



ENCOUNTERS WITH BOOKS FROM OTHER DISCIPLINES

Liberal Democratic Education: A Paradigm in Crisis

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Liberal democracy is said to be in crisis, with various individual and structural shortcomings bringing into question its ability to productively handle conflict, address urgent collective problems and maintain the appeal of liberal democracy itself. Taking up one piece of this puzzle, a collage of chapters in *Liberal Democratic Education: A Paradigm in Crisis* explores the ways in which the ideals and promise of liberal democracy can be better realised in and through education. While the collection would be of interest to legal scholars with specific interests in educational governance or political philosophy, it might be of most and more general interest to those in Law as teachers, and as stewards of institutions very much enmeshed in the public architecture of society. Despite the text's multi-level and interdisciplinary focus on education, the text will prompt legal readers to think about the law school in civic and not just disciplinary or professional terms, invite them to reflect on the significance of how, what, and who they teach for the health of liberal democracy, and offer them both philosophical insights and practical suggestions.

While each chapter is concerned with liberal democratic education, the text offers a variety of different ideas and perspectives from authors and editors spanning ten countries. Across, and at times within, these chapters, readers will find varying conceptions of each of democracy and liberalism, and see engagement with a range of educational contexts. These variations approach each other from different angles to explore how liberalism, democracy, their challengers, and education each penetrate one another, resulting in a three-dimensional web of conversations. Given the breadth and complexity of the topic, and the coverage across and within chapters, readers will undoubtedly have their own particular encounters with the text and find themselves sticking to different parts. Because of this, and the present scope, the reflection recounted here is necessarily limited and its attention likely tilted toward the democracy in liberal democracy.

One prominent theme that emerges across a number of chapters relates to the role of formal education in cultivating the civic capacities, understanding and dispositions necessary for citizens to effectively animate liberal democracies. The text begins, fittingly, with a case from Harry Brighouse that universities can and should shape students' civic character, and that this civic mission should follow on intentionally from an identified ideal of politics. Given the broad influence of law graduates in society and their particular professional roles – for example, Brighouse speaks not only of voting for representatives (who in many countries are often disproportionately law graduates), but mobilising legislative changes as well as challenging law in court as core instantiations of civic behaviour – the normative implications of this and similarly thematised chapters should land particularly hard on law schools. The substance of those implications, for him, follows from deliberative democratic 'obligations to consider and weigh all relevant, morally significant, interests' (p. 8) and give reasons for proposed uses of public power.

This vein, which runs across other chapters, readily connects to an existing deliberative democratic tradition in (especially American) legal education scholarship (Gutmann, 1993; Nussbaum, 2003; Menkel-Meadow, 2005).

Bryan Warnick's chapter offers a thought-provoking reflection on an implicit ingredient in deliberative participation: humility. Counterbalancing emphases on crafting confident citizens and the 'epistemic individualism' of students who 'think for themselves' (p. 85), he urges the complementary value of knowing one's intellectual limits and appreciating what goes into expertise; a disposition that is neither intellectually arrogant nor intellectually servile. With all that is done in legal education to develop law students' ability to articulate persuasively and win adversarial contests, a focus on humility in legal contexts seems a really fruitful direction for both thinking and practice. In this respect, the chapter brings a pedagogical angle to conversations within scholarship on the relevance of humility for law and legal actors, particularly with respect to judicial decision-making (see, e.g. Stevens, 2023; Berger, 2018). Not dissimilarly, Rupert Wegerif explores the importance of dialogic capacities to not just share but listen, feel and change one's mind. In a potentially interesting connection for those engaged in work around non-human legal subjects, Wegerif emphasises that '[d]ialogue is not just about human voices' (p. 168) but also about listening to the voices of, for example, nature and technology. This chapter might therefore further encourage thinking on the ways in which non-human subjects participate in civic-legal processes and what legal education specifically might do to prepare lawyers accordingly.

More than just articulating ideals, these chapters each take time to offer suggestions for educational practice, and add to methods discussed in legal education scholarship's own deliberative tradition as well as those found in the emerging vein of 'deliberative pedagogy' more generally (e.g. Schaffer *et al.*, 2017). Possibilities within classrooms as well as extracurricular institutional environments are offered, many of which seem to fit naturally with widespread law school curricula and techniques. Among the most interesting suggestions, two from Warnick merit highlighting. The first of these emphasises a critical memoir approach where *inwardly* focused critical thinking asks students to reflect on their own motives, priorities, biases and histories (p. 93). Another focuses on facilitating the experience of, and respect for, expertise through research-based, 'project-centred [classrooms] . . . tackling narrow community problems' (p. 97). Readers from Law might experiment while exploring how these connect to and build on law and literature and problem-based learning approaches.

To be sure, not all chapters take direction from deliberative conceptions of liberal democracy, and Ole Hilbrich's chapter explores the ways in which more agonistic conceptions demand alternative forms of civic education. On this, Hilbrich celebrates a wider range of political speech and emphasises understanding of political emotions and conflict, including the ways in which different political projects, movements and philosophies have shaped such real-world conflicts. This emphasis carries through into the subsequent chapter, with perhaps the most obvious relevance for legal readers. There, Prakash Iyer and Dolashree Mysoor explore the educational implications of the fact that the Indian Constitution, as a result of historical and (post-)colonial complexities, 'carries a set of contestations that manifest in multiple possible interpretations of constitutional values' (p. 135). Teaching it as a fixed, 'univocal' representation of the country's politics, and without fostering familiarity with a wider set of political projects, they say, leaves students (and lawyers, surely) unprepared to engage with its multiplicities and contradictions in public spaces.

That Iyer and Mysoor are discussing this primarily in the context of secondary school civic education evidences that the book's takeaways for legal education and scholarship should not be limited to post-secondary law school contexts – as I am tending to focus on – but on education at all levels, where students inevitably encounter both *the* law and *law* as a social phenomenon. The numerous chapters in this collection that speak to basic, compulsory education might be even more directly unpacked in relation to legal education there, and can and should encourage further scholarship on the interminglings of legal and civic education in those contexts. But more broadly,

the book's lessons on the relationships between legal and civic education might be carried forward in directions suggested by scholarship in which 'legal education' encompasses that which happens before and after law school, both formally and informally (Twining, 2018).

Early on, two contributions come from different angles to demonstrate how, for liberal democratic education, it also matters *who*, and not just what and how, one teaches. Anniina Leiviskä and Christopher Martin's chapter takes up the question of how education can uphold the legitimacy of a liberal democratic order. While noting that this depends in part on promoting the cognitive capacity and understandings necessary for consent to liberal ideals, they argue that education needs to go further to contribute to the *structural* conditions for that autonomy, and equal flourishing, to actually materialise. Focusing primarily on a basic educational system in which parental choice gives rise to socio-economic segregation and thus disadvantaging of marginalised groups, Leiviskä and Martin argue in favour of institutional restructuring such that the material conditions and experiences of education are equalised – for instance, through policies requiring socioeconomic diversity within institutions. This diversification of student bodies might not only counteract bias-inducing effects of segregation but, they say, contribute to the “restructuring of the prevailing class-structures of society, including the decision-making elites, and thereby result in . . . more just and equal policies and practices” (p. 42).

A subsequent chapter by Johannes Giesinger carries forward this theme of diversification of student bodies, discussing its relationship to the *epistemic* quality of societal decision-making more generally. Giesinger's intervention comes indirectly through a response to suggestions, arising out of crises of a supposedly disengaged and poorly informed public, that we should reject democracy in favour of a liberal epistocracy in which political legitimacy is tied to good decisions and power restricted to competent elites or society's 'knowers' – a class for which law graduates (and law professors) seem to qualify. Ultimately, however, Giesinger argues that even on its own terms the legitimacy of an epistocratic system relies on a *democratic* education system in which the full diversity of the population is given the opportunity to learn, grow, and move into positions of influence. At the heart of this argument is the idea that unrepresentative or socially segregated groups inevitably suffer from epistemic deficiencies and the corollary that cognitively and experientially diverse, interactive educational institutions improve the educational experiences within them – experiences which carry through to the quality of political decision-making.

As a particularly vaulting steppingstone toward societal influence, the discussion is especially applicable to law schools. To be sure, the value of diversifying law school admissions is not a new subject in legal circles. But within both research and administrative conversations, these contributions might enrich reflections on the ways in which law schools, through admissions, contribute to the maintenance or dismantling of societal inequalities, and connect this to social justice considerations, educational quality, as well as political legitimacy. These who-focused chapters therefore offer an important complement to earlier emphases – coming through a legal reading – on the heightened influence of law graduates in society and law schools' corresponding responsibility to cultivate their civic capacities accordingly. One potential reaction to that special responsibility might be to lean into elitism and see 'our' students – in current, not necessarily representative demographics – as those who *should* exert heightened influence within society. But these chapters offer a reminder that, while law schools must take seriously their responsibility to cultivate good citizenship among their student bodies, this responsibility must follow on from opening the school's gates to a fuller diversity of students.

In these chapters and others, there are several ideas and lines of analysis not discussed here but of potential value to academic readers in Law, whether in terms of research or their own practice: populist ideology in education policy, the promotion of values in education, more activist or critical approaches to curricula, and so on. But despite its breadth, the text is inevitably finite and there are any number of questions that readers in Law will have to go elsewhere to pursue in earnest. Even so, the collection is an interesting read that effectively identifies and provokes thought about a wide variety of relationships between education and liberal democracy while also

offering suggestions for practice. In all of this, there is much for legal scholars, teachers and law school administrators to take direction or inspiration from. Most important are likely the general arguments that, first, society's democratic ideals do not stop at the school gates and, second, that what goes on within them is at least part of the answer to the crises associated with their realisation beyond them. Read in light of the many ways in which law and politics are intermingled, and the resulting civic responsibility falling on law schools, this book serves as a worthwhile prompt for important work to be done in Law.

References

- Berger, B** (2018) What Humility Isn't: Responsibility and the Judicial Role. In Moore M and Jutras D (eds) *Canada's Chief Justice: Beverly McLachlin's Legacy of Law and Leadership*. Canada: LexisNexis.
- Gutmann, A** (1993) Can Virtue Be Taught to Lawyers? *Stanford Law Review* **45**, 1759.
- Menkel-Meadow, C** (2005) The Lawyer's Role in Deliberative Democracy. *Nevada Law Journal* **5**, 347.
- Nussbaum, MC** (2003) Cultivating Humanity in Legal Education. *University of Chicago Law Review* **70**, 265.
- Shaffer, TJ, Longo NV, Manosevitch I and Thomas MS** (eds) (2017) *Deliberative Pedagogy: Teaching and Learning for Democratic Engagement*. Michigan State University Press.
- Stevens, K** (2023) Humility as a Necessary Virtue in Common-Law Decision Making. *Jurisprudence*.
- Twining, W** (2018) Rethinking Legal Education *The Law Teacher* **52**, 241.