



Teaching Diversity at Harvard Law School

Or: The education of a straight, white, cisgender, male, able-bodied, upper-middle-class lecturer on law

By David A. Hoffman

One of my favorite sayings about teaching is that we teach what we want to learn. That maxim has been especially true during the five years that I have been teaching the Diversity and Dispute Resolution course at Harvard Law School.

"I realize that it may seem odd," I said to my students on my first day of teaching this course, "that a straight, white, cisgender male from an upper middle-class background and with no apparent disabilities is teaching a diversity course." That evoked a few smiles, and so I continued, looking around at the highly diverse group of students who had signed up for the course. "I have come here as a learner — and I anticipate that there is much that we will learn from each other in this course."

Ordinarily, when I begin teaching a course, I try to appear confident — as if I know what I am doing. But on this day in 2017, I abandoned that pretense and admitted that the students and I were embarking on what might be an intense journey. We would be talking about difficult and painful issues — all the many ways in which difference can mean danger for people of color, women, and members of the LGBTQI+ community and all the ways in which difference is used by those in power to exclude, marginalize, and demean. I realized that I needed to bring humility, an open heart, and an open mind into this classroom each day, and to leave behind — to the extent possible — my white fragility, my male defensiveness, and the pretense of having earned the opportunity to teach law students

solely by my own efforts and without the tailwinds of privilege propelling me.

My anxiety was substantially allayed by teaching this course with a brilliant colleague who brought a lot more diversity into the room than I did. Rabiya Akande, the Teaching Fellow for my first two years of teaching this course, was a doctoral student at HLS whose work focuses on the legal history and political theology of Islam. Rabiya is Muslim and from Nigeria, and it was she who first suggested that we design such a course.

But before I explain the design of the course and our techniques for teaching it, perhaps I should describe the disturbing circumstances that led to our proposing the adoption of this course by HLS.

Background

In November 2015, HLS was shaken by a frightening racist incident — the defacing of photographic portraits of its African American law professors. This incident, which was investigated by the Harvard University Police as a hate crime, was a reaction to a campaign by *anti-racist* students who were trying to persuade HLS to abandon the law school's shield, which bore the coat of arms of a slave-owning family. That emblem — three sheaves of wheat — had been chosen by HLS to honor the Isaac Royall family, which in 1781 had donated the first funds for a law professorship at Harvard. Student demands to remove the sheaves of wheat from the shield began in October 2015 and raised awareness that the Royalls were a slave-owning family known for the brutal suppression of a slave rebellion in Antigua. The students placed

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strips of black tape over the sheaves of wheat in all the places where the HLS shield appeared on campus, affixing this notice next to the shield: “The slavers of Antigua and the Royalls burned 77 enslaved people to death in Antigua.”

On the morning of November 19, 2015, HLS students and faculty arrived to find that someone had systematically removed the black tape from the shields all over campus and placed it over the faces of the African American professors' portraits, which, along with the portraits of other HLS professors, line the hallway in Wasserstein Hall, the main classroom building.

This incident was terrifying in part because it came on the heels of police killings of Michael Brown in Ferguson, Eric Garner in New York, Tamir Rice in Cleveland, and Freddie Gray in Baltimore. Anti-racism protests erupted on the Harvard campus, and a group of students occupied a portion of Wasserstein Hall for six months, renaming it Belinda Hall in honor of one of the enslaved people “owned” by the Royalls. HLS Dean Martha Minow denounced the vandalism, describing racism as a “serious problem” at HLS.

At the time, I was teaching the fall-term mediation course at HLS with Rabiya as the Teaching Fellow, and she suggested expanding the material about diversity in that course. Within a few days, I drafted an outline for the Diversity and Dispute Resolution course, incorporated Rabiya's suggestions, and proposed it to the HLS curriculum committee, which approved it in record time.

Course design

Diversity workshops have been a staple of dispute resolution training for many years, with a particular focus on how cultural differences can impede understanding. The course that Rabiya and I envisioned was different. In addition to improving understanding, we wanted to focus on power — and more specifically, the ways in which socially constructed concepts of difference are used to justify oppression, reinforce privilege, and support the *status quo*. We decided to examine the relationship between difference and power in the setting of conflict because that's where lawyers and dispute resolvers have an opportunity to engage directly with diversity issues.

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Accordingly, we decided to use dispute resolution role plays to situate the conceptual elements of the course in real-world conflicts. One of the fringe benefits of this choice was that students had the opportunity to play the part of individuals whom they did not think they could identify with — e.g., the landlord in an eviction case or the employer in a race discrimination case.

We also decided to do everything possible to make the class a safe space for students to engage with each other on a highly personal level. This meant getting to know each other in a more three-dimensional way than law school classrooms typically permit.

The first exercise in the first class is called “Who’s Here?” and it involves everyone — including faculty — standing in a circle facing each other. People take turns stepping into the center of the circle, while naming a non-obvious facet of their identity (such as “vegetarian”) and inviting others to join them in the circle if they share that identity. In response to “Please join me in the middle if you like to dance,” for example, the dancers meet in the middle of the circle, and then everyone steps back. “Please join me if you are an only child,” someone says. Same procedure. Then “Please join me in the circle if you are a Buddhist.”

Some of the identities are touching: “Step forward if you lost a family member to cancer.” Others are amusing: “Please step into the circle if you are shy and dislike participating in exercises like this.” A few people step forward, and everyone laughs.

The best part of the exercise is debriefing it: “What did it feel like to name your identities?” “What might be the value of an exercise like this in a course about diversity?” The answers to the latter question often include seeing people more three-dimensionally,

seeing that we have unexpected commonalities, experiencing some vulnerability together, or laughing together. Some say it’s a bonding experience. Or all of the above.

After this exercise, the main focus of the first class is how to have “difficult conversations” that are constructive rather than destructive — a skill that involves separating intent from impact, promoting mutual curiosity, and learning how to critique a person’s statement or action without impugning their character. My HLS faculty colleague Audrey Lee serves as a guest speaker for this class and uses the ideas in the book by Douglas Stone, Bruce Patton, and Sheila Heen titled *Difficult Conversations: How to Discuss What Matters Most* as the framework for discussion.

The second class is focused on our personal narratives. Each student is asked to write about “an area of interest or activity about which you are passionate; a person in your life who greatly influenced you; an experience or an aspect of your background or heritage that shaped the person you became; or any other aspect of your life up to this point that seems salient to you.” Then, in class, the students talk in pairs about what they wrote and what they might wish to share with the class as a whole when we reconvene. We sit in a large circle and then go around the classroom, with each student taking two minutes to share, if they wish, what they wrote. After each student speaks, the student directly across from them asks a question about what the student said, and, after the student’s response to that question, the baton passes to the next student in the circle. The depth of sharing and connection that occurs in this circle is stunning — attributable in part to the sensitive and thoughtful questions that each student receives in response to what they share.

This combination of mutual vulnerability and mutual support enables us to have in-depth and sometimes difficult conversations about race, gender, sexual orientation, class, culture, disability, religion, and values. Each of those topics then becomes the subject of an entire class.

Two other topics in the course address all these types of difference — namely, (a) unconscious bias and microaggressions, and (b) the psychology of diversity and inclusion. We devote a class to each of these topics, with a particular emphasis on the Internal Family Systems (IFS) model of psychology,

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which teaches that our psyches have “parts” (i.e., subpersonalities) and that while some of our “parts” are idealistic and egalitarian, other parts of us may be judgmental and even carry around stereotypes that became imbedded in our consciousness at an early age and may result in our inadvertently committing painful microaggressions.

Several of the classes are led by guest speakers, such as the class on psychological issues in which our guest speakers are a biracial psychiatrist and a clinical social worker who is a member of the LGBTQ community. Several of the classes feature videos, such as a touching interview with a transgender child and a TED talk about intersectionality. One of the pedagogical goals is to vary the modes of learning — discussions, role plays, exercises, videos, etc. — to honor the diversity of learning styles that exists in every classroom.

Among the overarching messages in the course are these: differences are (a) contextual (e.g., my being Jewish feels very different when I am in a synagogue compared to when I am in a mosque); (b) relational (e.g., to consider a person “disabled” requires a norm of what it means to be “abled”); (c) socially constructed (e.g., my being white gives me unearned advantage because I live in a society that arbitrarily values whiteness and devalues people of color); (d) manifested at both “micro” and “macro” levels in society (e.g., people of color are individually subjected to microaggressions and also treated differently as a group, for example, when residential zip code is used as a factor in an artificial intelligence program used for criminal justice sentencing); (e) simultaneously expressed and therefore intersectional (e.g., being Black, *and* a woman, *and* a member of the LGBTQ community is a unique and specific identity that partakes of, but is not wholly defined by, any one part of that identity); and,

importantly, (f) implicate power relationships (e.g., our access to resources may be enhanced or limited by how much advantage or disadvantage our socially constructed, intersectional identities provide in the society we inhabit).

Several conclusions flow from this analysis. First, while our differences are ubiquitous (as Montaigne wrote, “the most universal quality [in the world] is diversity”), the meaning that we make of our differences, and how we respond to those differences, is a choice. Second, while differences have been used by those with power and advantage to oppress, identities defined by difference can also be a source of strength and pride. Third, in our focus on difference, we should not overlook the fact that what we have in common may be at least as important as the ways in which we differ. Fourth, by becoming more culturally competent, we can strive for a level of comfort with our differences such that they no longer stand in the way of our authentic human connection with others. And finally, because our most salient differences are socially constructed, they can also be deconstructed, and the resolution of conflict — at both the individual level and the more global level — often requires us to deconstruct the pernicious aspects and malicious uses of difference, while acknowledging and celebrating those aspects of our differences and identities that we cherish.

Assessment

The students’ anonymously submitted evaluations of the course have been consistently and enthusiastically positive. I attribute this not to the quality of my teaching but rather to the quality of interactions that the students have with each other. Much of the work in the course is small-group discussion, where highly personal experiences and perspectives are shared, and thus the students are called upon to take responsibility for each other’s learning.

One element of the course that has been particularly well received has been empowering the students to participate in deciding how certain aspects of the course are taught. For example, one of the class exercises is called a “privilege walk,” in which students step forward or back from a line in the middle of the room in response to prompts related to unearned advantage or disadvantage. (A typical prompt might be “Step forward if you can hold hands with a

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romantic partner in public without attracting attention” or “Step back if you are the first in your family to go to college.”) There are many ways to do this exercise — it can even be done with people in their seats, noting on paper how many “steps” forward and back they would take if they were on their feet. I discuss with the students, in advance, how they feel about doing this exercise — and we decide together whether to do it “publicly” or “privately.”

Another element of the course that students appreciate is balancing student participation, so that the less outspoken students are given opportunities to speak, while the more outspoken students take less of the classroom airtime. The typical solution to this problem in the law school classroom is cold-calling — i.e., calling on students, without warning, to respond to the professor’s Socratic questioning. But cold-calling, in my experience, undermines the students’ feelings of safety in the classroom. In the Diversity and Dispute Resolution course, we never use cold-calling. Instead, we foster balanced participation by using small groups for many of our discussions, and then asking each group to designate as their reporter someone who has had the fewest opportunities to play that role. We also use “circle practice” for some of the large-group discussions, in which each student takes a turn to speak — or, if they wish, not speak and let the next person do so.

Philosopher Marshall McLuhan’s famous comment that “the medium is the message” applies here: walking the talk of empowerment and honoring each other’s stories requires the creation of a classroom in which no voice is marginalized and no voice is dominant. And that lesson, in my opinion, has implications for legal education beyond the arena of a course on diversity and dispute resolution.

One final thought: many of the readers of this magazine teach law students — often at law schools

that do not offer a diversity course. For those readers who wish to see more courses of this kind, I encourage you to consider teaching one, ideally in collaboration with colleagues who can speak from experience about diversity.

I realize that there are many views about who makes the best teacher for such courses and that some believe that people born into privilege should consider stepping aside to let diverse individuals do this work. I have also heard, during the many years that I have been attending workshops and trainings on diversity issues, the following question from a number of African American colleagues: “Why is it so often the job of Black people to teach white people about racism?” And I have heard from women colleagues: “Why is it so often the job of women to teach men about sexism?” Or “Why is it so often the job of members of the LGBTQI+ community to teach others about sexual orientation or gender identity?” My experience in creating and teaching a diversity course at Harvard Law School persuades me that this is work that can be done by all of us. Indeed, the very best trainings, courses, and workshops that I have attended or co-led on this subject over the years have been those in which there are several teachers or trainers with different identities and backgrounds. That said, if we are teaching solo, and if we don’t bring much diversity into the room, we need to lead such courses with humility and a willingness to do at least as much learning as teaching. ■



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Learning Diversity at Harvard Law School

Or: The education of a privileged law student
who thought she knew everything

By Natasha Aggarwal

The course “Diversity and Dispute Resolution” was not what I was expecting. I received a waitlist offer due to a last-minute vacancy, signed up, and expected a run-of-the-mill course at Harvard Law School by yet another brilliant professor, a course that would be unfairly dull and unjustifiably infuriating due to Zoom fatigue.

But in our first class, I was taken back by the extreme kindness and humility of our “straight, white, cisgender” professor “from an upper middle-class background and with no apparent disabilities.” Professor Hoffman wanted us to understand difference in terms of power, and Kenji Yoshino’s book *Covering: The Hidden Assault on Our Civil Rights* helped me label the process by which we constantly cover and uncover parts of our identities based on our headspace, social situations, and power dynamics. I realized that a key role we all can play in detangling social situations and acknowledging power dynamics is making space. My favorite example of this was Professor Hoffman explaining why cisgender individuals should include their pronouns in their introductions or Zoom names — doing so, he said, creates space for transgender, non-binary, and intersex individuals to mention their own pronouns. Through these sorts of demonstrations, Professor Hoffman didn’t just teach me to acknowledge, respect, and address diversity and often diametrically opposed principles and beliefs in professional settings. He also, and perhaps unintentionally, taught me about respect, kindness, and humility, which are greatly understated values in our elite law circles, especially when it comes to respecting those whose opinions differ from ours — in my case, people who believe that women should stay home, abortion is murder, or the 2020 election involved fraud.

We live in extremely polarizing times, and political views can make or break relationships. For the past six years, I have been engaged in a number of extremely polarizing debates concerning sexual violence (in particular, prompted by the #MeToo movement) and the myriad of issues caused and condoned by the current central government in India and the right-wing Bharatiya Janata Party, led by Narendra Modi. I slowly learned that I was not going to change anyone’s mind. Perhaps this was entirely attributable to my cynicism and exhaustion, but if someone wanted to support, for example, an alleged perpetrator of sexual violence, I concluded that there’s little I could say to change their mind. Eventually, I stopped engaging in conversations while ruthlessly burning bridges with people whose opinions were, in my view, questionable or even dehumanizing. But here’s the problem: I stopped listening. I was right, and they were wrong, correct? So I stopped learning about what the “other” side was saying and, oddly enough, about myself.

The theme for our second class was “The Danger of a Single Story,” which is also the title of a TED talk by Chimamanda Ngozi Adichie (which I highly recommend), in which she discusses how, as a child growing up in Nigeria, she wrote about white people drinking ginger beer. I thought I understood this completely: as a single woman, a feminist, and an Indian, my exposure to a wide range of books, TV shows, and movies saved me from being just Indian, just single, or just a feminist. This theme also solidified my belief that I wanted to be

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viewed as more than one personality trait, one belief, or even one immutable characteristic.

For our third class, we read “The Abortion Talks,” a chapter in *Civic Fusion: Mediating Polarized Public Disputes* by Susan Podziba. “The Abortion Talks” sets the stage by briefly discussing an attack by John Salvi on two reproductive health clinics in Brookline, Massachusetts, in 1994, assaults that killed two people and wounded five others, and subsequent “common ground talks” between pro-life (or, as I once liked to call them, anti-choice) individuals and pro-choice individuals. As I read this, I thought: “Yet another pro-life supporter taking people’s lives...” And “common ground? Between pro-life and pro-choice individuals? *What* common ground?” After being sure that such talks couldn’t possibly succeed, I started to think, “Oh, I see...”

But I was still confused: how can you engage in prolonged dialogue and eventually come to care about people who don’t believe that your body is your own, as the pro-choice advocates in the Abortion Talks ultimately did? I couldn’t, and I wouldn’t! I thought that the course would simply teach us how to navigate diversity as well as divergent points of view during dispute resolution, but do I have to respect people who don’t respect my right to choose? More important, does this mean I have to care about people who support Donald Trump or Narendra Modi?

In subsequent classes, Professor Hoffman assigned us fact scenarios for mediation role plays. In two of these role plays, I played the mediator, in one case working with two teachers who differed about how to handle the gender identity of a minor and the usage of gender-affirming pronouns, and in another with two divorced individuals who weren’t able to agree on the religious upbringing of their child. As an advocate of LGBTQ+ rights and an atheist, I was afraid of being biased. However, as I saw my classmates realistically embody these roles and the accompanying belief systems, I finally was able to step out of the judgment zone and tap into my sense of understanding and empathy. In doing that, I learned to establish common ground between even the most unlikely of people and be an unbiased mediator who did not want to push her own agenda.

In our last class, we listened to a conversation between two professionals, one who was fiercely

supportive of Donald Trump, and another who was an equally fierce opponent of the then-president. In mediating this discussion, Professor Hoffman asked them crucial but almost unassuming questions: “Why are you a Democrat? Why are you a Republican? I realized that everyone has a story and a reason for their beliefs and perspectives. For me, this course came full circle. We are all impressionable and vulnerable in the face of a story, just as Chimamanda Ngozi Adichie said in her TED talk. The two arguing lawyers, Professor Hoffman, and I are all impressionable. We see, we absorb, and we proceed on our assumptions.

In constantly criticizing the ways in which a single story is attributed to me, I forgot how much I have attributed singular identities or stories to pro-life individuals, Republicans and, in the context of India, supporters of the ruling conservative party. No person is just one identity or just one belief, but is instead a myriad of ideas, experiences, and trauma. Mostly important, we don’t always know someone’s stories. Maybe I will never agree with the Republican perspective, but now I can understand why someone has grown up to be a Republican. In learning to understand, I had to first learn to listen.

In this context, the most interesting tool I saw during mediation role-plays was the mediator asking both parties to state their respective perspectives — and then having each one repeat what they heard the other person say. This technique was intended to lower the temperature, increase a sense of community, and demonstrate how selective people can be in hearing others, but it also taught me to shut up and listen. I also learned *never assume*. As people navigate their identities and beliefs, they discover and rediscover, cover and uncover. To know and understand why someone voted for Donald Trump or even the ultraconservative Narendra Modi, I have to create space — by asking, respecting, and listening. ■



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