

THE FUTURE OF LEGAL EDUCATION WILL BE QUEER**Marie Dry*****Abstract**

This article explores how legal education can be made queer-er in the future. Drawing on personal experiences in law school, the author examines the potential of queering legal education to foster inclusivity and challenge heteronormative structures of learning and teaching. The article presents examples of spaces where queer approaches to teaching and learning may be deployed and examples of heteronormative, career-oriented, and individualistic practices in law school. Key themes of representation, non-futurity, failure, community, and utopia are employed to reveal biases inherent in various aspects of legal education, such as time, space, curriculum, faculty, and student experiences. Queer perspectives draw our attention to critically examine pervasive elements within law faculties such as productivity, excellence, adversarial processes, and individualism which prevent law schools from meaningfully integrating “outsider perspectives” such as queer theory. By embracing negativity, transgression, collectivity, and hope as philosophies of legal education, the author argues that law schools can provide students with the tools to articulate their relationship to the legal order in a more creative, politicized, and holistic manner. This article advocates for a future where law faculties actively embrace and integrate teachings from queer theory into their curriculum and pedagogical practices.

Keywords: legal education; queer; LGBT studies; pedagogy; future.

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Résumé

Cet article explore la manière dont l'enseignement juridique pourrait devenir « plus queer » à l'avenir. S'appuyant sur ses expériences personnelles d'apprentissage du droit, l'autaire examine le potentiel d'une éducation juridique queer pour favoriser l'inclusion et remettre en question les structures hétéronormatives d'apprentissage et d'enseignement. L'article présente des exemples où des approches queer de l'enseignement et de l'apprentissage sont déjà employées et des exemples de pratiques hétéronormatives, axées sur une vision carriériste et individualiste de l'éducation juridique. Les thèmes clés de la représentation, de la non-futurité, de l'échec, de la communauté et de l'utopie sont utilisés pour révéler les préjugés inhérents à divers aspects de l'enseignement juridique comme l'organisation du temps, de l'espace, du programme d'études, du corps enseignant et les expériences des personnes étudiantes. Les perspectives queer attirent notre attention sur l'examen critique d'idéaux omniprésents dans les facultés de droit, tels que la productivité, l'excellence, le contradictoire et l'individualisme, qui empêchent les facultés de droit d'intégrer de manière significative des perspectives « autres » telles que la théorie queer. En adoptant la négativité, la transgression, le collectif et l'espoir comme philosophies d'éducation juridique, l'autaire soutient que les facultés de droit peuvent fournir aux personnes étudiantes les outils nécessaires pour articuler leur relation à l'ordre juridique d'une manière plus créative, plus politisée et plus holistique. Cet article plaide pour un avenir où les facultés de droit adoptent et intègrent activement les enseignements de la théorie queer dans leur programme d'études et leurs pratiques pédagogiques.

Mots-clés : éducation juridique ; queer ; études LGBT ; pédagogie ; futur.

Introduction.....	43
Observation 1: law schools prepare students for a legal career.....	47
Can a legal career be queer?	48
Can the law student be an adolescent?	51
Observation 2: law schools require students to succeed individually	54
Can a law student fail?.....	56
Can law schools foster utopian communities?.....	59
Conclusion	62

Introduction

Law schools today are increasingly offering classes addressing queer theory, 2SLGBTQI+ issues, gender, and sexuality. Notable examples include the “Queering Law” class at the University of Alberta and the “Gender, Sexuality and the Law” courses taught at Dalhousie University and the University of Ottawa. Some of these courses originate from student-initiated seminars or are established through the efforts of student-led organizations. For instance, the advocacy activities of the student organization “Harvard Law School Lambda” participated in the creation of the Harvard LGBTQ+ Advocacy Clinic in 2020.¹ Further, law faculties now hire professors like Alexander Chen, the founding Director of the Harvard LGBTQ+ Advocacy Clinic, who actively advocate for the 2SLGBTQI+ community as a scholar and a teacher.² These changes prompt a

¹ Carolyn Kelley, “LGBTQ+ Advocacy Clinic launches at Harvard Law School”, online: *Harvard Law School* <<https://hls.harvard.edu/today/lgbtq-advocacy-clinic-launches-at-harvard-law-school/>>.

² “Alexander Chen”, online: *Harvard Law School* <<https://hls.harvard.edu/faculty/alexander-chen/>>.

question: does the inclusion of 2SLGBTQI+ scholars and issues in classes or clinics make law schools queer? While integrating 2SLGBTQI+ topics and individuals into law school classrooms is crucial to highlight the intersections of law, gender, and sexualities, insights from queer theory suggest a need for a broader, more profound transformation of legal education. This transformation would go beyond merely adding a class or clinic within a pre-existing curriculum and educational philosophy, but what this would look like remains unclear.

This article reflects on how we may queer legal education, inspired by my participation in the Winter 2023 Legal Education Seminar led by Prof. Shauna Van Praagh at McGill University's Faculty of Law. The small group of class participants delved into what and how law students learn throughout the seminar, experimenting with different approaches, pedagogical philosophies, and course content. Reflecting on legal education as a doctoral student researching queer family-building in Quebec and France led me to the question – can the future of law teaching be queer?

The attention of queer theorists remains mainly focused on scholarship rather than pedagogy, but recent research has made few attempts to reconcile queer theory and legal education.³ For example, two articles offer proposals to queer law schools⁴ and pedagogy.⁵ Both share the thesis that legal education is not yet queer, but that queer theory has much to offer to legal education. However, they differ in their suggestions on how to queer legal education. On the one hand, Brooks and Parkes propose that queering legal education is a process of pedagogical discovery to “include, reflect, and value queer lives” in law schools.⁶ On the other hand, García

³ Kim Brooks & Debra Parkes, “Queering Legal Education: A Project of Theoretical Discovery” (2004) 27 Harv Women’s LJ 89 at 91.

⁴ *Ibid.*

⁵ Daniel J García López & Luísa Winter-Pereira, “Fear of a Queer Pedagogy of Law” in Moira Pérez & Gracia Trujillo-Barbadillo, eds, *Queer Epistemologies in Education: Luso-Hispanic Dialogues and Shared Horizons* (Cham: Springer International Publishing, 2020) 141 at 147.

⁶ Brooks & Parkes, *supra* note 4 at 90.

López and Winter-Pereira, in their 2020 essay called “Fear of a Queer Pedagogy of Law,” argue that queering legal pedagogy is “a way of deconstructing, degenerating or perverting educational practices that break with normalization devices, that re-appropriate devices to degenerate them, to hack them.”⁷ This article aims to integrate both perspectives, demonstrating that the projects of making queer experiences visible and hacking educational tools and practices are not necessarily separable and would benefit from being employed together.

Building on this brief overview of existing scholarship, this essay aims to answer the following research question: how can legal education be made queer-er in the future? To address this question, I draw from both the education I gathered from reading queer texts and examples drawn mainly from my education at my alma mater: Sciences Po’s Law School. By combining both perspectives, I aim to provide avenues for reshaping the future of law schools into something not queer but queer-er. Indeed, “queerness” in law school is unattainable – it is a project that will continuously be ongoing and “in formation” because queerness is not static, complete, or finite. According to Butler, in her 1993 book *Bodies that Matter*, queerness is “that which is, in the present, never fully owned, but always and only redeployed, twisted, queered from a prior usage and in the direction of urgent and expanding political purposes.”⁸ As such, this article proposes to make legal education queer-er. The use of a hyphen in the term emphasizes here the everlasting nature of the process rather than aiming to present a roadmap to establish a queer law school.

This essay deploys a dual methodology. First, my analysis involves integrating first-person accounts of my law school experience. As Shauna Van Praagh noted in her 1998 essay “Stories in Law School: An Essay on Language, Participation, and the Power of Legal Education,” “the

⁷ García López & Winter-Pereira, *supra* note 6 at 147.

⁸ Judith Butler, *Bodies that Matter: on the Discursive Limits of “Sex”* (New York: Routledge, 1993) at 173.

insertion of personal experience into the teaching and learning of law exposes perspectives that previously may have been suppressed.”⁹ In the context of this essay, I integrate my own experiences to illustrate how law schools function as “straight spaces,”¹⁰ where queer theory remains an outsider that does not fit in.¹¹ Second, my methodology weaves together both paranoid and reparative readings of my law school experience. According to Eve Sedgwick, paranoid reading is an interpretative strategy used to uncover the truth that has been suppressed and hidden in a text. It is an “anticipatory mimetic strategy whereby a certain presumed, stylized violence [...] must always be presumed or self-assumed—even, where necessary, imposed—simply on the ground that it can never be finally ruled out”.¹² I will employ this approach to critique the narrative examples extracted from my own experience in law school: to discuss assumptions about time, futurity, productivity, success, and individualism. In contrast, a reparative reading is open to surprises: a reparative reader gives up looking for what one expects to find in a text – the paranoiac expectation – to leave room for new, maybe surprisingly pleasant, experiences.¹³ This second type of reading will open the door to discovering queer practices within the traditional legal pedagogies I have encountered instead of pre-emptively prescribing their normalcy.¹⁴

⁹ Shauna Van Praagh, “Stories in Law School: An Essay on Language, Participation, and the Power of Legal Education” (1992) 2 Colum J Gender & L 111 at 114.

¹⁰ Swethaa Ballakrishnen, “Law School as Straight Space” (2023) 91:4 Fordham L Rev 1113.

¹¹ Bennett Capers, “The Law School as a White Space” (2021) 106 Minn L Rev 7. The framing of law schools as “straight spaces” is inspired by Professor Bennet Capers’s analysis of law schools as “white spaces”: a site of exclusion for non-whites.

¹² Eve Kosofsky Sedgwick, “Paranoid Reading and Reparative Reading; or, You’re So Paranoid, You Probably Think This Introduction is About You” in Eve Kosofsky Sedgwick, ed, *Novel Gazing: Queer Readings in Fiction* (Duke University Press, 1997) 1 at 12.

¹³ *Ibid* at 146.

¹⁴ Michael Warner, *The Trouble with Normal: Sex, Politics, and the Ethics of Queer Life* (The Free Press, 1999). For Warner, the idea of a “normal” sexuality is a construct used to stigmatize and marginalize those who do not fit within this (heterosexual) norm. Normalcy can thus be understood as describing oppressive, arbitrary norms to which all lives are expected to conform.

This article departs from two observations I noticed about legal education during my time as a law student. The first observation shows that the traditional goal of law school is to prepare students for a specific type of legal career. The second observation is that law schools require students to learn in a particular way: individually, efficiently, and consistently. By investigating how these assumptions – which shape how law is taught and learned – clash with concepts drawn from queer theory, this article presents a series of suggestions on how to make law schools queer-er.

Observation 1: law schools prepare students for a legal career

To start the project of queering law schools, I first look into the role that law schools fulfill or claim to fulfill. I enrolled at Sciences Po's Law School in August 2018 to pursue a Master's in Economic Law. Throughout my three-year program, I was constantly reminded that the purpose of my legal education was to access a legal career. Law school was here to provide me with a future.

This message was conveyed in various ways. For instance, meetings with the school's administration in the first year were geared towards encouraging students to take a gap year to gain professional experience. As a result, I fell into a "career rhythm," as described by Philippe Kissam, transitioning from the status of a law student to a legal professional. This rhythm was punctuated by job interviews with law firms in the first year, internships during my gap year, and part-time work during my third and final year.¹⁵ The need to justify my presence in law school based on my "career goals" further reinforced this vision of my legal education as a means to enter the legal profession. For instance, during a mandatory individual meeting with an Academic Advisor, I had

¹⁵ Philip C Kissam, *The Discipline of Law Schools: The Making of Modern Lawyers* (Carolina Academic Press, 2003) at 84.

to explain my goals and objectives for the gap year before formally applying for this interruption. I was expected to explain how this year would fit within my broader career objectives and how it would better prepare me to answer market needs by gaining valuable professional experience. Applying for a gap year was commonly perceived as an opportunity for students to enhance their professional development and secure entry into major corporate law firms. These firms were often invited to present their practices at the school's job fair and other networking events. In class, professors often asked us to introduce ourselves by stating our names, where we completed our undergraduate degree, and our career aspirations after law school. I realized that I was expected to provide an acceptable answer as to why I had enrolled in law school, and this answer had to take the shape of a legal career. The general message was clear: my time in law school was an investment to get a job. This way, my experience as a law student was an exercise in futurity: an exercise in visualizing, planning, and working for my future.

Can a legal career be queer?

While law school encouraged me to imagine and articulate goals and aspirations for my future career, the definition of what this future would look like was only partially left for me to decide. Due to the lack of conversation around 2SLGBTQI+ issues within legal education, law faculties fail to present students with futurities such as 2SLGBTQI+ rights advocacy or queer studies in academia. Therefore, issues of visibility and representation are central to the project of queering law faculties to open the way for students to imagine using their legal education to build a queer-er career.

I had no 2SLGBTQI+ professor in law school, or so I thought. More accurately, in law school, I had no openly-out 2SLGBTQI+ professor. Queer and trans representation often encounter

the obstacle of the closet. As William N. Eskridge notes, “[h]omosexual and bisexual scholars have long been legal academic insiders, their minority sexual orientation – the mark of the outsider – literally invisible.”¹⁶ Further, Eskridge remarks that “most of us (and almost all of us in the legal academy) have hedged our bets, coming out as vanilla-flavored homosexuals, virtually normal.”¹⁷ The issue of representation for the queer and trans community in academia is one of silence, invisibility, and respectability politics.¹⁸ The lack of representation of openly queer faculty members contributes to the silence around sexuality and queer theory in law school classrooms. Reviewing my notes and syllabi from my first year of law school, I found only a few mentions of sexuality or queer theory. As Brenna Bhandar explains, legal pedagogical practices often “at best, relegate racialized, gendered, or other critical analyses of legal principles to the margins and, at worst, ignore these perspectives entirely.”¹⁹

To make law schools queer-er, policies and commitments to invest in diversifying faculty members must be enacted. Learning from effective practices in the private sector,²⁰ law schools can invest in targeted recruitment through partnerships with 2SLGBTQI+ Bar Associations or other not-for-profit legal organizations working on 2SLGBTQI+ issues. Mentioning queer and 2SLGBTQI+ legal studies in terms of references, in addition to initiatives like funding doctoral research on queer and 2SLGBTQI+ legal studies and offering mentoring programs, flextime

¹⁶ William Eskridge, “Outsider-Insiders: The Academy of the Closet” (1996) 71 *Chicago-Kent L Rev* 977 at 986-987.

¹⁷ *Ibid* at 987.

¹⁸ Margot Dazey, “Rethinking Respectability Politics” (2021) 72 *British J Sociology* 3 580 at 581. This essay defines respectability politics as the belief that minority groups can gain equal rights and protection by conforming to the standards and behaviors of the dominant group. In other words, it suggests that by acting in a manner that is deemed socially acceptable by the dominant group, minority groups can earn the same level of respect and rights as the dominant group.

¹⁹ Brenna Bhandar, “Always on the Defence: The Myth of Universality and the Persistence of Privilege in Legal Education” (2002) 14 *Can J Women & L* 341.

²⁰ Frank Dobbin & Alexandra Kalev, *Getting to Diversity: What Works and What Doesn't* (Harvard University Press, 2022).

policies, parental leave, and childcare support²¹ will further help diversify the faculty body. This can, in turn, encourage the development of queer and 2SLGBTQI+ studies in the faculty.

Recalling my experiences, I found a striking example of a mode of teaching that silences and ignores legal issues surrounding sexuality. In a lecture about the history of European Criminal Law during my first year in law school, my professor mentioned Cesare Lombroso's theory of Criminal Atavism and his study of the feet of sex workers to determine the criteria of criminality. While the class thoroughly discussed the weaknesses of Lombroso's theory, the presumption of a link between criminality and sexuality remained unchallenged and the critical queer perspective on sexuality was then ignored entirely. A queer-er Criminal Law class could address the historical link between sexuality and criminality. This discussion would allow students to historicize and contextualize contemporary issues related to the criminalization of queer sexual practices, such as BDSM laws²² and the non-disclosure of HIV-positive status²³ or transgender identity.²⁴

On the other hand, undertaking a reparative reading of my first-year notes, losing the anticipation of normalcy,²⁵ allowed me to identify a positive example of how queer perspectives were included in my law school curriculum. In Private International Law, my class explored issues of fraud on the law, intercountry mobility, and family relationships through the lens of human rights. Our professor encouraged us to reflect on the recent European court holdings regarding surrogacy. The class discussions and readings briefly introduced issues related to 2SLGBTQI+ parenthood through surrogacy. We also had the opportunity to interact on the topic with a guest

²¹ *Ibid.*

²² *R v JA*, 2011 SCC 28.

²³ Kim Shayo Buchanan, "When Is HIV a Crime-Sexuality, Gender and Consent" (2014) 99 *Minn L Rev* 1231.

²⁴ Florence Ashley, "Genderfucking Non-Disclosure: Sexual Fraud, Transgender Bodies, and Messy Identities" (2018) 41 *Dalhousie LJ* 339.

²⁵ See *note* 14.

speaker, a European Court of Human Rights judge. As such, the topic of surrogacy was not relegated to the margins or presented as just one of many examples, it was at the heart of an entire session and part of the list of final essay prompt questions. This approach ensured that surrogacy, which introduces 2SLGBTQI+ families into our discussion of law, was not treated as an outsider position within the class.

These discussions inspired and empowered me to explore the topic further in my master's thesis and continue my studies in a Ph.D. program studying LGBTQI+ family law. Teachers are responsible for considering the sources of law they introduce in their readings and topic choices, as they can significantly influence students' thinking, learning and production of scholarship.²⁶ Therefore, by incorporating opportunities to reflect on issues related to gender and sexualities in their syllabi, professors can actively encourage young scholars to engage with queer scholarship, as well as the development of a queer-er future for students of law.

Can the law student be an adolescent?

The traditional approach of law school to its mission, which emphasizes the importance of preparing for the future, clashes with queer perspectives rejecting futurity. In his book *No Future: Queer Theory and the Death Drive*, Lee Edelman argues, “What is queerest about us, queerest within us, and queerest despite us is this willingness to insist intransitively—to insist that the future stops here.”²⁷ As further explained by Lucien Israël, the result of education, particularly learning, is that “one no longer knows anything about the universe of the drive because the only small way to safeguard something of it is by knowing nothing about it.”²⁸ Indeed, in the sophistic Western

²⁶ Amy Preston-Samson, “Guest lecture”, *Legal Education Seminar*, McGill University Faculty of Law, Winter 2023.

²⁷ Lee Edelman, *No Future: Queer Theory and the Death Drive* (Duke University Press, 2020) at 31.

²⁸ Lucien Israël, *Pulsions de mort. Deux séminaires : 1977 et 1978. Le désir à la trace et Jenseits..., Au delà...*, Hypothèses (Toulouse: Érès, 2007) at 87.

tradition of education, teaching is a method that shapes minds and enables understanding.²⁹ If we accept this call to non-futurity as a defining aspect of queerness and an educational philosophy that seeks to shape the future human through the mind of the student, does it follow that a queer legal education is impossible? Queer critiques of traditional education and futurity challenge how education suppresses the queer drive to *jouissance*. However, this does not necessarily mean that no form of education can be queer-er.

The assumption of futurity in law school is based on the idea that students will mature over time. In asking what studies one will do “when you grow up,” law schools assume students will grow up. In a 2011 speech, Rod MacDonald suggested to the graduating cohort of the University of York, “We are not obliged to grow up [...] we can resist the seductive sirens and rewards of conventional life as an adult. Youth is a precious moment of idealism, of discovery, and of challenging orthodoxies”.³⁰ According to Lee Edelman, this idealized vision of youth, of the Child, “whose innocence solicits our defense” and “as the emblem of futurity’s unquestioned value,” is a political discourse that conflicts with the queer death drive. The queer death drive on the contrary may be anti-natalist, pessimistic about the future and turned towards death instead of life-affirming experiences. To queer law school, instead of supporting this binary opposition of the death drive of the queer adult versus the figure of the child, I propose viewing legal education as a time of prolonged adolescence. In his book “In a Queer Time and Place,” Jack Halberstam describes how queer adults continue to experience adolescence through subcultures, such as riot dyke bands, drag kings, and queer slam poetry, that place them outside traditional notions of time and maturity.³¹

²⁹ Hunter McEwan, “Narrative Reflection in the Philosophy of Teaching: Genealogies and Portraits” (2011) 45:1 J Philosophy Education 125.

³⁰ YorkU Alumni, *Roderick Macdonald accepts an Honorary Doctorate* (2011), https://www.youtube.com/watch?v=5HWxpo_HIf0.

³¹ Jack Halberstam, *In a Queer Time and Place* (New York University Press, 2005) at 174.

Viewing legal education as a prolonged adolescence offers possibilities for queering law schools. Embracing the adolescent student, law schools could encourage them to invest their time in subcultures as part of their legal education. For example, final essay topics for a course on Law and Society could include investigating student-led clubs as semi-autonomous social fields.³² Students could also receive academic credits for participating in “non-professional” clubs. For example, at Sciences Po, a club called “Binouze Bikers” organizes cycling bar crawls. This “non-professional” club is part of a subculture in which few (to no) law students participate due to the internalized belief that their time should be spent more productively to do what they ought to do in law school: work toward securing a job. Another way to promote participation in subcultures is to provide resources for creating spaces where students can engage in non-career-focused activities. For instance, weekly “happy hours” could be organized where law professionals are not invited. At McGill’s Faculty of Law, a weekly happy hour called “Coffee House” is organized every Thursday. This event, however, is a professional identity-shaping device whereby students socialize with legal professionals.³³ Turning “Coffee House” into a space to develop a subculture would involve disinviting law firms, law professors, and all other law professionals. This way, students can chat and enjoy each other’s company without this time being turned, consciously or not, into a productive activity to network or acquire soft skills for their future careers.

Encouraging participation in subcultures can help students break free from the “career rhythm,” or what Elizabeth Freeman calls chrononormativity: using time to organize individual

³² Sally Falk Moore, “Law and Social Change: the Semi-Autonomous Social Field as an Appropriate Subject of Study” (1972) 7 *Law & Soc’y Rev* 719. Sally Falk Moore’s concept of semi-autonomous social fields refers to social groups or communities that possess a degree of independence and self-governance. Such groups have their own sets of rules, norms, and institutions, and are embedded within a larger social, political, and economic framework. By conducting ethnographic studies on student-led clubs, students can gain an understanding of the intricate interplay between law, culture, power, and social organization, and how these factors contribute to shaping social change and continuity.

³³ Desmond Manderson & Sarah Turner, “Coffee House: Habitus and Performance among Law Students” (2006) 31:3 *L & Soc Inquiry* 649.

human bodies toward maximum productivity.³⁴ By implementing some of the examples mentioned above or similar measures that move law school into a time of neither childhood nor adulthood, it becomes possible to reduce the emphasis on future-oriented discourses in law schools. In turn, decentralizing law schools' aspirations toward the future will allow legal education to become queerer.

Observation 2: law schools require students to succeed individually

Sciences Po's Law School prides itself on offering a unique curriculum in France. The university's Master's in Economic Law is designed to train future business lawyers. The interdisciplinarity of Sciences Po's program and the focus on contract law and experiential learning are meant to teach students the "flexibility and pragmatism necessary for the practice of business law."³⁵ Rather than teaching mastery of legal dogmatics in 4 to 5 years of studies in law,³⁶ the Law School's philosophy of legal education is to impart a legal *culture* that is particularly useful for business lawyers in highly globalized, interdisciplinary, and rapidly changing environments.³⁷

While studying at Sciences Po's Law School, I received strong incentives to pursue a corporate law career. Firstly, the Master's in Economic Law placed significant emphasis on the "economic" aspect of the program, which transpired in most, if not all, of my courses. For

³⁴ Elizabeth Freeman, *Time Binds: Queer Temporalities, Queer Histories* (Duke University Press, 2010) at 3.

³⁵ Christophe Jamin, "L'Enseignement du Droit à Sciences Po: Autour de la Polémique Suscitée par l'Arrêté du 21 Mars 2007" (2010) *Jurisprudence Revue Critique* 125 at 137.

³⁶ Thomas E Carbonneau, "The French Legal Studies Curriculum: Its History and Relevance as a Model for Reform" (1979) 25 *McGill LJ* 445. This article presents the model of legal education in France's public universities. A model, radically different from Sciences Po's program, comprised of 4 to 5 years of law school usually taught through a lecture and tutorial format.

³⁷ Émilie Biland & Liora Israël, "In the Law School Classroom: Hidden Messages in French Elite Training" in Meera Deo, Mindie Lazarus-Black & Elizabeth Mertz, eds, *Power, Legal Education, and Law School Cultures* (Routledge, 2019) 73 at 101.

instance, my class in European law focused mainly on business-related case law and was aptly named “European *Economic* Law.” In the course on civil procedure, our professor drilled us on one particular provision of the Code of Civil Procedure, which dealt with ordering instruction measures on request or in summary proceedings. The instructor emphasized how this article could enable us, as counsel for corporations, to send an expert to gather all the necessary information in anticipation of a future trial. These examples illustrate how the curriculum and classes were designed with the underlying assumption that students would embark on a corporate law career, providing us with tailored preparation.

Secondly, in my experience, Sciences Po’s Law School presented its purpose as helping us secure a *corporate* job. This was evidenced by the focus of the final year specializations. After completing the first year in a program common to all, students are divided into six distinct tracks all catered to different work areas that future business lawyers would engage in, such as Economic Litigation and Arbitration, Public Economic Law Enterprise, Markets and Regulations, Global Business Law and Governance, Global Governance Studies and Innovation Law. Unlike a traditional major where students might take a few courses related to their major, at Sciences Po’s Law School, the tracks dictate the entirety of a student’s coursework in the second year.

Thirdly, a business law career was presented as the successful path for a law graduate. As students, success was expected of us during and after law school and was defined as wealth accumulation. This capitalist definition of success³⁸ was informally conveyed to us through competitions for internships (which determined present and future wages) and scholarships

³⁸ Max Weber, *The Protestant Ethic and the Spirit of Capitalism: and Other Writings* (Routledge Classics, 2001).

(all originating from grants by leading business law firms).³⁹ Also, failure was stigmatized while discussing qualifying grades for internships, scholarships and other learning opportunities. I recall a conversation regarding the student grading requirements to be considered for an exchange program. My contact person clarified their position: I could not expect to be selected by Sciences Po for any prestigious exchange program with a single “bad” grade, regardless of the context. In this manner, my legal education put forth a notion of success that remained unidimensional, tied to the metrics of report cards and future wages.

A sociological study of Sciences Po’s Law School published in 2019 showed that the socialization process in the law school includes acculturation to capitalist ideology through a specific emphasis on business law and the role of the business lawyer.⁴⁰ Further, such instances can lead law students to internalize capitalist ideologies and expectations of success, resulting in students being mired in what Barbara Ehrenreich calls the neoliberal culture of positivity. This culture is characterized by a “harsh insistence on personal responsibility, meaning that while capitalism produces some people’s success through other people’s failures, the ideology of positive thinking insists that success depends upon working hard and failure is always our own doing.”⁴¹

Can a law student fail?

Queer theory, mainly through its antisocial strand, which theorizes negativity, strongly rejects the neoliberal positive mindset “rebell[ing] against the sugarcoating and depoliticization of life”.⁴²

³⁹ “Bourses d’Excellence et Lauréats”, online: *Sciences Po Ecole de Droit* <<https://www.sciencespo.fr/ecole-de-droit/fr/content/bourses-dexcellence-et-laureats.html>>.

⁴⁰ Biland & Israël, *supra* note 38.

⁴¹ Barbara Ehrenreich, *Bright-Sided: How Positive Thinking is Undermining America* (Metropolitan Books, 2009) at 8.

⁴² Mari Ruti, *The Ethics of Opting Out: Queer Theory’s Defiant Subjects* (Columbia University Press, 2017).

Scholars such as Edelman and Halberstam advocate for embracing negativity and failure as integral aspects of queer existence. If legal education aspires to become queer-er, I suggest opening the doors of the faculty to negativity and failure.

“Bad education” is a form of teaching and learning focused on negativity, deficiency, and perversion, leading to *jouissance* through risky and potentially transgressive behavior.⁴³ What would this type of education look like in law school? Recalling my experiences with a reparative motive, I remember when my Accounting professor jokingly erred on the side of “bad education.” During one session, he attempted to motivate a distracted group of thirty students by telling us that learning accounting could help us “optimize our taxes.” While this remark could be interpreted as a lesson in capitalist ideology,⁴⁴ it was also an invitation to pervert his discipline. By intentionally diverging accounting from its conventional aim of maintaining records of a business’ finances, he invited students to pervert the tool to increase revenue.

Similar examples could be applied to other law courses. In Contractual Obligations, for example, professors could explicitly teach how to commit “misrepresentation” or “dol.” “Bad education,” in this instance, would focus on the *jouissance* that may come from the negative behavior of vitiating consent within a contractual relationship instead of ensuring valid consent. This shift from teaching about ideals of justice and positive relationships in law to perversion and deficiency could participate in deploying a queer-er pedagogy where negative actions are recognized and sometimes celebrated.

Additionally, queering law school could involve embracing the “queer art of failure.” According to Jack Halberstam, “[u]nder certain circumstances failing, losing, forgetting,

⁴³ Lee Edelman, “Learning Nothing: Bad Education” (2017) 28:1 Differences: J Feminist Cultural Studies 124.

⁴⁴ Biland & Israël, *supra* note 38.

unmaking, undoing, unbecoming, not knowing may in fact offer more creative, more cooperative, more surprising ways of being in the world.”⁴⁵ Failure also relates to the future-oriented discourses of law schools – it disrupts the narrative “of delivering us from unruly childhoods to orderly and predictable adulthoods.”⁴⁶ Various strategies could be employed to embrace failure in legal education. One approach could be to transform the narrative around the meaning of failure. By rethinking failure, responsibility can be shifted from the individual to institutional conditions – “the negative thinker can use the experience of failure to confront the gross inequalities of everyday life.”⁴⁷ This reframing could teach students to politicize their experiences of failure, organize themselves within their law school for greater access to equal opportunities for success, and write compelling scholarship about inequalities.

A second strategy is refraining from enforcing double penalties for failing grades. Straying away from the debates about the effectiveness, fairness, or impact of grading in education,⁴⁸ I argue that law schools should avoid further penalizing students who receive under-average or failing grades to transform our understanding of failure. Law schools further penalize students for failing grades through potential consequences that extend beyond the immediate academic setback. For instance, a failing grade may not only affect a student's chances of securing internships but can also turn into more severe repercussions, such as the need to redo an entire academic year. This compounded penalty not only deepens the setback academically but also exacerbates the impact on their morale and confidence. Therefore, incentives to perform well in exams already exist, and there is no need to punish further students who have failed a course or several. For

⁴⁵ Jack Halberstam, *The Queer Art of Failure* (Duke University Press, 2011) at 2.

⁴⁶ *Ibid* at 3.

⁴⁷ *Ibid* at 4.

⁴⁸ John A Laska & Tina Juarez, *Grading and Marking in American Schools: Two Centuries of Debate* (Charles C Thomas Pub Limited, 1992).

example, all failing grades resulting in a sub-minimal number of credits earned in a semester should not prevent a student from continuing their program. Accommodations could include allowing students to retake the exam or the course during the following year, turn in an additional assignment, enroll in additional coursework during the summer holidays to earn credits or modify a study plan to redistribute credits across the remaining years in the program. Legal education can embrace forms of failure and become queer-er by implementing some of these suggestions to reshape discourses and ideas around what being “successful” means in and after law school.

Can law schools foster utopian communities?

Another way to dismantle the neoliberal culture of positivity in law school is to decenter individual work from teaching and learning experiences. This suggestion to emphasize collectivity in legal education draws on Jean-Luc Nancy’s concept of being “singular plural.” According to Nancy, “the essence of Being is only as co-essence [...] if Being is being-with, then it is, in its being-with, the “with” that constitutes Being; the with is not simply an addition.”⁴⁹ It follows that existing during one’s legal education requires ongoing interaction between oneself and others, not as opposing forces, but as a mutually defining condition of coexistence. Based on this understanding of being *with*, it is clear that no being is strictly singular. However, as demonstrated above, individualism was highly praised during my law school experience. Working with peers was not encouraged – only one professor allowed me to co-write final essays in 2 of the 28 classes I attended during my law degree. In fact, due to the emphasis on self-reliance to master the knowledge required to do well on exams, I left Paris during exam study season at the end of each semester. This was my way to shield myself from the stress-induced hallway conversations about

⁴⁹ Jean-Luc Nancy, *Being Singular Plural*, translated by Robert Richardson & Anne O’Byrne (Stanford: Stanford University Press, 2000) at 30.

course content to maintain a healthy routine for longer study hours. I believed only I could teach myself the material, and my peers would be a distraction. I believed in the story of individuality that law faculties traditionally tell. As Jennifer Howard explains, “The traditional method of legal education implicitly supports a system where it is ‘every man for himself.’ The traditional approach offers little opportunity for students to develop skills necessary for teamwork”.⁵⁰

A queer-er law school experience would entail recognizing one’s coexistence with one’s peers. However, the neo-liberal capitalist culture of positivity enforced in legal education emphasizes competitiveness because law students are taught that one can succeed individually only when others fail. As such, the competitive atmosphere strongly underlies the individualistic approach to legal education.⁵¹ Therefore, to transform a law school cohort into a collective, it would be essential to encourage exercises recognizing one’s relationality to peers and reducing competition among students. For instance, citing study group members in an exam copy could become a common practice, and peer feedback could be incorporated into mandatory coursework. In the case of moot court competitions, collective successes in experiential learning could be celebrated as collaborative achievements instead of seeking to reward individuals with the “best speaker” award. Additionally, allowing students the time to get to know each other can enable them to discover commonalities and ways in which their experiences and knowledge intersect and complement each other. This can happen as they participate in subcultures and social events on campus, in addition to the time dedicated to in-class discussions of individual interests and final essay ideas. The architecture of a law school is also a crucial element in shaping this collectivity and relational behavior.⁵² Creating comfortable spaces for informal conversations after class and

⁵⁰ Jennifer Howard, “Learning to Think like a Lawyer through Experience” (1995) 2 *Clinical L Rev* 167 at 174.

⁵¹ *Ibid.*

⁵² Kissam, *supra* note 16 at 71.

between study sessions will further diminish the culture of individualism. Recalling my law school experience, I found instances of collaborative work while searching for “pleasure, positive effect, and ameliorative possibilities,”⁵³ through co-written essays, informal peer-review, and collective outlining. However, most, if not all, of these collaborations were initiated by us students without any guidance or incentives from the faculty members.

At the beginning of this article, I emphasized how law schools prepare students for their future careers. If legal education becomes an exercise in collaboration and community-building, how does this impact how legal education presents the future? Could the centering of collectivity in legal education allow students to imagine queer-er futurities?

Jose Esteban Muñoz argues that “the present is not enough. It is impoverished and toxic for queers and other people who do not feel the privilege of majoritarian belonging, normative tastes, and ‘rational’ expectations”.⁵⁴ Queering legal education, through inclusion, representation, visibility and collective utopian work, can give students the tools to imagine their future without an imposed norm of normalcy.⁵⁵ This way, queering legal education can extend beyond the classroom and into scholarship as a law reform project, i.e., aimed at (future) changes in the law. As part of their legal education, students can be encouraged to reflect on issues related to gender and sexualities and to politicize their coursework to write about their hopes for future law reforms. Queer utopianism centers on the idea of “hope” as both a “critical effect and a methodology.”⁵⁶ By teaching students to view “hope” as the “emotional modality that permits us to access

⁵³ Janet Halley, “Paranoia, Feminism, Law: Reflections on the Possibilities for Queer Legal Studies” in Elizabeth S Anker & Bernadette Meyler, eds, *New Directions in Law and Literature* (Oxford: Oxford University Press, 2017) at 130.

⁵⁴ José Esteban Muñoz, *Cruising Utopia, The Then and There of Queer Futurity* (New York and London: New York University Press, 2019) at 27.

⁵⁵ *Ibid* at 26.

⁵⁶ *Ibid* at 4.

futurity,”⁵⁷ they can learn to engage with projects of law reform that imagine a collective utopian future for law. By building communities and imagining utopias as core projects of legal education, law schools can distance themselves from the dominant traditional discourse around individuality and success and open the way for new and queer understandings of the future of one’s legal education.

Conclusion

This article offers several suggestions to queer legal education. I argue that traditional legal education needs to be reimagined to accommodate queer perspectives and promote subversive approaches to teaching and learning. In the first part of this essay, I note that the futurity presented in law schools is “straight.”⁵⁸ I argue that the lack of openly queer faculty members and the silence around sexuality and queer theory in law school classrooms limit law students from imagining a queer future in the legal profession. The assumption of futurity within legal education conflicts with queer perspectives that promote non-futurity. I, thus, view legal education as a prolonged adolescence to make law school time queer-er.

In the second part of this essay, I note that law schools ask students to display individual excellence. Departing from this discourse, I suggest embracing “bad education” and failure to provide students with the freedom to experiment with different approaches to learning, sometimes less effectively, and to politicize their educational experiences. Further, by recognizing the relationality of students’ experiences and aiming to build a community in law school, students can begin to draw queer-er law reform projects, imagining a shared utopian future.

⁵⁷ *Ibid* at 98.

⁵⁸ Ballakrishnen, *supra* note 11.

Given the opportunity to reflect on “the future of legal education,” this article presents *my* hopes for the future of law schools. This article advocates for reforms toward a queer-er law school in a way that includes and recognizes the coexistence of multiplicity in queer experiences and queer theories. This argument attempts to celebrate the complexity of queer theories and experiences, mingling negativity and optimism, non-futurity and utopia, failure and inclusion, or in other words: queer death and queer joy. My methodology of alternating between paranoid and reparative readings identifies and challenges systemic oppression while leaving room for joy, healing, and celebration of my own experience in law school. By embracing inclusion, representation, negativity, non-futurity, transgression, collectivity, and hope as philosophies of legal education, law schools can become much more creative in helping students articulate their relationship to law.