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Introduction

I began my Democracy Lab journey looking to explore how legal writing could, in the unidirectional conversation it represents, be a force in breaking down divisive political speech and extremism. I understood that it was a rare occasion that the truisms expressed in the U.S. Constitution had ever been achieved. At the same time, I thought that if people who saw themselves as guardians of those fundamental principles could just *explain why* racism, misogyny, homophobia, climate science denial, or any of a number of social justice concerns failed to meet the obligations of this country's founding documents we could change the world for the better. As a law professor, I firmly believed that there must be a pathway, or many, to healing the deep rift between the constitutional mandates on which our democracy is based and the everyday experiences of people living in America.

Early in the process of researching American democratic systems and rhetoric, I found myself directed time and again to the idea that the roots of political and social change were steadfastly located in empathy, specifically a version of empathy that allowed room for all perspectives to be seen and heard – acknowledged if not agreed upon. When I realized that my original project idea was too large to adequately explore in this venue, I focused my attention more narrowly to legal education. Having run a law school legal clinic for a decade, teaching empathy was a corner stone of my pedagogy. Could we not use empathy to subvert the traditional pedagogies of the legal academy and to make the law classroom a locus of justice-based societal change? Empathy could be the answer for doctrinal legal education just like in clinical education! As an early step in their professional socialization, law stud-

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ents could explore within the protective bubble of the classroom how legal principles manifest in lived experiences. Legal education could become transformative, a force for breaking down political extremism with dialogue, compassion, and understanding. And, inspired by Myles Horton's description of the power of democratic learning spaces,[1] I considered that there might be a pathway to dismantling systemic and institutionalized bigotry: empathy practiced and exercised in a democratic classroom could create the space needed for dialogue and understanding while also disrupting legal education's complicated and problematic legacy.

It did not take me long to realize that my optimism might be misplaced. What began as a meditation on and experiments in using empathy as a pedagogical tool quickly exposed themselves as an exploration of my own values. That exploration, in turn, gave rise to the central question of this reflection: How can we ask institutionally minoritized and marginalized students to continue to do the emotional labor of making space for understanding or perspective taking when they have been asked time and again to carry the weight of educating those around them?

I.

There is a perception of law school that reflects the rigorous neutrality of John Housman's fictional contracts class in the 1973 film *The Paper Chase*.[2] First year Harvard law students shuffle into each class with Professor Kingsfield ready to be humiliated in the face of his great intellect. Twenty-eight years later, *Legally Blonde*[3] offered the world a somewhat different, perhaps kinder and gentler, Harvard, still elitist but not quite as fearsome as it was in 1973. And, of course, many of us have our own personal and individual experiences that inform the way we think about legal education. Whatever your understanding, in its most didactic and historical form, the American law school arose from a need to accomplish two things: to give the profession legitimacy as an intellectual endeavor and to gatekeep who was allowed to enter into that profession.[4]

[1] Horton, *The Long Haul: An Autobiography*.
[2] *The Paper Chase*, directed by James Bridges.
[3] *Legally Blonde*, directed by Robert Luketic.
[4] *See* Coronado, "Envisioning Reparative Legal Pedagogies," 76; Williams, "Gatekeeping the Profession."

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I want to draw a distinction between the legal profession, the legal system, and legal education. The institution of the legal system, by which I mean the courts, trials, etc., and the institution of the law school are independent parts of a larger whole, the profession. All three are both dependent on and informed by the others, inextricably woven together, iterative and dynamic. Members of the profession come predominantly out of law schools, an environment rife with institutionalized exclusion, bigotry, and elitism.[5] Law students become lawyers some of whom, in turn, become judges, policy makers, and law professors. As we act as members of the profession, the biases inherent in the way we were educated along with our own biases, judgments, and assumptions can travel with us shaping how we practice law, how decisions are made, and how laws are written and enforced.[6] Eventually, all that day-to-day movement finds its way back into the law classroom.[7]

Legal education has traditionally had its own pedagogy, the dreaded Socratic method paired with casebook analysis.[8] Michael Hunter Schwartz and Paula Manning describe Socratic methodology as

> Law professors who use this method ask their students many, many questions. Professors select one student… and typically engage in a one-on-one dialogue… asking the student to explain an assigned statute or court opinion, to dissect the court's reasoning, the public policy underlying the statute or the holding, and to identify and analyze the issues in a hypothetical.[9]

From this simple description it is easy to see that a Socratic style is focused on moving students toward a "right" answer or explanation. The description also suggests that the professor has determined what that answer is and what questions need to be asked to get the class to it.

Popular culture is not known for downplaying the trauma associated with Socratic methodology, as Professor Kingsfield aptly demonstrated. And, while Socratic method ostensibly teaches critical thinking skills, rigorous Socratic lessons serve several additional lofty

[5] *See generally* Coronado, "Envisioning Reparative Legal Pedagogies"; Kanu, Exclusionary and Classist."

[6] Social Distortion, "Ball and Chain," ("But wherever I have gone/I was sure to find myself there…").

[7] Morrison, "Democratic Classrooms: Promises and Challenges." On a societal scale, American culture and the curricular evolution of public schools have long reflected and informed each other.

[8] *Merriam-Webster Dictionary*, "Socratic method." The entry defines the term as an argumentative form of dialogue between individuals driven by questions and answers. Many law professors are finding ways to adapt their doctrinal courses to non-Socratic methodology. The American Bar Association's accreditation standards also recognize that a well-rounded legal education reflects a multitude of active learning pedagogies. *See generally* American Bar Association, *Standards and Rules of Procedure for Approval of Law Schools 2023-24*. John Houseman's character in *The Paper Chase* provides the quintessential example of how terrifying Socratic methodology can be.

[9] Schwartz and Manning, *Expert Learning for Law Students*, 104.

purposes like teaching how to read case law, providing a foundation for topics tested on the licensing exam, and fostering persuasive argumentation skills.

What many legal educators and scholars have often ignored are the ways in which Socratic method has perpetuated violence and reinforced harms against minoritized people, both inside and outside the classroom.[10] Some law professors teach their courses as though the historical, societal, and economic contexts in which legal decisions are made (or even how legal education developed as a gatekeeping tool)[11] are irrelevant. A Socratic exploration of 'law' can foster the misleading impression that both law and the legal system are neutral and rational – legal doctrine, professional ethics, and lawyering practice represent a reasoned and reasonable evolution of a system free from the influence of human emotion. Such a pedagogy can employ a complicated system of 'impartial' smoke and mirrors to hide the brutal social history of legal education.[12] For example, first-year law students are introduced to the "reasonable man standard," a hypothetical human who responds to a legal injury in a way that is reasonable under the circumstances; he represents, the student is told, an objective measure against which we can neutrally apply the law. Aside from the obvious gender-based reference point, the reasonable man, in legal imagination, looks a whole lot like the people who designed and built the legal system – white, male, land-owning, and probably married to a woman. While the "reasonable man" eventually became became the "reasonable person", a standard described as how a reasonable person bearing the characteristics of that plaintiff would respond to the legal harm, it neither solves the problem of lack of neutrality nor addresses the influence of biases on decision-making.

Like any normative system the lived experiences of everyone involved in its creation – legislators, litigants, lawyers, judges, juries, and, of course, students and professors – shape each facet of law and the profession, and like any normative system. contrary to the illusion of impartiality. Every participant is human and therefore bound by human flaws and foibles, biases and assumptions. While purportedly objective and value-free, legal education and its pedagogies have played a primary role in a socialization process that erases many lived experiences and realities while supporting unacknowledged white, male, heteronormative, and class-based perspectives.[13] "Law" as it stands reflects the dominant or critical values of that moment.

[10] There are law professors and law school administrators tackling institutionalized and systemic problems within their institutions. There is a growing body of scholarship on the issues as well as concrete efforts to make progressive change within the academy. However, as Antonio Coronado points out in "Envisioning Reparative Legal Pedagogies," many of the revolutionary re-imaginings of legal education are just that: imaginary.

[11] *See generally* Crenshaw, "Toward a Race Conscious Pedagogy in Legal Education."

[12] Gerdy, "Clients, Empathy, and Compassion," 25.

[13] Coronado, "Envisioning Reparative Legal Pedagogies," 68. Coronado argues that the current wave of "book-banning, historical revisionism, and identity subjugation" are reflected in long-held traditions in legal education that defend institutionalized white power. *See also* Williams, "Gatekeeping."

I am not the first to ask whether empathy can be an effective pedagogical tool in a law school classroom. The pedagogical model of clinical legal education, originating in the 1960s, often endeavors to teach empathy for marginalized peoples and communities. 'Client-centered representation' is the buzz phrase for describing legal representation free from moralizing judgments by the student attorney. In the 1980s and '90s, various movements in legal scholarship examined how client narratives and counter-narratives (and consequently, how lawyers present those narratives) influence legal fact-finding and decision-making.[14] In turn, those conversations expanded to include critical legal theory on race, class, gender, religion, and sexual orientation. Each developmental step toward critical deconstruction of the law, legal processes, and lived experiences acted as catalysts for serious academic study.[15] Whether or not the academy used the word "empathy" to describe the evolution of critical theory, each step moved students closer to examining flaws in the legal system.

Many of these early efforts to influence how future clients experienced the legal system did not address harms perpetuated against students in the law school itself. It is interesting to consider that the institution responsible for fostering successive generations of attorneys was willing to address disparities in the legal system but was (and arguably remains) unwilling to address the fundamental principles around which law schools were formed.[16] While exposing students to a version of the legal system that was repressive, oppressive, and in need of correction, quiet patterns of institutionalized violence perpetuated against minoritized students remain. Many students continue to find themselves in classrooms where they are forced to discuss systems of power in neutral terms while simultaneously experiencing those classrooms and systems as decidedly not neutral.[17]

II.

As a student of what he calls "moral psychology," Paul Bloom juxtaposes emotional empathy with cognitive empathy, drawing the distinction between *knowing* that someone has had different experiences from you (cognitive) and feeling those experiences together with or on behalf of another (emotional).[18] The emotional experience of standing in another's shoes is beautifully described in the final pages of *To Kill A Mockingbird*[19] as Scout recognizes how Boo Radley saw their street and neighborhood:

[14] Cover, "Nomos & Narrative." Robert Cover (no relation) may have jump-started the trend of scholarly interest in narrative with this 1982 essay. In 2018, Cambridge University Press published a compilation of essays on the topic: Hanne and Weisberg (eds.), *Narrative and Metaphor in the Law*.

[15] hooks, *Teaching Community: A Pedagogy of Hope*, 46.

[16] *See generally* Coronado, "Envisioning Reparative Legal Pedagogies."

[17] Coronado, "Envisioning Reparative Legal Pedagogies."

[18] Bloom, *Against Empathy*, 16-17.

[19] Lee, *To Kill a Mockingbird*

> A boy trudged down the sidewalk dragging a fishing pole behind him. A man stood waiting with his hands on his hips. Summertime, and his children played in the front yard with their friend, enacting a strange little drama of their own invention. It was fall, and his children fought on the sidewalk in front of Mrs. Dubose's…. Fall, and his children trotted to and fro around the corner, the day's woes and triumphs on their faces. They stopped at an oak tree, delighted, puzzled, apprehensive. Winter, and his children shivered at the front gate, silhouetted against a blazing house. Winter, and a man walked into the street, dropped his glasses, and shot a dog. Summer, and he watched his children's heart break. Autumn again, and Boo's children needed him.
>
> Atticus was right. One time he said you never really know a man until you stand in his shoes and walk around in them. Just standing on the Radley porch was enough.[20]

For the purposes of this reflection, I adopt Bloom's description of emotional empathy, that is, having an emotional experience of the world as you think someone else might just as Scout was able to experience Boo's love for his children.

Empathy tacitly acknowledges the complex relationship between the existence of self and the existence of 'other.' If, as the definition of empathy suggests, we ask students to recognize experiences or context different from their own, then we accept that othering can be a natural consequence of making meaning of the world around us. There are members of an identified racial, class, sexuality, or gender group and those who do not fit those characteristics – in-group and out-group.[21] And, as humans with many connecting identities we can be simultaneously in-group and out-group. However, 'othering' becomes problematic when it is used to denigrate and/or dehumanize people from perceived out groups.[22] To say, "I don't see an 'other,' I just see a human," while perhaps well-intentioned,[23] is to deny the many identities of that person and to suggest that one is not ready or willing to believe someone's lived experience.

Chimamanda Ngozi Adichie's 2009 TED Talk *The Danger of the Single Story*[24] explores the impact of stories on human understanding. Adichie discusses how, when we repeatedly and consistently tell one story of a group, we erase the messy complexity of the human experience. Any single person's humanity is effectively reduced to one dimension; this is

[20] Lee, *To Kill a Mockingbird,* 321-322.

[21] Brome et al., "Saying 'I Don't See Color.'"

[22] Toni Morrison provides a comprehensive analysis of the action of 'othering' in all its contradictions in *The Origins of Other*, a published compendium of lectures given at Harvard University.

[23] There is a significant body of work that explores the nature of microaggressions like claiming to be 'colorblind.' A 2012 article summarizes much of that research: Apfelbaun et al., "Racial Color Blindness: Emergence, Practice, and Implications."

[24] Adichie, "The Danger of a Single Story."

equally accurate for large groups of people with similar characteristics or cultures.[25] On the other hand, multiple stories of the positive and negative, personal and political, accomplishment and failure, and the broad spectrum of human experience have the opposite effect: rather than a flattening, multiple stories demonstrate the full humanity of a life lived.

Adichie explains the Igbo word *nkali* as roughly translated to mean "to be greater than another."[26] She uses nkali to describe not just the power to tell the story but also the power to make that story definitive.[27] Nkali has wide spread implications. For example, James Coleman's 1966 study on the impact of inequities in American education concluded that cultural and home life factors contributed more to disparities in educational achievement than did unequal resources.[28] The cascading impact of Coleman's conclusions? Decades of studies that shifted the blame for racial inequality in education and achievement onto Black people.[29] Nkali. We can see the power of nkali in the current political environment. So far, Donald Trump's 2024 election rhetoric mirrors that in his first term from 2016-2020 and during his second run for president in 2020. Trump and his surrogates tell a single story of immigration: immigrants, particularly those with brown skin or Arab-sounding names, are criminals, insane, rapists, terrorists, murderers, pet-eaters. Nuanced stories have no place in Trump's depiction of the "other" who must be eradicated to protect the nation.

Adichie's talk raised for me the question of how to combat the danger of a single story in doctrinal legal education. The myth of neutrality, of one universally applicable definition of rationality or logic, is a dangerous single story. If the law reflects neutral principles and is administered in an unbiased manner, there is no need to listen to individual stories; the flaws are with the storyteller, not the institution. Empathy directly challenges law's single story by providing a counter-balance to nkali. We can create empathy by engaging in dialogue designed to inspire not only perspective-taking but also an emotional experience of understanding. We can join in this potentially transformative dialogue with the goal of reducing nkali or eliminating it altogether.

III.

If you conduct an internet search of the phrase "democratic classroom" you will be rewarded with a myriad of pedagogical tips, thought pieces, and critiques of the theory. As with

[25] Adiche, "The Danger of a Single Story," 12:57-13:07, 9:28-9:35. "[Y]ou show a people as one thing, and only one thing, over and over and that is what they become." Adichie tells the story of how she bought into a single story about Mexican immigrants and the shame she felt when she realized what she had done (8:25-9:25).

[26] Adiche, "The Danger of a Single Story," 9:53.

[27] Adiche, "The Danger of a Single Story," 10:12-10:15; Barnum, "The Racist Idea that Changed American Education."

[28] Coleman et al., "Equality of Educational Opportunity (Summary Report)."

[29] *See, e.g.,* Jensen, "How Much Can We Boost IQ and Scholastic Achievement?"

democracy generally, it can be hard to pinpoint exactly what a democratic classroom represents. I envision that a democratic learning environment engages students by promoting inclusion, voice, representation and participation. A professor may facilitate the conversation but the topics discussed or direction taken is driven by the needs and interests of participants.[30] While democratic classrooms come in a variety of shapes and sizes, all seek to deepen meaningful learning. For me, one of the most powerful goals of a democratic pedagogy is to share information through dialogue; dialogue supports critical thinking and shared responsibilities.[31] And, ideally, dialogue between and among majoritized and minoritized students would foster empathetic perspective-taking through greater understanding one of the other. As a theoretical matter, that puts a lot of pressure on the democratic classroom to solve society's ills.

To whom and about what one feels empathy are, as Paul Bloom suggests, directed by bias:[32] humans tend afford empathy to the people and things they value. Proving Bloom's point anecdotally, my biases certainly influence how much empathy I feel in any given circumstance. I have no desire to empathize when someone explains how inclusion is discriminatory on its face. My empathy lies with the lived experiences of minoritized people and those are the voices I want to amplify. As a result, a serious conflict exists between where my empathetic feelings lie and how I envision democratic learning environments. Specifically, I have no empathy for what I have heard called worldview discrimination, what students describe as not being allowed to express their conservative-leaning perspectives for fear of backlash. Students claiming worldview discrimination seem afraid that they themselves may or already have become the Other – powerless, excluded, holders of beliefs that have become irrelevant.[33] I have had students tell me directly that they are not interested in

[30] Marshall, "The Power of the Democratic Classroom, ("The democratic classroom fosters critical thinking, authentic participation, and social and emotional learning. It's a humanizing space…Part of creating a democratic classroom is being aware of how to set up our classrooms, establish community, and make space for students' diverse voices, opinions, and perspectives."); Learning for Justice, "Democratic Classrooms." Since I accessed the video on YouTube in March 2024 it has been removed from public viewing. The democratic classroom model fits nicely with graduate level education as it supports many of the principles of andragogy, theories of adult learning. Andragogy focuses on engaging adult learners in directing what they learn and making that learning relevant to everyday life: Knowles, *The Modern Practice of Adult Education: From Pedagogy to Andragogy*.

[31] hooks, *Teaching Community,* 44.

[32] Bloom, *Against Empathy*, 34. Bloom argues that we can value the lives of others and give others weight in our decision-making but the strength of our empathy tends to lessen as we move beyond those people and things we love most.

[33] Toni Morrison, "Being or Becoming the Stranger," in *The Origins*, 30. Drawing on Camara Laye's *The Radiance of the King,* Morrison discusses fear of otherness. She writes, "It allows us to… imagine anew what it feels like to be marginal, ignored… to be stripped of history or representation… In other words, to become a black slave." Morrison, "The Foreigner's Home," in *The Origins*, 109. See also hooks, *Teaching Community*, 27.

listening to the voices of minoritized and under-represented students, echoing broader politicized claims that white students are shamed and discriminated against when forced to listen to those voices.[34] As bell hooks so eloquently puts it, "The danger of sympathizing with the stranger is the possibility of becoming a stranger."[35]

Even as critical legal theories can foster empathy by explicitly naming imperialism, white supremacy, and capitalist patriarchy have undeniably shaped the American legal landscape, there are those who seek to continue centering the myth of neutrality. As I discuss above, Socratic dialogue centers the educator's choices, that is, the educator decides what is important in any particular lesson and, with guided questions, directs the students toward those conclusions, conclusions that carry an air of universality and rationalism. This is not to suggest that even a law professor using traditional Socratic method cannot choose to focus on the cultural, historical, and economic backgrounds of the legal lessons and, in fact, many do; the point being, of course, that the professor has made the choice to direct the conversation toward specific topics. Because a democratic dialogue would move between students, with the educator acting primarily as a facilitator to the student-led conversation, the elephant in the law classroom is whether an empathy-focused discussion can be successful.

IV.

A student's worldview is shaped by the many experiences they have over the course of their lifetime; in addition, each person lives within connected nests of cultural- and value-driven frameworks that they absorb over time.[36] I have worked with countless strong-willed students, many of whom share the personality trait of not wanting to have their minds changed for anything or anyone. This presents a challenge to implementing learner-focused democratic principles. If a democratic classroom rises from a presumption that there is room in every lesson for multiple voices with multiple perspectives, then inherently there is a danger of majority rule. In my ten years at the University of Wyoming my classrooms have tended to be dominated by white students with rural backgrounds; the population is also overwhelmingly politically and religiously conservative, straight- and cis-presenting. Dehumanizing othering sometimes hides in the voice of that majority; Ta-Nehisi Coates labels this behavior as an attempt to "confirm one's own self as normal."[37] In turn, minoritized students have not

[34] Maxine Greene explores the phenomenon of "negative freedom" in *The Dialectic of Freedom*. She describes negative freedom as the freedom from constraint, the freedom to do or say as one pleases in the face of feelings of powerlessness.

[35] Morrison, *The Origins*, 30.

[36] Hooyman and Kramer, *Living Through Loss,* 78. They define culture "broadly as a set of shared beliefs, values, behavioral norms and practices that characterize a particular group of people with a common identity."

[37] Coates, "Foreword by Ta-Nehisi Coates," in *The Origins of Other*, xii.

felt safe in pointing out the differences between their colleagues' worldviews and their own concealed or counter-narratives, exactly the impact I am trying to avoid.

Feminist journalist and writer Rose Hackman describes emotional labor as "identifying or anticipating other people's emotions, adapting yours in consequence, and then managing to positively affect other people's emotions."[38] Hackman explains that emotional labor "relies on the fundamental understanding that women should prioritize other people's experiences before their own.'[39] While Hackman's writing primarily addresses the role of women in heteronormative relationships, the behaviors she describes are applicable whenever the minoritized player is required to put their own emotions to work for someone else.[40] Can there be any work more traumatic than arguing for one's own worth against someone who is not ready or willing to hear and believe your stories, especially in light of their emotions, beliefs, and values? There is a tremendous psychological toll to being the person responsible to carry the weight of emotion management.[41]

In many ways, the practice of empathy reflects not only the ability to take on the perspective of another[42] but also the principles of self-awareness and self- forgiveness. Empathy comes both from others recognizing and being willing to believe another's lived experience. It also requires awareness of and reflection on ways we have not acted empathetically. Broadly characterized, empathy can be both externally sourced and self-referential, i.e., one offers empathy to another and one forgives oneself for not having empathy for self or others.[43]

A democratic educator seeks to dismantle systemic and institutionalized hierarchies built around race, class, gender, sexuality, and religion.[44] As a pedagogy I aspire to, how can I make space for all voices to be heard in a majority rules scenario where the illusion of neutrality is the given? Should I make room for the voices of dehumanization? Should empathy flow from the minoritized to majoritized in the name of creating understanding? The choices I make as an educator communicate my beliefs and values, including choices about who has the power and privilege to speak and about what.

How can we reconcile the principles of democratic education with the burden of emotional labor in the law school setting? Antonio Coronado names the disparate burden

[38] Hackman, *Emotional Labor,* 19.

[39] Hackman, *Emotional Labor,* 9.

[40] Sandberg, "The Art of Showing Pure Incompetence." Emotional labor is tied to the idea of weaponized incompetence, a manipulative way of approaching the world by behaving such that others will not ask you to do something. The tie is evident when a majoritized group refuses to educate themselves about or believe the stories of the lived-experiences of others.

[41] "Emotional Labor: The Metafilter Thread Condensed."

[42] *Merriam-Webster Dictionary*, "empathy." The entry defines empathy as both the action of understanding of the experience of another and the ability to be empathetic.

[43] *See generally* Givens, *Radical Empathy.*

[44] hooks, *Teaching Community*, 45.

imposed on minoritized students, staff, and faculty as "the onus of changemaking in legal education's white supremacist foundations and lasting curricula."[45] If minoritized students find themselves explaining why or arguing whether they are fully human, educators looking to disrupt the foundations of traditional legal education have failed. If intellectual trauma and violence are, as we know to be true, pervasive and persistent in the law school environment, can a democratic classroom model coupled with empathy interrupt that harm? In the words of Coronado, "Trauma is not a teaching tool."[46]

Intentionality in using empathy as a learning tool means connecting what happens in the classroom with what happens in the outside world. In contrast to the myth of legal education as untouched by emotion, history, geography, or economics, empathy suggests that we are bound to recognize how context influences the conduct of the profession; it invites us to explore how nkali manifests in the day-to-day interactions of the people around us. And it requires us to ask who holds power in the broad root structure of the American lawyer/legal system, who benefits from that power, and who is left out.[47]

It occurred to me as I worked through these questions for myself was that I was asking myself a moral question more than a pedagogical one – how much and to what extent is it okay for me to ask minoritized students to do the heavy lifting? Emotional empathy is, in many ways, reflective of morality. Most discussions of empathy center around how the more powerful can open themselves to hearing and believing the experiences of those less powerful. In this conception, empathetic concern explores how dominant cultures have failed not only to get the stories right but also then to work actively and intentionally toward correcting those failures. Empathy comes from learning. The morality of that learning is centered in who we expect to do the teaching and the reasons why we choose to teach empathy in the first place.

Asking for more work from minoritized students runs counter to the principles of the democratic classroom. In this context neutrality and morality are at odds. My morality will not allow me to be neutral in my teaching and learning spaces. I will pick and choose who is heard and when, and I will challenge people who behave in brutalizing ways – valuing equal air time makes sense only when paired with a failure to acknowledge how the law school environment supports and perpetuates violence against many of its students. It cannot follow that in democratic teaching and learning spaces that empathy is owed to the immoral and dehumanizing; oppression is not discourtesy.[48] And, as the person in the front of the room, I believe it is my moral responsibility to make sure that I am not giving a pass to oppression in the name of democracy. We do not and should not expect empathy to flow in the direction of minoritized to majoritized.

[45] Coronado, "Envisioning Reparative Legal Pedagogies," 77.
[46] Coronado, "Envisioning Reparative Legal Pedagogies," 71.
[47] *See, e.g.,* Adichie, "The Danger of a Single Story."
[48] Mayo, "The Tolerance That Dare Not Speak Its Name," 38.

Conclusion

The power an educator wields in the teaching and learning space is the ability to set up structures and scaffolding to dismantle from the inside the things that are too shameful to speak – systems that perpetuate danger, harm, and erasure. It is not a question of pedagogy, it is a question of morality. Who am I as both a moral actor and an educator? What are my responsibilities to the students in my teaching and learning spaces? Certainly, I am there to facilitate conversation and learning, but what does that look like in action, knowing what I know and believing what I believe about legal systems.

Law school is but one stone of many in a long road of educational spaces that justify existing institutionalized systems of oppression.[49] While I disagree with Paul Bloom that empathy has little use because of the influence of bias,[50] I agree whole-heartedly that to whom and when we show empathy reflects our own biases and judgments, our choices of when and with whom to engage. Empathy is a moral choice; if we choose not to exercise it, as educators we must attend to the consequences of those actions. What are the choices we are making and how do those choices reflect our values? Answering for ourselves these hard questions opens us up to transformation – the central goal of learning, and teaching.[51]

Postscript: July 2025

I wrote this reflection at the end of a year spent in the 2023-2024 Democracy Lab program at the University of Wyoming. I was the only person in the cohort with a legal background; my colleagues were undergraduate students, graduate students, professors in other departments, and community members. And yet, I cannot explain adequately the impact of the perspectives of those colleagues had on my definition of "democracy."

In the years since Trump's 2020 election loss, he was found liable for sexually abusing E. Jean Carroll, an American journalist and author.[52] In a different case, a jury convicted Trump of 34 felonies related to improperly influencing the 2016 presidential election.[53] Through the spring and summer of 2024 I listened to the wild and often unhinged political rhetoric that defines Trump's Make American Great Again movement. And, as the 2024 election drew closer I wanted to believe that the outcomes in Trump's court cases, along with his attempt to disrupt the 2020 election on January 6, 2021 would be enough to keep him from winning.

[49] *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973). The arguments rely on social science research suggesting poor children of color may not be capable of learning even if schools in low-income, racially divided neighborhoods were funded at the same level as schools in predominantly white areas.

[50] *See generally* Bloom, *Against Empathy*.

[51] Tompkins, *A Life In School*, 213.

[52] Neumeister et al. "Jury Finds Trump Liable for Sexual Abuse."

[53] Sisak et al., "Guilty: Trump Becomes First Former President Convicted of Felony Crimes."

Then, on July 1, 2024, the United States Supreme Court, led by the 6 conservative-appointed justices, ruled that the United States Constitution conferred upon a sitting president nearly absolute criminal immunity for acts undertaken as part of executive branch duties.[54] It was a devastating blow for many in the legal profession who had committed themselves to upholding constitutional principles. Liberal pundits could not talk loudly enough about the existential threat the ruling posed to American democracy. These same pundits argued that the Supreme Court held off releasing its opinion to ensure that Trump would not be criminally tried on the 4 counts of insurrection related to January 6, 2021 before the November election. As a result, and despite his history, Trump rode the wave of exoneration to election victory.

In the 7 months since Trump took office on January 21, 2025, the world has watched his regime systematically erase constitutional principles that were once considered inviolate. Stories of corruption and revenge in the regime filter through the news cycle on a nearly daily basis. Along with attempting to eliminate or redefine entrenched rights such as birthright citizenship and abortion access[55], Trump and his surrogates are implementing a coordinated campaign to destroy the federal government. The goal: to consolidate absolutely government power and to create a unitary executive. In the months since his inauguration, Trump has bypassed Congress in every way possible, signing executive order after executive rather than going through the legislative process, declaring well-established processes unconstitutional, attacking funding and curricula at private and public universities, eliminating federal departments, challenging the legitimacy of Article III courts,[56] and creating what amounts to a private highly funded secret police force through ICE that which is free from any governmental oversight. orderAnd in what has now become an unsurprising, if not infuriating, trend, the Supreme Court continues to rule in ways that expand executive power, limit Article III court jurisdiction and power, ignore Article I authority, and erase long recognized individual protections. Even the nation's congressional leaders seem to be clearing the way for the elimination of this country's 250-year old system of checks and balances.

Notable in the post-inauguration world is an absolute no-tolerance policy regarding diversity, equity, and inclusion initiatives. Grant funding for the National Institutes of Health, the National Science Foundation, the National Endowment for the Humanities, and many

[54] *Trump v. United States*, 603 U.S. ____ (2024). The appointments are as follows: George H.W. Bush nominated Clarence Thomas in 1981; George W. Bush nominated John Roberts and Samuel Alito in 2005 and 2006 respectively; and Donald Trump nominated Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett in 2017, 2018, and 2020 respectively.

[55] The stories of people illegally arrested and deported, the inhumane conditions in holding facilities like "Alligator Alcatraz," specious accusations of criminality, and a refusal to back down even when American citizens have been arrested are legion and beyond the scope of this paper. Heather Cox Richardson, a Boston College professor of American history, writes a daily newsletter called "Letters from an American" in which she discusses the connections between current politics and policy and United States history.

[56] US Const. art. III.

more is currently paused while Trump's minions review projects and applications for alignment with the administration's priorities. Any program, project, or initiative that even hints at providing support for minoritized and underserved populations faces elimination, even if the project is funded entirely by private organizations. Public universities, including the University of Wyoming, feel the pinch as state legislatures outlaw DEI in state institutions. Undergirding anti-DEI policy is an absolute acceptance that worldview discrimination against conservative thinking can be redressed only by a return to white-washed history and a return to meritocracy.[57]

As I edited the original reflection in this political atmosphere, I and several of my colleagues around the country were talking about how to ensure we were creating learning environments that did not perpetuate trauma against minoritized students. Even as we have discussed changing our vocabulary and reworking teaching styles, we cannot ignore the fact that Trump's policies seek to eliminate any acknowledgment of minoritization in every sphere of American life. Many of us wonder if and when students unhappy with the content of our courses will report us as violating their "rights." At the same time, intrinsically motivated changes in the culture of the profession are not possible if legal educators and others in the profession abdicate responsibility for what occurs in their classrooms, bowing to threats of retaliation from governmental authority. I am reminded, as I often am, of Audre Lord's powerful observation that we cannot dismantle the master's house using the master's tools.[58] As such, the conundrum remains – how do we do the work of fostering empathetic, well-rounded learning grounded in history in this atmosphere of heightened fear and scrutiny?

[57] *See generally* Litman, *Lawless: How the Supreme Court Runs on Conservative Grievance.*

[58] Lorde, "The Master's Tools Will Never Dismantle the Master's House."

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