

Emotionally Efficient Legal Education

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Happiness isn't just therapeutic (not that there is anything wrong with that!). Schools that invest in happiness and other efficient emotions can identify better students and get students to perform better – both at traditional law school exams and at negotiation. That's not merely a theory. That's the result of years of study with students at the University of Miami. It also is consistent with basic psychological research and medical research. But they are only consistent: there were good reasons to believe that emotion might affect performance by law students in some different way. The good news is that some of the same emotions and thinking habits may make students feel better and perform better. And there is evidence that some of these habits, like optimism, can also be taught. Of course, it makes sense to test these results through further study: Do they apply to other law schools? Do they predict bar performance? Do they predict success as lawyers? So, too, the results also raise some important research and policy questions. Can we really test for these skills in students? And should we: testing and rewarding these skills might capture the potential of some minority lawyers better than the LSATs, but they might hurt other minorities, including those who already suffer from some emotional disabilities.

I. Competing Paradigms For Emotion and Success

1. The Traditional Paradigm

1. Emotion is negative (such as anger)
2. Only very strong emotions matter
 - a. Maybe even only for Adifficult@ people
 - b. Maybe only difficult “others” (women; foreigners)
3. Emotion interferes with negotiation
4. Emotion only from the negotiation itself – solution only by solving the negotiation itself
5. The lawyer (and or mediator) can Acool out@ the emotionally hot client
6. Institutions need only worry about emotions if there are strong negative emotions and only about the strong negative emotions of individuals (such as those with legally recognized disabilities).

2. A Competing Paradigm: Efficient Emotion

1. Emotion includes positive and negative emotion
2. Mild emotions matter
 - a. Negative emotions and positive emotions independently lead to more success
 - b. The more positive emotion, the better results (sometimes for the individual, sometimes the negotiation unit)
 - c. The less negative emotion, the better results (sometimes for the individual, sometimes the negotiation unit)

3. The lawyer should not simply avoid emotion
 4. The lawyer should promote more positive emotion and less negative emotion
 5. Institutions should invest in emotions, even relatively mild ones and even if there are not negative emotions.
- II. Evidence For Efficient Emotion in social science
1. Non-lawyer studies and Apositive@ psychology
 1. Business and undergraduate students made happy get better negotiation results
 2. Business and undergraduate students made unhappy or angry get worse results
 2. Larger constellation of positive psychology studies: Those induced to be in better moods (through scents or funny videos, etc) do better at many tasks (e.g., academic physicians in better moods diagnose faster and more accurately
- III. Law student study one: Happier and more optimistic students do better
- A. Why not just extrapolate from non-lawyer studies?
 - a. Those studies have some problems of their own: it's not always clear if what is making a difference is the emotion or something else (such as gratitude for getting a gift). The studies also don't really address whether emotion matters only if it is a negative emotion: the happy emotion might just be reduction in unhappiness.
 - b. Those studies also might not apply to lawyers for a number of reasons. For example, some studies show Machiavellian types don't change their behavior when people try to manipulate their emotions. Law students might be more likely to have such characteristics or be taught them through law school. In addition, law students have higher rates of depression and anxiety, and this may also lead to different results for law students.
 - B. Our basic methodology
 - a. We looked in part at what we think of as the emotional habit of optimism. The specific type of optimism is an individual's confidence in her ability to overcome obstacles. We tested this at the beginning of the semester.
 - b. We also looked at emotion immediately prior to a negotiation. Rather than trying to manipulate the emotion, we just asked students to describe how well words like "happy" or "jittery" seemed to describe them at that exact moment.
 - c. From this, we constructed an index of positive and negative emotion.
 - d. Both of these scales are based on research scales used in a variety of psychology studies.
 - e. Students negotiated in on-line chat rooms at the end of the semester as part of their grade in a negotiation class. The record of the transcripts gave students an incentive to try hard since their actual behavior, not just their results, would be reviewed. We gave them a further incentive by rewarding the buyer who got the best price and the seller who got the best price.
 - f. We followed a scoreable negotiation similar to that used in many other studies. Students negotiated over several different items related to the sale of

a condo: on some they had the same preferences. On some they disagreed: on some issues, both cared about the disagreement equally; on others, one cared more than the other. Students received a certain number of points for different agreements on different points.

- C. Our most important findings
 - 1. Positive emotion associated with greater *individual* success at tasks both with potential for individual gain and joint gain
 - 2. Undergrad GPA and LSAT have no relationship to negotiation success
 - 3. Negative emotion associated with less individual success
 - 4. The typical emotion was mild, and the self-reported differences mild
 - 5. Positive emotion and negative emotion have distinct influences B merely reducing negative emotion not sufficient to optimize probable success!
 - 6. Optimism strongly predicts negotiation success!
 - 7. The association of these emotions and emotional habit of optimism was as strong as the ability of the LSAT to predict first year grades!
- IV. Emotion and first year grades
 - A. We looked at first year grades to see whether emotions and emotional habits could predict first year grades.
 - B. We found that optimism and the (self-reported) tendency to reframe negative events in positive ways predicted first year grades.
 - C. This statistical association was as strong as the LSAT and undergraduate GPA.
 - D. This finding is consistent with other studies that show that some kinds of optimism predict grades in other types of schools.
 - E. But it is not obvious: another study found that a somewhat different kind of optimism actually predicted worse grades for law students at Virginia!
 - F. We also went farther than other individual studies in considering whether the optimism might simply have reflected different abilities: were students optimistic because they realized, correctly, they had higher LSAT and GPA?
 - G. We corrected for the LSAT and GPA and our results were still valid: in other words, optimism and positive reframing predicted how well students did in excess of what a simple measure of GPA and LSAT would predict.
- V. Emotion and mental health/wellness
 - A. We also looked at how well emotional habits predict mental health.
 - B. An emotion might be less efficient if it led to good results on one dimension (such as grades) but at the cost of another (such as mental health).
 - C. We were particularly mindful of this since an earlier study at Virginia found pessimism was good for grades – but other research shows pessimism is bad for health!
 - D. We looked at changes in depression, anxiety, and well-being levels over the course of the first year of law school.
 - E. Optimism was strongly associated with more well-being and positive reframing with less depression.
- VI. Emotionally efficient legal education

- A. One might apply this research in two distinct ways
 - a. How can one improve the emotions and emotional habits of law students to make them perform better – and be happier and healthier?
 - b. How can law schools improve themselves by selecting students with more efficient emotions?
- B. Options for improving individuals
 - a. One can identify several types of skills that might work
 - i. Awareness of importance of emotion
 - ii. Training in awareness of one’s own emotions
 - 1. E.g., mindfulness training
 - iii. Awareness of emotions of others
 - 1. E.g. facial expressions of emotions
 - b. Options in dealing with emotions once identified
 - Option one: Inducing efficient emotions
 - a. Awareness of what works for given individual
 - b. Training in “learned optimism”
 - 2. Option two: Attempting to correct for effects
 - a. Easier to correct for setting low targets from negative mood than correcting for failures of creativity from lack of positive mood!
- C. Institutional challenges in screening for more emotionally efficient students
 - 1. Can we admit students based on emotions and habits like optimism?
 - Difficulty testing optimism directly
 - Less difficulty testing emotional awareness of others
 - 2. Policy: Should we admit students based on emotions and habit
 - Pro: May show less bias involving minorities than LSAT
 - Con: May show more bias for those with emotional disabilities