Not Ideas of the Thing but the Thing Itself: Imagining a Support Group for Separated and Divorced Fathers as a Site of Legal Education

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Legal education is not just about attaining an abstract knowledge of formal institutions, norms, and processes; it is also about developing insight into oneself and one’s relationships. Therefore, understanding and developing the personal and social conditions that make governance through law possible are crucial elements of legal education. This article highlights legal education’s potential role in fostering every person’s sense of implication in—and responsibility for—building a just society. In order to illustrate this concept, this article looks at the ways in which DADs, a support group for separated and divorced fathers, constitutes a site of legal education.

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Introduction

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Introduction

How one conceives law, education, and the relationship between them, shapes the horizon of possibilities for legal education.¹ To imagine law and education pluralistically is to see them as complex, shared, interactional human endeavours, rather than externally-imposed, expert-technical means of controlling social behaviour.² The personal significance of these inter-related, inherently social practices lies in their contribution to the project of discovering what it means to be a human being. My aim in this article is to advance the idea of legal education as an exercise in personal growth and renewed social engagement. To this end, I present Dads Aiming for Direction and Support (DADS)—a support group for separated and divorced fathers—as a site of legal education.

I begin with an explanation of what I mean by a “site of legal education.” I then sketch some of the acute challenges that participants in the DADS program are facing in their lives, as well as how the program endeavours to help them. Next, I present a way of thinking about law as a more holistic normative endeavour than it is usually framed. From this

1. Every account of what legal education “is” comports some idea of what legal education is “for”; the same holds true for law; see Kenneth J Winston, “The Ideal Element in a Definition of Law” (1986) 5 Law & Phil 89.
point of view, one has a clearer vantage point to see DADS as a site of legal education. Thereby, I attempt to show that the program’s potential to foster opportunities for participants to develop a sense of order and meaning in their lives reveals what is at the very heart of legal education.

My goal in this paper is not to make specific curricular recommendations. Nor is it to show that all legal educational environments are identical. Instead, I hope to demonstrate how adopting an inclusive, aspirational view of legal education can shed light on the kinds of learning relevant to facilitating more just forms of human interaction through law. Presenting DADS as a site of legal education underscores the relationship that the program, its participants, and their families bear to law. Moreover, it is also a way of resisting reclusion of law and legal education to the remit of a privileged few—recognizing law instead as a resource and responsibility of all members of society.

I. Setting sights on sites of legal education

Through formal study of the law, one becomes conversant in the ways that power purports to be legitimated. One not only learns about what law is and how it may (or may not) work, but also why law evolves (or not), and how to change it or keep it as is. As much as the smooth functioning of the legal system needs individuals who are experts in the formal law, a flourishing society requires much more from its legal professionals, its law, and the human beings whose conduct it purports to govern. I argue in favour of conceiving both law and legal education pluralistically, to highlight not only their formal and explicit instantiations, but their informal and implicit dimensions as well.

At first blush, it may seem unusual to identify the work of a support group for fathers whose spousal relationships have broken down with the activity of legal education. So prevalent is the assumption that the

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3. While I believe that conceiving law and legal education beyond their formal, institutional incarnations offers sound footing for forging new paths in law school teaching, such a discussion is beyond the scope of this article. For studies on the significance of “affect” in the formation and professional development of jurists and efforts to re-imagine law as a “healing profession,” see Paul Maharg & Caroline Manghan, Affect and Legal Education: Emotion in Learning and Teaching the Law (Burlington: Ashgate, 2011) and Marjorie Silver, The Affective Assistance of Counsel: Practicing Law as a Healing Profession (Durham: Carolina Academic Press, 2007).


The defining feature of legal education is the formal preparation of students to become lawyers that it is easy to ignore or discount other examples of it. Other forms include lecture series targeted at curious laypersons, professional development programs offered to seasoned jurists, and various other ways of empowering people through the dissemination of knowledge. Moreover, there is a great deal of pressure today to collapse legal education into professional preparation, and then that, in turn, into technical training. Nevertheless, whether law schools claim to be in the business of training legal professionals or contributing to the formation of citizens, by virtue of deliberately doing one, they are (deliberately or not) doing the other. It is important to situate legal education in a social field as wide as that inhabited by those whose interactions law purports to govern.

My hypothesis is that what unites legal education in its diverse forms is its potential to foster every human being’s sense of implication in, and responsibility for, contributing to the reconstruction of more just forms of social ordering. This way legal education may be seen to embrace—while at the same time transcend—the particular concerns that attend the practice of law and inform the training of lawyers.

Even though accounts differ over what preparation for the legal profession ought to specifically entail, they nonetheless tend to equate education solely with schooling, and law exclusively with the official legal

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10. The equation of legal education with the training of lawyers has a long pedigree. It is what Chief Justice Coke expressed in response to King James I’s claim that, by virtue of being an educated person equipped with powers of reason, he was as qualified to sit in judgement as any judge: “True it was that, God had endowed His Majesty with excellent science and great endowments of nature; but His Majesty was not learned in the laws of his realm of England, and causes... are not to be decided by natural reason but by the artificial reason and judgment of the law, which law is an art which requires long study and experience, before that a man can attain to cognizance of it.” Prohibitions del Roy, (1607) 77 ER 1342, 1343 (KB), cited in Ernest Weinrib, “Can Law Survive Legal Education?” (2007) 60 Vand L Rev 401 at 437.
normative outputs of the state.\textsuperscript{11} Even public legal education initiatives and university programs targeted at a wider swathe of people than aspiring lawyers tend to embody these assumptions.\textsuperscript{12}

But as the old saw attributed to Mark Twain—that “I never let schooling get in the way of my education”—implies, it is not just within the confines of academic institutions that learning occurs. Indeed, the formative role of apprenticeship for lawyers—not just in the past but also in the present, and no doubt the future—testifies to the learning taking place beyond the walls of the classroom.\textsuperscript{13} Practice makes the practitioner—of the law, or anything else for that matter. Formal educational institutions may put up a shingle, but there are many sites of education that are in the business of teaching and learning, even though they do not explicitly profess to be.

It would be equally unrepresentative to recognize as law only that which “thinks of itself as law.”\textsuperscript{14} Nevertheless, many years ago, Lon L. Fuller pointed out the strong appetite among jurists for the “intellectual flavour of made law”\textsuperscript{15}, that is, the explicitly legal, institutionally sanctioned, state-backed, and formally elaborated system of law. In support of a more balanced diet, Fuller stressed the importance of recognizing the implicit, customarily established, unofficially generated and informally expressed.

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\textsuperscript{12} Consider, for example, how the primary focus of the public legal education initiative Law in Action Within Schools (LAWS) is to expose “at-risk” secondary school students to “legal issues, the justice system and the legal profession”: Law in Action Within Schools, online: <www.lawinaction.ca>. Performing mock trials is presented as an example of “law in action within schools” but the facilitation of peer-to-peer mediation is not. Privileging “lawyers’ law” and the activities of legal practitioners is effectively what certain strident visions of university “law and society” programs do as well; see Lesley Jacobs, “Legal Consciousness and the Promise of Law & Society” (2003) 18 CJLS 61. Such insistence on the incommensurable differences between “law school” and “legal studies” gives the impression that one doth protest too much; on this point, see Vincent Kazmierski, “How Much Law in Legal Studies? Approaches to Teaching ‘Legal’ Research and Doctrinal Analysis in a Legal Studies Program” (2014) 29:3 CJLS 293.

\textsuperscript{13} For one to be “of” a profession before entering it, the study and the practice of law would have to be replicas of each other. Even if one were to substitute a system of professional apprenticeship for university-based study, it would still take time to learn the intricacies of the trade, not to mention the finer points of the law. Law societies recognized that university-based study could offer a more broadly-based, intellectually rigorous legal education to its future members than the apprenticeship system ever could; for instance, see C Ian Kyer & Jerome E Bickenbach, \textit{The Fiercest Debate: Cecil A Wright, the Benchers, and Legal Education in Ontario 1923–1957} (Toronto: Osgoode Society, 1987). What may seem like the particularly intense pressure today to make legal study more closely approximate legal practice has in fact always existed; see “Section III: Professional Colonization” and accompanying footnotes in Roderick Macdonald & Thomas McMorrow, “Decolonizing Law School” (2014) 51:4 Alta L Rev 717.


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dimensions of legal normativity. Notwithstanding the regular tendency to oppose them to one another, Fuller argued that like “the two blades of a pair of scissors,” the patent and latent dimensions of law are two parts of a whole, stating “[i]f we watch only one blade we may conclude it does all the cutting... [but] both blades cut... neither can cut without the other.”

Just as formal legal study in an academic environment does not represent the only possible mode of legal education, neither do the activities of legal practitioners sum up the interactive, social practice that is law. Both within and beyond the walls of law faculties, universities, and bar courses exist as informal and implicit sites of legal education. These spaces for human interaction are not explicitly consecrated to the activity of formally studying the law, but nonetheless facilitate legal education. The greater the extent to which teaching and learning aims are expressly laid out and consciously pursued, the more formal the site of education is. The more official, systematic, and deliberate the elaboration of norms, the more explicit the site of law-making. For example, a law school is a formal site of education, but an implicit site of law-making; conversely, Parliament is an informal site of education but an explicit site of law-making.

DADS is a “formal site of education,” insofar as it has a curriculum, is centred around explicit learning objectives and has facilitators performing a teaching role. It is not a formal site of “legal education,” however, because its goal is neither to train lawyers nor to impart an abstract knowledge of the legal system. Although the sessions are not designated for a sustained, focused study of the rules, rationales, principles, institutions and processes of family law, informal discussions of these topics frequently arise. Moreover, to the extent that the participants are learning about themselves and how to relate better to others, including their children and former spouses, they are learning to actively contribute to the conditions for

17. Lon L Fuller, “American Legal Realism” (1934) 82:5 U Penn L Rev 429 at 452.
20. The personally and professionally formative experiences law students have outside of the classroom are also important. See Desmond Manderson and Sarah Turner’s argument as to the student-socialization functions of a weekly networking event sponsored by law firms at a Canadian law school: “Coffee House: Habitus and Performance Among Law Students” (2006) 31:3 Law & Soc Inquiry 649.
rule-based, other-regarding social interaction. This is part of both legal education and of law-making.

II. Taking a look at a community-based support group for fathers in transition

At the request of the John Howard Society (JHS) of Durham Region, my colleague Shahid Alvi and I undertook an evaluation of their DADS program.\(^{21}\) We conducted our intensive study of the program on an understanding with the JHS that we would be free to use the data we collected for scholarly purposes—subject, of course, to the informed consent of participants and certain confidentiality safeguards.\(^{22}\) As part of our research, we reviewed past and present program materials, administered an intake and post-exit survey, and carried out interviews (with five of the six participants, one past participant, the two facilitators, and four former facilitators). We also carried out unobtrusive observations of the ten weekly two-hour meetings of the Fall 2014 session. Each week we sat at a small table in the corner of the room writing our observations down in our notebooks.

The JHS of Durham Region established the DADS program in 1995 in response to clients seeking a peer support group to help them cope with the dissolution of their spousal relationships and, in particular, the impact on their relationships with their children.\(^{23}\) Although there have been modifications to the program over the years, its design and delivery have been relatively consistent. Two JHS employees—with experience and training in the fields of counselling and social work—facilitate the sessions. Since the program’s inception, at least one of the facilitators has been a woman. Structured around a ten-chapter program manual, the sessions include information, tips, exercises, and discussions on the following topics: the nature and purpose of the program, the impact separation and divorce can have on children, and the ways in which, depending on their age, children may respond to these experiences. The subject of how to have a “business relationship” and minimize conflict with one’s co-parent is also discussed, and strategies for coping with anger, stress, grief, and

\(^{22}\) We carried out the research with the UOIT Research Ethics Board’s approval and in accordance with the Tri-council Policy Statement on Ethical Conduct for Research Involving Humans.
self-esteem are also addressed. The program concluded with a re-cap of the larger themes.

The group of men who participate in DADS is diverse—displaying a range of demographic characteristics. Their educational backgrounds, income levels, professional occupations, and employment statuses range widely. How they come to participate in the program also differs, as do their motivations for participating. Some participants ostensibly join DADS just to get the certificate at the end, believing that it will help them in their legal matters, such as child custody disputes. For others, the primary motivation appears to be their perception of the therapeutic benefits the program will have.

Participants are going through a tumultuous period in their lives, characterized by high levels of conflict and stress. While dealing with feelings of anger, frustration, grief and anxiety, many may also be engaging in a range of harmful and avoidant behaviours. Regardless, they are endeavouring to cope with the changes associated with irremediable spousal relationship break-down. Based on what the men said in the sessions and interviews, two central themes emerge. First, the participants feel as if they have no recourse, especially in response to the misconduct of their former spouses but also in respect to the deterioration of their relationships with their children. They frequently describe the conflicts they have with their former spouses as both intractable and damaging for their children. They express holding out little hope in lawyers, the courts or anyone else to improve their situations.

Another prominent theme is the participants’ sense of instability. The men referred to the financial toll. The economic costs of the divorce process, spiked by the high price of legal fees, were felt all the more acutely in cases where the individual was unemployed. Dollars and cents were far from the primary preoccupation of the participants, though. Characteristic of the circumstances that led all of the participants to the program was their experience of emotional, social and normative instability. In some cases the sense of emotional instability was described by the participants as psychological in character. For example, in the interviews one participant disclosed his struggle with situational depression, while another explained he was in DADS because he could not afford a psychologist. The program is designed to encourage participants to acknowledge their feelings, to understand why they feel the way they do, and to develop strategies for dealing with their feelings.

One’s social life often undergoes significant changes during the divorce process. Not only can there be a profound change in the nature of the relationship one has with one’s spouse, but also with one’s children, extended family, friends, and the wider community. It is a marked period of transition for oneself and for the most important people in one’s life. Changes to relationships both prompt and proceed from shifts in personal commitments. In this context, what one’s social roles are and how one should go about fulfilling them become live questions (whether or not one consciously considers them). This is what I mean by normative instability: the order in one’s life is undergoing transformation. How do the old rules—or any rules—apply now?

The potential reasons and remedies for feelings of instability and lack of recourse have multiple dimensions: intellectual and emotional, educational and normative, psychological and institutional, economic and social. The DADS program has a limited capacity to provide concrete redress for its participants. For this reason, one experienced social worker described facilitating DADS as “the hardest thing” she had ever done. In our interview, she stated:

I work with high-risk teenage boys and it’s a heck of a lot easier to work with them...because I can teach them and train them and work with them, but DADS I can’t fix their problem. I can’t give their kids back... In just about every area of social service work that I’ve done I’ve been able to offer a solution somehow. I don’t have one for that. There’s no solution, right?

Even though an incentive for many participants is the chance that joining the program will enhance their prospects of success in their attempts to gain custody or have access to their children, the program’s real value lies not in its ability to increase the quantity of contact participants have with their children, but in its potential to help them improve the quality of that contact. All the participants attested to finding the readings in the course manual helpful. Indeed, one noted that he shared the course manual with his parents to help them see the importance of not discussing his co-parent’s failings around the children and to develop coping strategies themselves. The readings, exercises and discussions offer occasion for

26. Interview of facilitator 6 (18 December 2014).
critical self-reflection on what it means to be a good father and a good person.27

The support group context contributes to both the therapeutic and educational roles of the program. Through their interactions, the participants provide validation and offer guidance to each other. Their exchanges are occasions for affirmation and correction. Being listened to is instrumental to talking through one’s challenges. Conversely, listening to others enables one to see one’s own difficulties and one’s ways of approaching them in a new light. Nearly all of the men in the set of sessions we studied expressly acknowledged that one of the chief benefits of attending the program was, in the words of one participant, to “hear about other peoples’ experiences… [which] helps to put perspective on things.”28 Thus, the support group provides an opportunity to feel supported and encouraged by individuals facing similar challenges. It gives participants a chance to draw hope from the stories they hear. Finally, it gives the men an opportunity to discuss problems they are facing, to articulate the difficulties they are encountering with a sympathetic group of people, and to work out ways of responding constructively to these challenges.

III. Reflecting on the roles of DADS and dads in the construction of family law

What does this educational and therapeutic program have to do with law? Notwithstanding its recognition that children have the right to meaningful relationships with both of their parents,29 DADS does not profess to be a “fathers’ rights group”,30 in fact, it expressly distances itself from

27. For an analysis of the various ways in which notions of fatherhood are constructed through law and social practices, see Richard Collier & Sally Shelton, Fragmenting Fatherhood: A Socio-legal Study (Oxford; Portland: Hart Pub, 2008).


30. See Molly Dragiewicz, Equality with a vengeance: Men’s rights groups, battered women, and antifeminist backlash (Boston: Northeastern University Press, 2011); Richard Collier & Sally Sheldon, eds, Fathers’ Rights Activism and Law Reform in Comparative Perspective (Oxford and Portland: Hart Publishing, 2006); in particular, see the insightful analysis of the “micro politics of child contact,” in Carol Smart’s preface to the Collier and Sheldon book.
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these types of “pro men” organizations. In the sessions, participant grumblings about “a system rigged in favour of women” were re-directed towards discussion of the steps that participants can take to deal constructively with their co-parents, to develop positive relationships with their kids, and to better attend to their own self-care. This was done by the lead facilitator, who sensitively and thoughtfully drew from her own personal experience as a woman who went through a difficult divorce. She was clearly respected by the participants and her experience of having facilitated many sessions in the past was evident.

There is an explicit connection between this program and the family law system. Many of the participants are advised to attend the program by lawyers representing them in disputes before the courts. In this respect, participants regularly exchange advice on navigating the family law system, share opinions about its nature, and discuss their experiences with “the system,” “the law,” “the courts” and “lawyers.” On an implicit level lies an even more significant link. Because the program aims to assist participants to grow as “dads,” the men are continuously discussing and reflecting on their experiences, emotions, rights, duties, obligations and aspirations as fathers and co-parents. In this way, the program provides a space in which participants share, contest, explore and develop their concepts of and feelings about the norms governing their post-dissolution family lives.

How individuals themselves imagine, invent and interpret the norms by which they govern their interactions is as important to understanding law as the rules, institutions and processes whereby authorities purport to prescribe human conduct. When it comes to the creative role that people play in constructing legal normativity, many accounts of family law either deny its existence, bracket its relevance or diminish its significance.

In emphasizing official, state-based sites of law-making, such as courts

32. Programs of this nature are rare in Canada although there are a number of them in the United States; see Jacinta Bronte-Tinkew et al, “Elements of Promising Practice for Fatherhood Programs: Evidence-Based Research Findings on Programs for Fathers” Report prepared for the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance (Washington, DC: Child Trends, 2007).
and legislatures, they elect to ignore the question of what people actually do or they try to portray the role of people as either separate from or secondary to the project of law. Symbolizing commercial exchange or public administration under the governance of rules has an intuitive resonance that framing family living in this way usually does not. The necessity of formal rules grows pronouncedly in the post-dissolution context since parties can no longer rely on either the formal expectations or tacit understandings underlying their spousal relationship. The challenge of defining new kinds of rules, roles and, ultimately, relationships may very well require the invocation of explicit and formal legal norms, institutions, methodologies, justifications, and processes. But these formal processes do not provide a substitute for the negotiation and development of informal, implicit, and inferential normativity.

At its best, the program does not just permit participants to sound off about the system, but to challenge their preconceptions. A past participant who was invited to speak with the group in the final session discussed how his perspective had changed through his participation in the program:

So one thing I learned and I still practice is don’t involve the kids in adult conflict. And I still will not talk about any of these issues with him around. Whereas I know my ex as soon as she gets an audience she’ll tell everybody how bad I am in front of our son or whoever’s listening. And that’s one thing, that was one of the most important things I think I got from DADS is you’ve got to leave the kids out of it.

Extensive social-psychological literature has emerged on why people accept the formal outcomes of institutionalized legal decision-making

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36. Lon L. Fuller notes that “the internal affairs of the marriage have generally been thought to be inappropriate material for regulation by a regime of formal act-oriented rules, whether imposed by law or by contract,” observing “no laws in the books prescribing which spouse is responsible for helping the children with their school work or allocating between husband and wife the right to invite their respective relatives to make weekend visits,” in “Mediation—Its Forms and Functions” (1971) 44 S Cal L Rev 305 at 330.

37. See Macdonald, supra note 5.

38. DADS session # 10 (25 November 2014).
processes as legitimate, even when they do not agree.\textsuperscript{39} Perhaps to seek social arrangements that accord with one’s sense of justice is to have to swallow some element of injustice. One must not confuse law’s aspiration for justice with achievement of justice. At best, “the legal” only ever offers an approximation of “the just.” The past participant’s remarks are therefore evidence of weighing values and reconciling to oneself what is worth fighting for and how.

When the same individual who had expressed in other sessions how unfair he considered child support to be returned to this point, the past participant offered an alternative perspective. Here I quote from that exchange:

Present participant: “[You split the time with your child] 50/50 so why do you have to pay child support?”
Past participant: “Well, gotta support the child [so he’s] clothed, looked after.”
Present participant: “That’s bullshit. Couldn’t she get a job?”
Past participant: “Bottom line: someone has to pay to look after the kids.”\textsuperscript{40}

This dialogue is illustrative of participants challenging each other’s views of state legal principles and practices. Although most references made by the men to the law and legal system were anecdotal and impressionistic in character, the veteran female facilitator did provide tips from time to time. Familiar with the kinds of fights that can crop up between former spouses, she underscored the importance of including things like arrangements for holidays—“everyone forgets about Halloween”—and provisions for the emergency contact—“so dad has first right of refusal”—in orders and agreements pertaining to child custody and access.\textsuperscript{41} Speaking to this group of men in high conflict situations with their former spouses, she stressed “everything has to be written, has to be stamped by the judge—otherwise it won’t happen.”\textsuperscript{42} Notwithstanding these occasional comments, there was no systematic effort to offer information about the legal system or to provide resources to assist participants in understanding and navigating the court process or alternative forms of dispute resolution.

\textsuperscript{39} Much of this has been influenced by the pioneering work of Tom Tyler in \textit{Why People Obey the Law} (Princeton: Princeton University Press, 1990).
\textsuperscript{40} DADS session # 10, \textit{supra} note 38.
\textsuperscript{41} DADS session # 5 (23 October 2014).
\textsuperscript{42} \textit{Ibid.}
Both current and former facilitators of the program identified participant success with progress made in learning to accept the things they cannot change, while regaining a sense of control over their lives and hope for their future. This involves discovering how to come to terms with what has happened in one’s life, reflecting on the ways in which one has contributed to one’s own situation, identifying one’s goals, aspirations and values (as parents and as persons), and working toward building healthy, rewarding lives in relationship with one’s children, one’s co-parent, oneself and any future romantic partners. To this end, the DADS program seeks to provide participants with both support and tools. By no means does it remedy the sense of disempowerment or disorder they may be experiencing, but it does provide them with resources for their ongoing journey.

Cultivating the emotional, psychological and intellectual resources people need to exercise agency is of primordial significance to law as a normative undertaking. The very possibility of law as a rule-based endeavour depends on human beings acting as responsible, creative and normative actors. People need to be willing and able to orient their actions according to what they feel are legitimate norms for family law to fulfill its promise. John Dewar argues that when it comes to addressing family conflict, “a realm in which big ideas are in play, where the passions are engaged and in which the stakes are high for us all” law’s virtue is that “it calls us back to the level of practicality or functionality—the question, in other words, of what will work.”

A legal arrangement’s workability may turn on factors such as the modesty of its ambitions or the genius of its design; whether it actually works is another matter.

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43. John Dewar, “Family Law and Its Discontents” (2000) 14 Int’l JL Pol & Fam 59 at 79-80. Dewar draws on Cass Sunstein’s argument that the aim of adjudication should be understood as that of furnishing “incompletely theorized agreements”; that is, decisional outcomes framed in such a general manner that people with differing perspectives, values and goals can accept them without relinquishing their own deeply held normative commitments: Cass R Sunstein, “Incompletely Theorized Agreements” (1995) 108 Harv L Rev 1733. Further illumination of the concept is offered by Benjamin Berger’s analysis of the place of law in the politics of religious freedom: Benjamin L Berger, “The Virtues of Law in the Politics of Religious Freedom” (2014) 29:3 JL & Religion 1. There is a danger, though, as identified by Jeremy Webber, of overstating the extent to which the “incompletely theorized arguments” represented by court decisions can be developed at a remove from deeper normative conflicts informing them. The adjudicative process of effecting a practical compromise can never completely skirt over underlying arguments of justification. Moreover, argues Webber, it is wrong to give their “incompletely theorized” character all the credit for the willingness of disputing factions to accept them: “[M]embers realize that, within broad limits, they have to put up with normative positions, normative interpretations, that they do not fully agree with if they are to live in society with people who have their own minds... Legitimacy is a relative concept, in which there can be greater or lesser degrees of acceptance. It is not on-off, either accorded or not”: “The Grammar of Customary Law” (2009) 54 McGill LJ 579 at 624.
Judicial decisions based on statute provide a set of formal norms and procedures for the dissolution of spousal relations and the establishment of parenting arrangements. Alison Diduck observes, “whether it is about money, care of children, employment, income support, or housing, the purpose of family law is to allocate and enforce responsibility for those responsibilities.”44 This purpose is not self-executing, however. People need to be willing and able to act responsibly in order for state law to discharge its function of allocating and enforcing accountability for these roles.

People’s faith in their capacity to fulfill their duties is as important as any declaration of what those duties are. For a person who senses that one’s family relationships constitute such an unworkable mess that nothing one does will make any meaningful difference, the law ceases to matter. Lon L. Fuller argues that there are some situations in which “law fails of its full mission...because it projects itself upon a social terrain incapable of supporting it.”45 Fuller describes these as instances “where the stream of life simply does not offer a sufficient substance to keep afloat even the most modest demands of the law.”46 To illustrate his point, he draws an “analogy from family life,” casting the father “in the role of law and son in the role of citizen subject to law.”47 The father is unable to exercise any authority whatsoever if he and the son do not communicate at all: “son is not stifled or oppressed by father’s rules, he simply shrugs them off; they do not enter meaningfully into his life at all, either as impediments or as guides to conduct.”48 Law proves ineffective if it fails to resonate. It is not a matter of law’s whistle being too loud and shrill to elicit its intended response, but of being pitched at such a frequency that it fails to register at all.

Roderick Macdonald notes: “in limiting the way in which people are authorized to talk to each other about their conflicts, rules transform

45. Lon L Fuller, “The Law’s Precarious Hold on Life” (1968–1969) 3 Ga L Rev 530 at 536. Fuller marshals three examples from US law to support his argument that certain social conditions must be satisfied for law to work (at 531-537): first, the problem of enforcing property rights on skid row where no one is ever quite sure who owns what or where it came from. Second, that of enforcing a contract in which the parties have not spelled out what they are agreeing to and have actually agreed to different things. Third, that of applying the principle of fault-based liability when it is impossible to tell based on ordinary powers of human observation and judgment what exactly happened and who was to blame. In each case, the premises necessary for the respective laws of property, contract, and tort to govern are absent
46. Ibid at 530.
47. Ibid.
48. Ibid.
claims of justification into arguments about the meaning of words."^{49} Sometimes, though, the language of law is merely appropriated as a proxy for the “inarticulate complaints, open-ended differences of opinion, or multidimensional conflicts” that persist in strongly felt ways.\(^{50}\) The “non-interpretive arguments,” as Macdonald calls them (i.e. the yearning for vindication, vengeance or simple recognition), are, superficially, “reformulated into a language and form consistent with that given by the formal rule”; \(^{51}\) below the surface, the purposes informing the rule may lie unappreciated or adamantly opposed.\(^{52}\)

The goal of the DADS program is to help fathers work through personal struggles and establish healthier, more constructive relationships with their children and former spouses. Learning how to act constructively and responsibly has intellectual and emotional components. Just as severe emotional instability may impede one from reaching the levels of openness and concentration necessary for learning, a lack of awareness or understanding will hamper one’s discovery of what one can do to enhance one’s psychological well-being. If the modifier “educational” denotes the discovery of knowledge and the development of specific skills, competencies and habits, the term “therapeutic” evokes the process of personal healing and the cultivation of emotional and psychological well-being. The therapeutic and educational dimensions of the program both complement and reinforce each other. In many ways, all education has a therapeutic aspect and all therapy has an educational dimension. While DADS serves educational and therapeutic roles, these in turn have normative implications.\(^{53}\)

Normativity finds expression in declarations of what people should do, such as legislative enactments and judicial decisions; however, it is also communicated implicitly through human interaction. Norms arise from, and are reflected in, the manner in which individuals act toward


\(50\). Ibid.

\(51\). Ibid.

\(52\). See Harvey Brownstone, Tug of War: a Judge’s Verdict on Separation, Custody Battles, and the Bitter Realities of Family Court (Toronto: ECW Press, 2009).

Indeed, how human beings actually treat each other can be a much closer indicator of what they consider their obligations to be. Participation in the DADS program nurtures each man’s willingness and ability to work with their former spouses and their children to cultivate shared sign-posts for guiding their interactions. During this process, family law comes to mean more than the coercive exercise of state power. Recognizing both its formal and informal aspects, its explicit and implicit dimensions, family law, as a normative endeavour, turns on the capacity of its purported subjects to make it their own.

A recurring challenge acutely experienced by participants in DADS is that for a wide variety of reasons, neither their former spouses nor their children may wish to establish the level of communication requisite to building the kind of normative regime they desire. These individuals must contend not just with their own limitations, but also the limitations of the people upon whom such a cooperative undertaking of law-making relies. Success in court, even securing enforcement of judicial orders, will not by itself ameliorate these conditions.

Thus, the conclusion that legal education “is inevitably concerned with the activity of ‘judges, legislators, and practitioners’” would be sound, if that were all there were to law. Boiling law—and therefore legal education—down to a preoccupation with “the practice of law” is not the product of logical necessity but an interpretive choice. Ernest Weinrib argues that quite apart from making legal education recognizable to the legal profession, exclusively equating law with the work of legal professionals grants the subject the “generically determinate character” it requires to serve as the object of intellectual study. Were the object of university legal education not “the study of the practice of law,” Weinrib insists it would then be akin “to the zoological study of unicorns.”

Electing not to centre teaching and learning strictly around a generic account of law need not be considered some flight of intellectual fancy. On the contrary, it can stem from a well-justified skepticism toward the claim that it is only those activities consciously governed by law that ought to

54. Fuller distinguishes between “enacted” or “made” law, on one hand, and “customary” law, on the other, on the basis that the latter derives its force due not to the mere fact of its formal enactment but “to the fact that it has found direct expression in the conduct of men [sic] toward one another”; see Fuller, supra note 16 at 1.

55. See Weinrib, supra note 10 at 404.

56. Ibid at 401.

57. Ibid at 404.
serve as the object of legal study. While endowment with the powers of practical reasoning does not itself a legal expert make, neither does knowledge of the “artificial reason and judgment of the law” capture the full breadth and depth of what legal education involves. Absent a wider and deeper knowledge of the human purposes it is intended to serve, merely knowing the law offers an insufficient basis for understanding it. Attending to certain dimensions of legal normativity—including the very conditions of its possibility—is integral to legal education. It is vital for those striving to be educated in the law so they might appreciate the forms and limits of state law as a normative endeavour. Fundamentally, though, paying attention to the conditions for law is part and parcel of engaging in a critically self-reflective examination of how human beings endeavour to order their lives together. Recognizing the unofficial, informal, and implicit dimensions of any official, formal, explicit aspect of law reveals the need to situate legal education within the wider social field in which law is imagined, experienced, made and resisted.

Conclusion
Law as a normative endeavour relies on the commitment of its subjects. How they choose to articulate and to live their commitments depends on their mental and emotional well-being. When one is cultivating one’s capacity to build new normative regimes with their children and co-parents, one is developing one’s legal agency. Far from any law faculty, university, bar course, or CEGEP, the program serves as a site of legal education.

58. Legal pluralist scholarship robustly confronts this claim. For a conspectus of legal pluralist approaches, see Emmanuel Melissaris, Ubiquitous Law: Legal Theory and the Space for Legal Pluralism (London: Ashgate, 2009). Objection to this plural account of law may be boiled down to two rhetorical questions: first, if law is everywhere, does that mean law is nowhere? Second, if everything is law, then does that imply law is everything? See Simon Roberts, “After Government—On Representing Law Without the State” 68 (2005) Mod L Rev 1 and “Against Legal Pluralism: Some Reflections on the Contemporary Enlargement of the Legal Domain” (1998) 42 J Leg Pluralism & Unofficial L 95. It may be countered that the objection indicates a failure to appreciate the point critical legal pluralists attempt to make; namely, that law is not a thing, but an activity. Law, Roderick A Macdonald argues, is a manner of framing human conduct, a lens for analyzing social interaction. Like religion or economics, sociology or ethics, law presents a field of view that can be applied anywhere. This does not mean, however, that law is always the only, let alone the best, way of understanding the world; see Roderick A Macdonald, Lessons of Everyday Law (Montreal & Kingston: McGill Queen’s University Press, 2002). As Brian Tamanaha notes, legal pluralists have never been able to dispose of this question to everyone’s satisfaction: “Understanding Legal Pluralism: Past to Present, Local to Global” (2008) 30 Sydney L Rev 375. For Tamanaha’s own foray into the matter, see “A Non-Essentialist Concept of Legal Pluralism” (2000) 27 JL & Soc’y 296. For Macdonald’s, see “Triangulating Social Law Reform” in Ysolde Gendreau, ed, Dessiner la société par le droit: Mapping Society Through Law (Montréal: Les Editions Themis Inc, 2004) 120.

because participants are learning how to “do” law; they are cultivating their capacity to act as jurisgenerative human agents.  

Formal legal study enables one to develop a certain normative literacy, permitting one to become more fluent in the language through which political, economic, and social power purport to be legitimated. It enables one to move beyond “the first year’s tendency to flip flop between formalism and mere equitable intuition.” Acquiring such a facility does not just enhance one’s ability to understand the law, but also to change it.

Participants in DADS are not undertaking a formal study of the legal system, its norms, institutions or processes, although this does take place indirectly. They are, however, learning about themselves, while finding new ways to govern their interactions with the most significant people in their lives. They are discovering ways to articulate their thoughts and feelings in modes other than self-pity and complaint. They are learning to identify and pursue their aspirations, rather than just indulging in lamentations over the past or fantasizing about the future. Although the context of DADS is distinctive in many respects, every student of law, just like every participant in DADS, confronts the challenge of establishing the kind of order that will permit them to find a sense of meaning in their lives.

The American poet, Robert Frost, once said:

Any psychiatrist will tell you that making a basket, or making a horseshoe, or giving anything form gives you a confidence in the universe... that it has a form, see. When you talk about your troubles and go to somebody about them, you’re just a fool. The best way to settle them is to make something that has form, because all you want to do is get a sense of form.

While his reductive diagnosis of a person’s troubles to a loss of a “sense of form” may obscure the complexity of factors—psychological, social, political, economic, and cultural—informing personal distress, there is wisdom in Frost’s remarks. I am not specifically referring to his folksy pacan to self-reliance—although I do think that writing a self-help book is probably a more therapeutic exercise than reading one. When he says

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60. Robert Cover uses “jurisgenerative” to describe the capacity of social movements, cultural communities and judges to produce law: “Noms and Narrative” (1983) 97 Harv L Rev 4. Roderick A Macdonald & David Sandomierski attribute this law-making potential to all legal subjects, since it is ultimately they who decide what norms to treat as normative: supra note 33.
“giving anything form gives you a confidence in the universe,” he is underscoring how a sense of objective order and a sense of subjective meaning are mutually reinforcing. To have, in Frost’s terms, “a confidence in the universe” is to have a sense that there is an order to existence—an order to which one is subject, and of which one is part. Creative activity, what Frost calls “giving form,” may be experienced not just as a way of confirming, but of actually calling forth this sense of order.

It is not a matter, then, of either total rejection or complete embrace of the way things happen to appear; ours is a creative, not purely reactive role. Education should neither produce resignation nor indifference to the always imperfect orders human beings construct in the world. Rather it should help one to cultivate the disposition of “conflicted engagement” Frost describes in one of his poems:

I hold your doctrine of Memento Mori.
And were an epitaph to be my story,
I’d have a short one ready for my own.
I would have written of me on my stone:
I had a lover’s quarrel with the world.64

A human being who lacks a sense of meaning does not feel like his or her choices matter. And so, judgments of fairness—as well as feelings of obligation to act on them and confidence that one can—become irrelevant. A sense of meaning and a sense of order are interlaced. Through the construction of order, human beings come to identify as a collective, as opposed to “an accidental accumulation of several individuals in one spot.”65 At the same time, only by identifying with others is it possible to forge personal identities.66 Some degree of predictability is necessary for human beings to pursue their projects. Order furnishes the conditions for acting meaningfully. Absent a sense of order, one’s actions seem to have less salience because there is no counting on the what or the how, and no accounting for the why.

The struggle for meaning and order in one’s life is not unique to participants in the DADS program. It is part of the human condition. The more one learns about law and the legal system, the less confidence one may feel about the level of recourse available to anyone who experiences injustice. Moreover, the more one studies law, the more unstable social life

may seem. Rather than becoming resigned to injustice or indifferent to it, students of law, like participants in DADS, may discover what it means to feel at once conflicted and engaged—both implicated in and responsible for the order and disorder in one’s own family and within society at large.

Such an opportunity is not the exclusive feature of “legal” education, nor a characteristic exclusive to it. Neither institutionalized education in general, nor formal legal education in particular, boast a monopoly over this endeavor. And there’s no guarantee that professors or students will choose to take it up. Still, to view it as a foundational dimension of legal education is to see that the value of legal education is not reducible to what one learns about law. Its true worth lies in the opportunities it offers for personal growth and renewed social engagement. Fostering these activities—in law faculties and at support group sessions, in community programs and at kitchen tables—more closely approximates “[n]ot ideas of the thing but the thing itself.”
