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## REMAKING THE MATRIX: LEARNING FROM THE LEGITIMACY TRAP TO TRANSFORM LEGAL EDUCATION

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### INTRODUCTION

Asad Rahim’s *The Legitimacy Trap* dislodges a basic misunderstanding about the origins of the prevailing mode of legal education. Contrary to widespread belief, the Socratic method, along with the curriculum and modes of assessment associated with it, was *not* adopted “because it offered the best legal training to future lawyers.”<sup>1</sup> Instead, Rahim documents how its inventor, Christopher Langdell, sought to legitimate law schools by mimicking the scientific method in vogue at the time. Langdell’s ability to institutionalize his unsubstantiated approach to teaching at Harvard—despite widespread consternation of faculty, students, and practicing lawyers—depended upon the power he and his supporters wielded, over an extended period of time. What enabled the model to become the bedrock of law schools across the country, Rahim shows, was the rise and support of the corporate law firm.<sup>2</sup>

Rahim invokes a process of legitimation to explain the durability of this nineteenth-century pedagogy, in the face of blistering critique from luminaries such as Karl Llewellyn and a modern day “surround-sound chorus of voices”<sup>3</sup> calling for fundamental reform. Law schools’ preoccupation with prestige and precedent has cemented in place a mode of legal education that, as Lani Guinier and I wrote in *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity*, “over-emphasizes adjudication . . . and develops too little of the institutional, interpersonal, and investigative capacities that good lawyering requires.” Law schools continue to “breed a culture of competition and conformity” that “is remarkably static, non-adaptive, and resistant to change, even in the face of strong pressure from significant constituents of legal education and evidence that law schools are not fulfilling

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<sup>1</sup> Asad Rahim, *The Legitimacy Trap*, 104 B.U. L. Rev. 1, 48 (2024).

<sup>2</sup> *Id.* at 12, 47; see Robert W. Gordon, *Legal Thought and Legal Practice in the Age of American Enterprise, 1870–1920*, in PROFESSIONS AND PROFESSIONAL IDEOLOGIES IN AMERICA 70, 72 (Gerald L. Geison ed., 1983).

<sup>3</sup> Rahim, *supra* note 1, at 8.

core aspects of their mission.”<sup>4</sup> Law school is preparing people for a set of professional roles that do not meet the demands or needs of a changing society.

Rahim spells out “the folly of relying on exclusionary pedagogical practices to create an inclusive legal education.”<sup>5</sup> This gladiator model, initially designed to exclude all but white male elites, has thwarted efforts to make law schools more diverse and inclusive.<sup>6</sup> Rahim masterfully articulates the mismatch between the prevailing legal pedagogy and the needs and interests of a diverse student body.

There is an additional problem, however, with law school’s narrow preoccupation with legitimation defined by precedent and prestige. Legal institutions are themselves facing a crisis of legitimacy within the larger polity. We are teaching law students to accept and function within legal institutions that are widely acknowledged to be dysfunctional, unjust, and in need of transformation.

Across a wide variety of fields, there is growing concern that legal institutions are failing to meet their stated goals. Courts, lawyers, and government face increasing levels of public distrust.<sup>7</sup> Access to justice is a pervasive problem, meaning that the way we teach the law—as if people with legal problems have legal counsel who adjudicate their claims before a judicial arbiter—bears little relationship to the way most people experience legal issues—for many in overburdened courts without legal representation.<sup>8</sup> Yet, we continue to teach our students to accept and operate within legal institutions we know to be deeply problematic. Many of us offer critiques of the doctrines we teach, but critique alone, unaccompanied by ways to promote change, can foster cynicism and despair in our students.<sup>9</sup>

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<sup>4</sup> Susan Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity*, 60 VAND. L. REV. 515, 516, 519-20 (2007).

<sup>5</sup> Rahim, *supra* note 1, at 49.

<sup>6</sup> See generally Susan P. Sturm, *From Gladiators to Problem Solvers: Connecting Conversations About Women, The Academy, and the Legal Profession*, 4 DUKE J. GENDER L. & POL’Y 119 (1997).

<sup>7</sup> Public trust in the courts is reported to be at historically low levels. Katy Lin & Carroll Doherty, *Favorable Views of Supreme Court Fall to Historic Low*, PEW RSCH. CTR. (July 21, 2023), <https://www.pewresearch.org/short-reads/2023/07/21/favorable-views-of-supreme-court-fall-to-historic-low/> [<https://perma.cc/XRH9-NGW9>]; Carol Funk, *Public Confidence and the Courts: Pillars of the Rule of Law*, AM. BAR ASS’N (Feb. 17, 2023), [https://www.americanbar.org/groups/judicial/publications/appellate\\_issues/2023/winter/](https://www.americanbar.org/groups/judicial/publications/appellate_issues/2023/winter/) (“Recent polling indicates staggering declines in public confidence in federal courts. Public confidence in state courts likewise appears to be dropping to new lows, with substantially more individuals now viewing those courts unfavorably as providers of equal justice to all.”).

<sup>8</sup> See generally Kathryn M. Young, *What the Access to Justice Crisis Means for Legal Education*, U.C. IRVINE L. REV. 811 (2021); Colleen Shahan et. al, *Judges in Lawyerless Courts*, 110 GEO. L. J. 509 (2022).

<sup>9</sup> Susan Sturm, *Lawyering Paradoxes*, 62 SANTA CLARA L. REV. 175 (2022).

We have to figure out how to equip our students to navigate what I have called the “justice paradox”: legal institutions are simultaneously a crucial means for pursuing justice and a source of the injustice. They have to learn how to both work with and within legal institutions that purport to advance justice, while they also challenge the way those institutions carry out their justice mandate and work to transform them. But the prevailing methodology, treating appellate cases as the mode of inquiry and engagement with the law, fails to help students figure out how to both function within these institutions and to work to transform them.<sup>10</sup>

REWIRING THE LAW SCHOOL MATRIX FROM THE BOTTOM UP AND THE INSIDE  
OUT

Asad suggests three reforms to create the conditions under which legal education to meet the challenges they face: (1) abandon the U.S. News and World Report’s “Best Law Schools” ranking system, (2) implement incentive structures that substantively reward teaching innovation, and (3) cap the student-faculty ratio in 1L courses. These are important steps toward transformative change. They do not, however, go far enough.

The transformative changes needed to achieve inclusive and effective law schools will require strategies and solutions that take account of power and culture, as Asad does so effectively in his history and current-day critique of the Langdellian law school. Unless we find ways to change the culture that reproduces the legitimacy trap, the incremental changes Asad advances will not be adopted or, if they are, they will be undercut by the prevailing culture. We have to rewire the law school matrix—“the complex web of rituals, habits, and shared assumptions that create a culture of legal education resistant to change.”<sup>11</sup> This kind of change calls for a redefinition of the law we are teaching our students to embrace the definition offered by my mentor, Professor Robert Cover: we have to chart the relationship between the “is,” the “ought,” and the “what might be.”<sup>12</sup>

The path to transformation must take account of the factors that play such a central role in producing the legitimacy trap. We have to undertake a power and culture analysis to locate the prospect for real change. Where do the levers for change lie? What incentive structures and norms need to change, and what will make that possible? Transformative change requires a theory of change that takes account of where power and influence might lie to push for transformative change. The challenge is to amplify the visibility and influence of the bottom-up efforts undertaken by those who experiment with transformative of change, along with adopting the kind of top-down change proposed by Rahim.

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<sup>10</sup> For a fuller elaboration of the justice paradox, along with other paradoxes that effective lawyers must learn to navigate, see *id.*

<sup>11</sup> Sturm & Guinier, *supra* note 4, at 525.

<sup>12</sup> Robert Cover, *The Supreme Court 1982 Term—Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4, 10 (1983).

BUILDING [AND MULTIPLYING] SUBCULTURES OF CREATIVITY AND  
TRANSFORMATION

The strategy that I have seen take root in my own institution and in others involves creating subcultures that invite students to learn how to operate within the dominant legal culture while also experimenting with reinventing their practice. One effective driver of this process is the involvement of people with firsthand knowledge of law's operation and impact, such as people directly affected by incarceration, in the design and implementation of legal pedagogy. For example, I now co-teach a course called Breakthrough Advocacy Through Transformative Learning Exchange ("BATTLE"), created by Alejo Rodriguez. Alejo is an advocate, teacher, researcher, and poet who also spent 32 years in prison. BATTLE brings together law students and advocates directly affected by incarceration to learn with and from each other, and in the process to undertake ways of transforming the way the legal system addresses legal problems. For many students, this space gave them the chance to reimagine their own relationship to law and power, and became a springboard for new projects that would push for fundamental change in legal institutions and pedagogy.

By building a constituency among students, faculty, and advocates, BATTLE is having a ripple effect on faculty and students at my law school. It has contributed to the decision of student editors of the Jailhouse Lawyers Manual, originally written only by law students to provide legal knowledge to people who are incarcerated, to reimagine every chapter with the co-authorship of someone with firsthand expertise dealing with the legal issues of each chapter. BATTLE has also given rise to a movement to introduce Trauma Informed Lawyering to students, cutting across clinics and podium courses.

These small steps have created a constituency for change, matched by similar programs being undertaken at law schools around New York City. With the leadership of Jocelyn Simonson, formerly incarcerated advocates have developed teaching modules and taught classes at Brooklyn Law School in every section of criminal law. These classes have been transformative for many of the students, who are now clamoring for more. A group of centers in law schools around the city have begun collaborating—starting with sharing ideas, connecting faculty and students, and developing shared vocabulary and practices. The intention is for that group to introduce bottom-up changes in the core curriculum that will lay the groundwork for broader change.

Experiments at the margins can provide a constituency for change in the law school's core curriculum. For example, as a companion to a traditional Civil Procedure course, students can participate in Civil Procedure Through a Justice Lens, a faculty-supported, student lead workshop that invites students to examine critically the cases and concepts that comprise the dominant curriculum, and to explore ways that lawyers can push for change. They involve lawyers and other legal actors (including advocates who have experienced the civil legal system first hand) in brainstorming about ways that lawyers have and can create momentum for change.

These small steps alone will not transform the larger culture. But what makes them sustainable is that they are building a subculture within the law school environment that rewires, at least within those spaces, the values, practices, and incentives shaping students' growing understanding of the law. When those micro-spaces of innovation connect across institutional boundaries, that step can build the kind of movement for transformation that will be needed to counteract the forces of inertia. This approach to change puts into practice the approach to change described in *Emergent Strategy*: "how we intentionally change in ways that grow our capacity to embody the just and liberated worlds we long for."<sup>13</sup>

The changes proposed in *The Legitimacy Trap*—smaller classes, support for curricular innovation, and rejection of rankings—would pave the way for the kind of cross-institutional experimentation needed to produce culture change. And by building sub-cultures that embody the changes we want to see, across different institutions, we can connect to push for change from inside and outside the institution. Organizing both bottom-up and top-down efforts, within and across institutions, will be necessary to build momentum for transforming legal education so it can become a site of full participation and meet the challenges posed by a troubled world.

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<sup>13</sup> ADRIENNE MAREE BROWNE, *EMERGENT STRATEGY: SHAPING CHANGE, CHANGING WORLDS* 4 (2017).