowing them to imagine a broader role for minority lawyers, and a different relationship between themselves and women, LGBTQQIA people, and people of color.[10] This has a spill-over effect to their own interactions with clients and deepens their learning in the classroom itself.[11]

It is a best practice to use teaching materials that include women, LGBTQQIA people, and people of color as participants in the full range of legal transactions, and not simply to include them only when the legal issues directly implicate them (for example, a course that uses no people of color in its problems and hypotheticals except when there is an issue of racial discrimination). Additionally, where possible and appropriate, teachers should initiate discussion of the racial, gender, or sexual orientation issues the material presents, without shifting to diverse students the burden to raise such issues.[12] Doing otherwise may generate feelings of alienation among diverse students because it sends a message that they are outside of, or do not

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[6] 2008–2009 AALS Statistical Report on Law Faculty, Ass'n of Am. Law Sch. (2009), http://aalsfar.com/statistics/2009dlt/gender.html, *archived at* http://perma.cc/LX65-CVAJ (62.2% of law faculty identify as male); http://aalsfar.com/statistics/2009dlt/race.html, *archived at* http://perma.cc/X8GG-PLYK (71.5% of law faculty identify as white).

[7] Chris Chambers Goodman & Sarah E. Redfield, *A Teacher Who Looks Like Me*, 27 J. Civ. Rts. & Econ. Dev. 105, 116–19 (2013).

[8] *Id.* at 129; Luz E. Herrera, *Challenging a Tradition of Exclusion: The History of an Unheard Story at Harvard Law School*, 5 Harv. Latino L. Rev., 51, 118–19 (2002).

[9] *See* Rachel F. Moran, *Diversity and Its Discontents: The End of Affirmative Action at Boalt Hall*, 88 Cal. L. Rev. 2241, 2297–99 (2000).

[10] Nisha C. Gottfredson, A.T. Panter, Charles E. Daye, Walter F. Allen & Linda F. Wightman, *The Effects of Educational Diversity in a National Sample of Law Students: Fitting Multilevel Latent Variable Models in Data With Categorical Indicators*, 44 Multivariate Behav. Res. 305, 319 (2009) (concluding that "racial diversity increases intergroup contact . . . and that intergroup contact increases perceived diversity of ideas . . . and decreases prejudiced attitudes.").

[11] *E.g.*, Antoinette Sedillo López, *Beyond Best Practices for Legal Education: Reflections on Cultural Awareness — Exploring the Issues in Creating a Law School and Classroom Culture*, 38 Wm. Mitchell L. Rev. 1176, 1178, 1180–81 (2011–2012); Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 Clinical L. Rev. 33, 38–48 (2001).

[12] Meera E. Deo, Maria Woodruff & Rican Vue, *Paint by Number? How the Race and Gender of Law School Faculty Affect the First-Year Curriculum*, 29 Chicano/a-Latino/a L. Rev. 1, 18–24 (2010); *see also* Margaret E. Montoya, *Máscaras, Trenzas, y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 17 Harv. Women's L.J. 185, 201–06 (1994).

belong in, the world of people involved in the legal profession.[13]

Finally, classroom teaching techniques and modes of interaction in office hours may send negative messages to all students about the value of diverse students' input and messages to diverse students themselves about how much they "belong" in law school and, by extension, in the legal profession itself.[14] Evidence suggests that some teachers misuse the Socratic Method in a way that favors white students and male students, and white male students in particular.[15] If used too aggressively, it will favor students for whom this is a comfortable mode of discourse. Research suggests that those students are more likely to be white males.[16] This problem is not inherent in the Socratic Method if it is used in accordance with the practices of good teaching generally and Socratic teaching specifically, as described in this book.[17]

Even when the Socratic Method is implemented well, faculty must be alert to call on students in ways that are gender and race neutral. Studies show that in higher education generally, teachers interact with males and females in ways that tend to reinforce women's invisibility and silence in the classroom[18] and similar patterns have been documented in the law school classroom. It is likely that this is also true for other categories of diverse students.[19]

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[13] Cruz Reynoso & Cory Amron, *Diversity in Legal Education: A Broader View, a Deeper Commitment*, 52 J. Legal Educ. 491, 496 (2002).

[14] Kevin R. Johnson, *Importance of Student and Faculty Diversity in Law Schools: One Dean's Perspective*, 96 Iowa L. Rev. 1549, 1557 (2011).

[15] Nancy E. Dowd, Kenneth B. Nunn & Jane E. Pendergast, *Diversity Matters: Race, Gender, and Ethnicity in Legal Education*, 15 U. Fla. J. L. & Pub. Pol. 11, 37 (2003) [hereinafter Dowd et al., *Diversity Matters*].

[16] Male students may be more willing to "take up space" and speak, even when they are not certain of the answer or are not on topic. *See* Stephanie M. Wildman, *The Question of Silence: Techniques to Ensure Full Class Participation*, 38 J. Legal Educ. 147, 151 (1988).

[17] *See, e.g.*, Chapter 5, Section A, *The Socratic Method*, below.

[18] These phenomena have been documented in higher education generally, *e.g.*, Mary Frank Fox, *Women and Higher Education: Sex Differentials in the Status of Students and Scholars, in* Women: A Feminist Perspective 238–55 (3d ed., Jo Freeman ed. 1984):

In faculty interaction with students, a "subtle and silent language" differentiates males and females. . . . Studies indicate that, in their interactions with students, faculty encourage male compared to female students by making more eye contact with the men, nodding and gesturing in response to questions, assuming a position of attentiveness when men speak, and taking a location near male students. . . . Observers frequently note that in classroom discussions, even the brightest female students tend to remain silent, while their male counterparts dominate. . . . Faculty members promote and reinforce the invisibility of female students by subtle practices such as calling directly on males but not females, addressing men by name more often than women, giving men more time to answer a question before going on to another student, interrupting women more frequently or allowing them to be interrupted, and crediting the contributions of male more often than female students.

Id. at 244 (quoted in Stephanie M. Wildman, *The Question of Silence: Techniques to Ensure Full Class Participation*, 38 J. Legal Educ. 147, 147 n. 1 (1988)).

[19] Sari Bashad & Maryana Iskander, *Why Legal Education is Failing Women*, 18 Yale J.L. & Feminism 389, 403 (2006); *see, e.g.*, Morrison Torrey, Jennifer Ries & Elaine Spiliopoulos, *What Every First-Year Female Law Student Should Know*, 7 Colum. J. Gender & L. 267 (1998).

It is a best practice for both institutions and individual teachers to ensure that all teaching methods are used equally and fairly for the benefit of all students.

Whatever teaching methods are employed, they should reflect eight characteristics of good teaching: respect, expectation, support, collaboration, inclusion, engagement, delight, and feedback.[20] The general approach to the material, if it is to create an inclusive environment, "cannot revolve solely around white men. Nor should [it] predominantly address the legal concerns of the wealthy, to the exclusion of the interests of middle class Americans or the poor."[21]

Different approaches might be effective in creating a more inclusive environment. One is to provide more context for students' learning to help them understand the material within their own frames of reference. Doing so "reduced feelings of alienation because they helped students relate the new material to their prior experiences, allowed students to express their perspectives, and showed students how to use the new material on exam questions and in situations they will face when they are attorneys."[22] Three ways to provide context are relating the information to students' lives and backgrounds, helping students "own" the material, and, from those, helping students translate the material into their own lives.[23] Three teaching strategies for providing more context are experiential learning exercises, writing exercises, and collaborative learning exercises.[24] All of these methods should be paired with formative feedback, to ensure that all students are learning what is being taught.

Collaborative learning, in particular, is a commonly referenced method of creating an inclusive environment. "Participatory, cooperative, collaborative methods that actively involve students in the learning process appear to be particularly critical, both to benefit from diversity in the classroom and to ensure equal learning opportunities and outcomes."[25] These methods, which address *who* speaks in the classroom, should be paired with methods that address who is spoken *about*: "[t]o the extent legal education focuses on the study of American law, the legal accomplishments of women and people of color should be explicitly included in the curriculum."[26] In addition, "strategies for changing [law school] culture may [include] 'little' things like the pictures on the wall that convey the images of who belongs."[27]

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[20] Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, J. L. EDUC. 75, 87–110 (2002).

[21] Dowd et al., *Diversity Matters*, at 41.

[22] Paula Lustbader, *Teach in Context: Responding to Diverse Student Voices Helps All Students Learn*, 48 J. LEGAL EDUC. 402, 404 (1998).

[23] *Id.* at 405.

[24] *Id.* at 412–14.

[25] Dowd et al., *Diversity Matters*, at 39.

[26] *Id.* at 41.

[27] *Id.* at 37.

c.   Conclusion

While it is a best practice to consider the impact of pedagogy on all students in the classroom, many approaches are available for creating an inclusive, equitable, and welcoming environment. As the "humanizing legal education" movement has suggested, legal education does not have to be an alienating, hostile, unpleasant experience in order to effectively prepare lawyers for the practice of law. The ways in which that can be accomplished are varied. In addition to the strategies described here, more ideas will develop as legal educators give more thought to the topic and as institutions place more value on this goal.