

A BALANCE OF CONTENT AND APPLICATION: INSTRUCTOR PERSPECTIVES ON THE ROLE OF HIGHER EDUCATION LAW COURSES IN GRADUATE PREPARATION PROGRAMS

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Abstract

Higher education law may be a relatively common course in a higher education and student affairs (HESA) curriculum and a core professional competency in the field, yet there is a paucity of empirical research on why it persists. We conducted a qualitative research project to explore how instructors of higher education law describe their approach to teaching. We used a competency-based pedagogy framework distilled from the Law, Policy, & Governance competency (ACPA & NASPA, 2015). Findings reveal how instructors sought to increase student knowledge of law and legal issues that provides a foundation for professional practice and cultivates legal critical thinking. Implications from these findings have bearing upon pedagogical approaches to HESA courses and generate research on how to ensure curricula meet the needs of an applied field.

Keywords: law, graduate preparation programs, pedagogy, instructors

Higher education and student affairs (HESA) has been, and will continue to be, a low consensus field (Renn, 2020). Prior to the establishment of professional competencies (ACPA & NASPA, 2010, 2015), HESA professionals disagreed on skills and knowledge necessary for individuals to be successful in the various roles, as well as the content areas HESA graduate preparation programs should include (Herdlein, 2004). Historically, a course in higher education law or legal issues was a common offering within HESA curricula (Olivas, 1984; Sorenson, 1984). The codification of competencies solidified law as an integral course regarding content knowledge, development of student thinking about risk management, and practical application as appropriate to their roles in higher education (ACPA & NASPA, 2015; CAS, 2019; Eaton, 2016; Gehring & Penney, 1995).

To ensure the persistence of higher education law in HESA curricula, Gehring and Penney (1995) asserted four primary reasons for its inclusion: to recognize issues of liability and appropriately alert legal counsel; to understand student rights in the development of policy and how to articulate those policies for constituents; to assist students in understanding their legal rights and help them with decision-making; and to avoid issues of personal and institutional liability. Contemporary concerns about how legal structures or demands influence student affairs practice—referred to as creeping legalism (Kimball et al., 2019; Ryder et al., 2022)—demonstrate the importance of knowledge about law for practitioners and why it must remain in HESA program curricula. Yet, given the necessity of law in HESA curricula, scant empirical research exists about course content, curricular role, and instructor experiences with these courses in HESA programs and what it means for this course to be a necessary component in a HESA curriculum. As with most, if not all, courses in a HESA curriculum, higher education law provides a foundation for lifelong learning and prepares students to engage in legally and ethically sound practice.

We imagine that instructors of higher education law courses consider the content as an important contribution to student knowledge when it comes to the application of legal constructs and how this shapes their professional practice (ACPA & NASPA, 2015). We undertook a research project that explored how HESA program instructors of higher education law (or similar courses) described their background, approaches to course, and connections of course material to professional practices. For this manuscript, we focused on instructor perceptions of the role and purpose of the course, and our research question was:

How do instructors characterize the purpose of the course in HESA curricula and its relationship to HESA professional practice?

Our research sought to establish a contemporary understanding of instructor approaches to higher education law that encompasses assignments, readings, ethics, crucial topics, and connections to HESA practice. For this manuscript, we sought to examine how (if at all) the law, policy, and governance (LPG) competency of the ACPA/NASPA Professional Competencies (2015) showed up in higher education law courses. Our findings elucidate how instructors characterized their teaching of higher education law as related to their HESA curricula and HESA practices.

Literature Review

We determined there are three main areas of relevant extant contemporary research that engages with topics of higher education law: overall HESA curricula examinations (e.g., Cooper et al., 2016), practice-based knowledge and application of law (e.g., Ardoin et al., 2019; Kimball et al., 2019; Nguyen et al., 2018; Ryder et al., 2022), and legal issues in higher education (e.g., Duran-Leftin & Duran, 2022; Garces et al., 2022; Ward, 2023). Researchers who focused on the practice and application of law in the literature investigated how those with an invested interest, such as site supervisors and senior student affairs officers (SSAOs),

characterized new professional's preparation and skill sets (Cooper et al., 2016; Dickerson et al., 2011; Herdlein, 2004; Herdlein et al., 2010; Renn & Jessup-Anger, 2008; Richmond, 1989; Waple, 2006). For instance, Kimball et al. (2019) focused on "how student affairs professionals think about law" (p. 623) and emphasized that "all student affairs professionals require ongoing, applied legal training" (p. 627). In general, HESA supervisors and SSAOs saw law as an area of deficiency for early career professionals and felt it was a necessary course in HESA curricula (Dickerson et al., 2011; Herdlein, 2004). These articles advocated for a higher education law course in HESA programs because of how law influences HESA practices and decision making, which bolsters the necessity of the course. Notable in contemporary literature and research was an absence of attention on higher education law course content or pedagogy.

In 1984, an issue of *The Review of Higher Education* focused on higher education law. In the introduction to the issue, Olivas (1984) declared that there was an indispensable need for higher education professionals "to understand complex litigation and its effect upon the governance of institutions" (p. 293). Whether a result of student activism in the 1960s and 1970s, judicial activism, and/or legislative reforms, by the 1980s higher education law courses for HESA programs were a mainstay in the curricula (Olivas, 1984; Sorenson, 1984). Olivas (1984) was confident there would be future journal issues devoted to "the crucial issue of the proper role of law in the academy" (p. 294). Yet, by and large, outside of higher education law textbooks (e.g., Boettcher & Salinas, 2024; Kaplin et al., 2020) or books about specific legal issues (e.g., free speech, see Sun & McClellan, 2019), few follow-up publications addressed the role or content of higher education law courses in HESA curricula.

Coleman and Keim (2000) focused their research on higher education law courses in HESA programs and examined syllabi for course content areas, textbooks used, and national conference

sessions to uncover legal education available for professionals. They reviewed 23 higher education law syllabi and legal-focused conference programs in the late 1990s. As one of the few empirical articles, albeit over 20 years old, their work surfaced concerns about higher education law as a course in HESA programs and the adequacy of the education provided. Their work echoes previous scholarship that urged higher education practitioners to understand the law and legal issues (Barr & Associates, 1988; Gehring & Penney, 1995; Olivas, 1989). Coleman and Keim (2000) questioned how programs without a higher education law course educated students about legal issues, as well as the course's adequacy for the programs that included the class in their curriculum (Coleman & Keim, 2000). They also expressed doubts about the adequacy of professional conferences to provide legal education "because most program abstracts do not appear to contain the requisite breadth or depth or include references to statutory law or provide examples of liability-proof policies" (Coleman & Keim, 2000, pp. 17-18). Overall, they concluded that "the legal training of student affairs professionals is somewhat suspect" (Coleman & Keim, 2000, p. 18). Additionally, they raised questions about course content, which also surfaced questions about instructor pedagogical approaches and credentials (Coleman & Keim, 2000).

A challenge faced by instructors is how and to what depth to cover case law, including what text to use that would provide clarity of legal terminology, summary of broader legal ideas and theories, and contextualizing the case within practice (Sorenson, 1984). If case law knowledge is a priority, then that requires a specific type of deep expertise, not often found in HESA program faculty (Painter, 2001). Additionally, a single course within a curriculum only exacerbates the challenge of content delivery and student application of content (Painter, 2001). In short, instructors must balance conceptual and case-law knowledge with the practical application of material to professional situations and dilemmas (Painter, 2001). Perhaps

in response to the absence of a clear pedagogical approach, Ward (2020) used TribalCrit (Brayboy, 2005) to construct critical conscious legal literacy (CCLL). CCLL provided a framework about legal issues in how to understand and make meaning of potential solutions. Ward (2020) asserted that an individual's socialization received through various systems (e.g., education, religious, medical) that occur prior to taking a law course in a HESA graduate program is an important influence on a students' disposition to the purpose, function, and importance of law. CCLL requires instructors and students to consider how higher education law course curricula functions to reinforce hegemonic constructions of legal issues or provides disruptions to those logics that offer social justice and decolonized ways of thinking, knowing, and engaging (Ward, 2020).

Attention to the pedagogical approaches in the teaching of higher education law are necessary given the persistence of law in HESA curricula and the encroaching influence and importance of law in HESA practices (Kimball et al., 2019; Ryder et al., 2022). Previous researchers (e.g., Coleman & Keim, 2000; Olivas, 1984) made evident the need for content about ethical practice that include adequate information about laws and conceptual ideas about justice. We seek to reinvigorate conversations about higher education law as it applies to curricular need and professional application.

Conceptual Framework

We chose to create what we refer to as a competency-based pedagogy framework by drawing from the law, policy, and governance (LPG) competency (ACPA & NASPA, 2015). The LPG competency broadly "includes the knowledge, skills, and dispositions relating to policy development processes used in various contexts, the application of legal constructs, compliance/policy issues, and the understanding of governance structures and their impact on one's professional practice" (ACPA & NASPA, 2015, p. 13). To develop our conceptu-

al framework, Catalano constructed a conceptual organizer using only components of the competency that discussed law. He then isolated those descriptions and organized them into three tenets: *knowledge* (address acquisition of progressively more complex content acquisition), *practice/application* (explore practice enactments that reflect risk management and legal compliance), and *critical thinking* (critical examinations the role of laws, policies, and practices to advance social justice principles) (ACPA & NASPA, 2015). Knowledge, practice/application, and critical thinking are the result of examining the competency itself and considerations of teaching and learning. Given how HESA is both a low consensus (Renn 2020; Torres et al., 2019) and applied field, instructors must approach courses that develop students in their learning, thinking, and application.

Our competency-based pedagogy framework provides attention to both the research and scholarship of HESA and the realities of how and why practitioners apply such knowledge (ACPA/NASPA, 2015). We believe that this law-based framework is relevant to both the formal education of HESA professionals and the guidance for professional development. From these three tenets, we framed our findings and discussion to tell the story of how instructors described the purpose of their course, and the role LPG plays in relationship to curriculum, practice, and student development.

Methodology

Our project began as an exploratory one because we were uncertain of what we would find, which led us to use Sandelowski's (2000) general qualitative description method. We wanted to contribute to HESA conversations about instruction and practice by providing a descriptive summary of how instructors characterized the role of higher education law within their HESA curriculum and to HESA professional practice. As a method, general qualitative description in higher education literature, allows for an expansiveness unbur-

dened by too many rules or formalities (Catalano & Perez, 2023; Patel, 2022; Sandelowski, 2010). At the same time, we acknowledge the influence of own identities and experience influenced our own thinking about how instructors should teach and what students should learn in a higher education law course, whether conscious or unexamined; these ideas shaped our approach to all aspects of the project (e.g., interview questions, analysis of data). Our choice of using general qualitative description as a method belies a simplicity that is neither trivial nor easy to get “the facts right and then conveying them in a coherent and useful manner” (Sandelowski, 2000, p. 336). In this way, our findings might seem elementary or evident, yet we argue they are a necessary foundation that will lead to future research that advances the scholarship of teaching and learning in HESA curricula.

Researchers’ Positionalities

Catalano is a seasoned instructor of higher education law who has many curiosities about how others approach the course. Adams has a doctorate in Higher Education who was a doctoral candidate at the time of this project. She seeks to understand the choices instructors make about course content and teaching styles. As two former practitioners who never used case law in our work, we wondered how instructors viewed higher education law course content and how they viewed their role to connect such content into application for practitioners. In short, we hoped to gain insights from other instructors on how they think about teaching and learning of higher education law.

Data

We placed a call to HESA faculty listservs and directly to HESA program directors to solicit participants with our criteria for selection: instructors of higher education law or a similar type of course in a HESA program within the last two

years (2020-2022). Of the 27 individuals we interviewed, 19 were full-time faculty, seven were full-time administrators who served as instructors either at their own or a different institution(s), and one identified as a consultant without any specific institutional affiliation beyond instructor for the course. Table 1 provides participant pseudonyms, pronouns (as participants listed them in the demographic questionnaire), role at the institution where they teach the course, and highest degree earned. Nine participants identified themselves as an attorney and/or someone with a Juris Doctor (J.D.), including a juris master’s degree. Interviews lasted from 45-75 minutes and covered instructor background, approach to the course, and connections to higher education practices.

Of the 27 participants, 22 shared that higher education law or legal issues was a requirement of the HESA curriculum where they taught the course, and five said it was an elective course. Yet, even within the same program, there was variation within programs about the status of the course, such as an elective for the master’s students versus a requirement for doctoral students. Participants taught the course within master’s programs, doctoral programs, and in mixed graduate enrollment of master’s and doctoral students. We do not provide social identity demographic information about participants because those were not our axis of analysis for this manuscript and want to resist that as a measure of goodness in our research (Stewart, 2022). All participants had the opportunity to choose their own pseudonym, and we honored whatever name they chose, and all completed an open-ended demographic form that included pronouns.

We also recognize that participants chose to opt into our research; thus, it is unsurprising that most participants described law as having importance to both HESA curricula and HESA professional practice. For instance, Ann noted, “I think teaching the course maybe makes me think it’s more necessary than I had thought before.” Her perspective provides insights into how partici-

pants saw an importance to higher education law that motivated them to engage in this research project.

Limitations

As with any research, we recognize the limitations within our data and our subsequent findings when it comes to specific participant information and curricular approaches. In participant recruitment, and within the demographic questionnaire, we did not ask participants to specify the enrollment of their higher education course (e.g., master's or doctoral students). We also did not ask each participant about modality of course delivery (e.g., face-to-face, asynchronous). These oversights meant that our interview protocol did not include questions that would allow us to draw distinctions between curricular approaches when the course had master's, doctoral, or mixed program student enrollment or how course modality might influence approach. These are significant limitations that do not allow us to engage in cross analysis that might reveal how enrollment level and modality might influence instructor's choice of content and/or approach.

Analytic Approach

We engaged in a robust data analysis, as "qualitative descriptive research is still interpretive" (Sandelowski, 2010, p. 79). Our analytic approach utilized elemental coding (Saldaña, 2021), then structural coding (Saldaña, 2021) to synthesize and present clarity of participant descriptions. We engaged in elemental coding methods in our first cycle coding in the form of structural coding. This process allowed us to provide content-based segments or indexing of data for easier categorization (Saldaña, 2021). In this process, we used our three tenets of our conceptual framework to serve as a priori codes, uncertain if these would yield helpful organizers to the data. We did this round of coding in isolation from each other while memoing our thoughts, then met to discuss our initial findings. In our sharing of our first round

of coding, we used each other as peer debriefers to explore our thinking and question our possible assumptions (Merriam, 2009). This process confirmed for us that conceptual framework tenets functioned as appropriate categories for our findings. We then engaged in a round of second cycle coding using pattern coding to help us consolidate how we organized participant descriptions within each category (Saldaña, 2021). Our collaboration in co-constructing these codes also served to engage in trustworthiness in our process. Through our coding processes, we gave close attention to the words and ideas of our participants, which kept us close to our data (Sandelowski, 2010).

Findings

Our goal in this research was to understand how instructors characterized the purpose of the course in the curriculum and how that relates to professional practice. Participants described the role of higher law as a necessary curricular component for professional practice preparation, which we organized into three major categories: Increasing Legal Knowledge, Foundations for Practice, and Cultivation of Legal Critical Thinking. Elizabeth provided a general sentiment shared across participants, "They're not going to become experts on the law or interpreting the law, but making that connection is really important." As a course, higher education law provides a survey of content that is relevant to future practices of HESA professionals.

Increasing Legal Knowledge

Instructors described higher education law courses as opportunities for students to learn about the U.S. government, basically civics, to provide the primer for understanding case law. Sawyer, who taught in a counseling-based program shared, "I want them to have a working understanding of the basic legislative, and case law, and regulations that impact their work with students... at the federal and the state and local insti-

tutional level.” Instructors often commented that students lacked knowledge about how the U.S. government creates laws, the structure and levels of the court system, and “have zero clue how a case gets to the Supreme Court” (Hugo). In a content scaffolding view, students must know the basics of civics before they can engage in critical thinking throughout the semester. Jane asserted, “I want them to understand what aspects of law are really most central to the work we do... [and] how we fit into the bigger picture.” Civics provides the initial context and content that are essential to the purpose of higher education law as a course in a HESA curriculum.

In addition to civics, instructors believed general case knowledge was integral to student learning. For Ramsey this included teaching students how to conduct legal research as a mechanism to support their practices. She said, “students will learn about the current state of the law, how to apply it to practice, and they learn the basics of legal research so that they can stay abreast of the law throughout their career.” She desired students to feel comfortable to maintain or find ways to return to legal knowledge when it was applicable.

When it came to specific court cases, Katerina shared that students must “know about landmark court decisions and why they are important, and policy, and how does an institution make up their policies.” Knowing about landmark decisions was important, but for Penny, she required students to know how to read case law. Stephanie offered that students needed the ability to understand and interpret legal cases. She described her approach this way:

And so there’s a little bit of learning about how to make sense of legal cases and how to read some of the legal guidance that comes out. But a lot of it is really applying it, and what does that mean for your positions?

For Stephanie, and other instructors, students must learn case law to provide the best preparation for practice.

Of course, case knowledge is quite distinct from law school, and instructors varied in how they described the importance of case law. For these instructors, a relatively common refrain was some variation of that they were not training students to be lawyers. Boris, who is a lawyer, described how the course fits into the curriculum as a primary way to think about the purpose of the course. He shared, “Because I guarantee you that the goal for the department and the program is not to make more lawyers. That’s not the thing.” This course is preparation for interacting with aspects of the law, legal thinking, and legal issues in HESA practices, but it was not lawyer training. Wesley shared,

The way I explain it to students is I am not training you to be a lawyer. I am training you to understand and anticipate the legal issues that are inherent in student affairs practice and consider some key questions.

Wesley’s frame made apparent a connection exists between practice and knowledge within the field of student affairs and understanding application of knowledge is paramount.

Instructors aimed to help students become better consumers of information for their practice, which then opened their capabilities for making meaning of that knowledge through critical thinking. For instance, Boone offered:

I don’t want them to learn to be lawyers, but have some basic understanding of things like what a summary judgment means, so when they read an article in *The Chronicle* [of Higher Education] or in *Inside Higher Ed* that throw out a few legal terms or procedural things, they have some idea of what it means, that they have some idea of how to read a case and get the important pieces out of it.

The purpose, as Boone and other instructors saw the course, was to create practitioners who can navigate legal conversations, content, and contexts in their work.

Instructors wanted students to know enough

about the law to understand how to anticipate and respond to risk management. Shannon was explicit in the objective of her course:

This class is about CYA [cover your ass]. As a practitioner, you're not a lawyer. ... I am not a lawyer. ... At the end of the day, I want you to know when to call your supervisor, when to call your legal counsel, and understand how you make decisions.

A significant concern for instructors was how to remind students of their limitations and provide them with practical approaches for how to manage various legal situations, such as interactions with university legal counsel. Penny shared the following about what students need to know about risk when it comes to their practice:

be able to see it before it happens and to try to avoid it, not become so risk avoidant so that you don't make any decisions, but trying to mitigate that. ... So if they're talking to a general counsel to give them confidence and a reminder that they know this area best and not be intimidated to share their opinion.

Risk management is an important aspect of preparation for practice, and so too is the preparation for interaction with legal counsel at the institution. Decision-making requires both content knowledge and use of critical thinking, which we turn to in our next finding.

Foundation for Practice

For many instructors, law was indispensable to the HESA curricula because it was integral to professional practice and the importance of the LPG competency (ACPA & NASPA, 2015).

Jack described the course as one where students learn concepts to become better thinkers as practitioners. For instance, he shared,

Okay, so how do you take law and more intentionally apply it to theory conversations? How do you take law and apply it or integrate it, really, into the policy con-

versations because they're going to be influencing each other? How do you look at the law through a historical lens to help frame your thinking about some of the contemporary issues that you're navigating as a practitioner?

For Jack and other instructors, content transcended into practice, and a goal was to connect content to application.

Hugo noted how higher education law as a course functioned to prepare and protect them as professionals. He shared, echoing Shannon's assertion above, "They need to know how to cover their asses." The law course provides opportunities for students to understand some of the potential dangers and inconsistencies between professional values and actions, as well as provide opportunities to consider how they will respond in those situations. Similarly, Diana P. described how student development theory is important to HESA professional work to understand student growth, but that conceptual knowledge has limitations. She argued:

[this course] is probably, to me, one of the most necessary courses that they take because it's real, right? ... And I think that the importance of the class that I teach is that the students are actually really able to—and I work to make this happen—to connect what we are talking about with either what they currently do ... or with the jobs that they want.

For Diana P., and many of the instructors, there exists a clarity content infusion between law and both the bigger picture and minutiae of their HESA practices, which made it incredibly necessary to HESA professionals and HESA curricula.

An absence of higher education law in a HESA curriculum might signal inadequate preparation as HESA professionals because the course offers the kind of depth one cannot gain from a professional in-service training. Katerina said, "It is important that they understand when something is not right and they seek advice, legal ad-

vice if necessary. It is important that they know how to protect themselves and how not to get into dangerous situations.” For her, HESA professionals must begin a position trained to notice issues on the horizon and understand how to prepare for any outcomes from those issues. Within the HESA curricula, higher education law courses provide an important preparation for the real-world practices of administrators.

Wesley described the course as an opportunity to “give them real world scenarios and ask them to really work through those issues.” Real-world application describes instructor attention to skill building, scenarios, and reflection as engagement. This approach encourages students to consider the ramifications of their actions or lack of actions. Arlo shared, “We have some pretty rich conversations initially because they have to understand that the choices that they make do have legal impacts. But also the choices that they make can get them to the same legal consequence.” The approach of real-world examples serves to connect conceptual ideas to the everyday realities of work in higher education.

Skill-building encapsulates everything from how to think about legal issues to how to recognize a challenge or potential conflict with the law. Marie described the purpose of the course as, “The higher education course is a non-legal course focused on empowering administrators to understand the regulatory, legislative and judicial processes that affect our work on campus.” She framed the course as a capacity-building space where students learn content and how to apply that content to their daily professional lives. Instructors used scenarios to help students work through their understanding of law and professional practices. For Carol, scenarios allow students to explore their emotional reactions while in-context to understand the precarity of their choices, the impact of their choices, and how they will reconcile their emotional investment in the outcome. Carol offered, “follow your policy. ... You have to set aside that emotional connection you’re having with the student and work within

the system if you want to keep yourself safe from a lawsuit.” For her, a practice-based approach using real world examples “is a critical piece of how we should be learning law and teaching law.”

Kate, Stephanie, and others also supplied students with case studies. Kate’s intention was to provide students with a scenario with a plethora of issues to put students in a position to sift through their priorities and determine what to address first. Instructor intentions are to give students experiences similar those a HESA professional would need to manage. Libby described how scenarios expose students to explore the complexities of higher education institution functions. She said, “the background workings that they may not be aware of in their positions, in terms of how things are handled through legal lens and how the legal lens might bind the institution even from saying something in some cases.” Her approach exposes institutional dynamics in preparation of more nuanced discussions about situations they may encounter.

Instructors drew from their own experiences and student experiences to create scenarios and as a mechanism for student engagement in the classroom. Juliet thought personal scenarios made law more accessible and invited students to workshop their own professional experiences. Rambler noted how she intentionally connects the course content to each students’ work environment or functional area. This approach, at minimum, helps students recognize when they should check with a supervisor before acting. She described her approach as one where it was, “not to avoid getting sued, but to avoid harm and to be that fully-informed practitioner.”

Instructors wanted students to have adequate preparation for their current and future work environments when it comes to the law. In this way, instructors used their own experiences as HESA professionals and/or lawyer and asked students to bring into the classroom their current and past experiences in higher education as sites of learning. Scenarios and reflection allow students to consid-

er and reconsider their understanding of what it means to operate within the parameters of the law as a HESA professional. Penny noted, “what I hear in the feedback is this course helps them in their job in some way.” Real world application describes how instructors made intentional connections to practice that also increased student engagement with the course materials and content. The connections to practice also framed how instructors encouraged students to consider their ethical decision-making.

Ethical decision-making is also an important aspect of practice. Beatrice framed her teaching philosophy of the class as “really is focused much more on critical thinking around legal issues and ethics. Our students make ethical decisions as they become practitioners, almost every moment of every day.” Her ideas highlight how HESA professional practice is about actions and inactions as choices of decision-making, and higher education law can provide a way to think about how they make those decisions. Many of the instructors linked ethical practice to professional competencies (ACPA & NASPA, 2015; CAS, 2015).

Shannon used the ACPA/NASPA competencies (2015) as an entry point for students to engage in self-examination of their ethical foundations for their behaviors. She shared, “The biggest shock for students is that law is not objective. I think that is a crushing realism that my students have.” Shannon’s approach to ethics requires students to consider the complexity of law and ethical thinking to recognize how neutrality is impossible. Carol also spoke about the murkiness of ethics. She framed her thinking this way: “Getting them to understand that law provides the outside boundaries. It does not address the ethics of what we do, the decisions we make. Because sometimes, it’s not black and white. It is a lot of gray.” Carol aims to complicate student thinking to push them into critical thinking when it comes to their practices.

Instructors recognized that HESA professionals have resources to help make decisions, yet also need to have a sense of what they believe prior

to their placement in a position of authority. As Sawyer remarked, “I want them to have a strong sense of ethical mindfulness and a sense of who they are and what they stand for—I often say, so they can sleep at night.” Ethical decision-making and application to real-world situations students do (and will) encounter as practitioners highlight the importance of self-awareness as a foundation for practice.

The practical application of ethical decision-making was to offer students an opportunity to have greater self-awareness prior to being in the position of making significant decisions. Instructors also used ethics to caution students about the realities of what it means to be a HESA professional. For example, Hugo joked that the title for his second class session is: “How Not to Get Sued ... You’re Going to Get Sued.” Through his humor, he draws students attention to the inevitability of litigation as their career progresses to positions with more authority and how to prepare themselves for common missteps that might “get you in trouble or your institution in trouble” (Hugo). For Hugo, ethics prepares students for what they will encounter when they enter the profession after completing a master’s degree. He explained, “I don’t want you to memorize law. I don’t need you to memorize statutes. I don’t need any of that, because a master’s level student going into master’s level work, in my estimation, doesn’t need any of that crap.” Instead, his goal is to help students build intuition, what he called “Spidey sense,” for times when they are uncertain about what they legally can or cannot do.

Cultivation of Legal Critical Thinking

Participants described how the interconnectiveness between history and legal issues were important dynamics regarding the entire HESA curriculum. As Jane put it,

It’s also really important to me that they understand how we got to this place. Because if you don’t understand how we got to this spot, you’re not going to un-

derstand what the issues are and you're not going to understand what could possibly happen going forward.

who is the law created for? Who does it benefit? Who does it exclude?

For her, as well as many other instructors, historical thinking skills cultivated critical thinking than spanned across topics. Similarly, Elizabeth described the course's purpose as a place to "expose you to historical legal cases and policies that underpin our current practice in higher education." Case law and policies shape the form and function of higher education, and students need that historical knowledge to make those connections to contemporary practices.

Instructors declared how the knowledge of the historical specifics were as important to understand as how and why the law operates as it does in higher education. For Urban Guy, who taught at an HBCU with predominantly Black students in his course, he felt a particular importance for them to understand the legal roots of segregation and civil rights laws. He shared,

They need to have some history of our legal basis, the Constitution. What are the references to education in the Constitution that's relevant to them? How did these laws come about? What was the socio-economic situation in the country that put this into the Constitution?

Urban Guy's pedagogical approach encourages students to develop their critical thinking through course materials and connections across identities, politics, and law.

Other instructors also utilized question-posing as a method to advance student content knowledge and inspire content acquisition. Ese provided this clarification of how he sees the purpose of the course:

This class is really designed to understand just the historical development of law and how it plays in higher education. ... But also, as understanding the racial, gender inequality injustice around the development higher education, but also how the law has created spaces that maintains inequalities, right? Especially

In his approach to course materials, Ese introduced questions about the intended purposes of higher education, the inequalities that exist since the inception of higher education in the U.S., and how those persist into contemporary higher education. Through this framework of history, students can excavate how laws shaped and codified persistent inequities in higher education.

At the intersection of pedagogical approaches that use question-posing and critical thinking were instructors who used a social justice approach to enhance student learning. Instead of using ideas of laws as an abstraction, instructors humanized the content by focusing on the impact of legal decisions and laws. As Jack asserted:

The law is not some neutral thing. There are human beings behind the policy that are created, whether that be judges as far as case law, legislators, or those in varying administrative appointed positions that are creating the administrative law.

A few instructors ensured course materials exposed the historical legacies of oppression through the passage and maintenance of laws. To engage students in a social justice approach to learning about the law, instructors provided a framework for understanding the basis of the legal system. Imani offered this framing, "I want students to understand that law is human created. And it's a system that is already predetermined with thoughts, perspectives, and dispositions, unless we call them out and critique them." By using this foundation, Imani prioritizes content acquisition that uses historical and legal knowledge to explore inequities in the U.S. broadly and higher education specifically.

To spur on student learning about the law through a social justice framework, Ann had students read *The New Jim Crow* (Alexander, 2010) to understand mass incarceration and "listen to a podcast about the Supreme Court case over Native

rights to land in Oklahoma.” Her intention was to challenge students thinking about legal compliance and encourage students to think about how the “law is not fair for everyone, and there are certain decision-makers that have a lot of power and don’t take into account everybody’s needs and experiences.” Instructors made connections between ethics and social justice through the framing of HESA professional practice in the form of student advocacy. Elizabeth explained, “I also want them to understand their ethical responsibilities and how this fits into their advocacy for a student.” The importance of the course content for instructors is the direct relevance to application for the positions students will be in post-graduation. Student advocacy was an important area of practice that demonstrated an overlap between ethical decision-making and social justice frameworks. For example, Hugo spoke about the role of HESA professionals to be “social justice advocates.” He shared how HESA preparation programs must be accountable for the kind of training they provide students. For Hugo, if the expectation is HESA professionals will serve as advocates in a world where institutions are not “justice-oriented,” then they must provide the kind of educational training that prepares them for all that comes with such an approach. In fact, such training must include how to persist when the fatigue of doing justice-oriented work occurs and to cultivate the critical insight skills of how to respond when their ethical stance is out of alignment with the institution where they work. Put simply, if students want to be student affairs practitioners who advocate for social justice, then HESA graduate programs must prepare them to endure various forms of resistance and potential consequences, including possible job loss.

Discussion

Forty years ago, there was a hopeful conversation about not just the importance of higher education law related to HESA practice and HESA curricula (Olivas, 1984), but the beginning of dis-

cussion about how and what to teach about higher education law (Schaffer, 1984; Sorenson, 1984). Since that time, attention on higher education law has focused on higher education legal issues (e.g., Kimball et al, 2019; Ward, 2023). What is clear is that higher education law is an integral competency (ACPA & NASPA, 2015) and practitioner skill sets should include legal knowledge (e.g., Cooper et al., 2016; Renn & Jessup-Anger, 2008). These findings offer a return to the original discussion from the 1980s that are neither revelatory nor staid, but they are contemporary insights from instructors about the purpose of higher education law courses and their relevance to HESA practitioners.

Gehring and Penny (1995) asserted that the purpose of a higher education law course was to learn how to recognize liability issues and articulate policies to a diversity of constituents. To fulfill that need, higher education law courses must, in alignment with our findings, cultivate legal (and general) critical thinking, provide legal knowledge, and provide a foundation for professional practices. What these findings obfuscate, through laying them out as clean and distinct categories, was the challenge of balance instructors faced. Increasing legal knowledge, foundations for practice, and cultivation of legal critical thinking are how instructors offer sufficient real-world applications with conceptual and content knowledge to enhance critical thinking that lasts beyond the classroom experience. In addition, these categories reveal the importance of cross-curricular engagement with history, philosophy, and social justice, as well as instructor considerations of how to offer enough content to inspire nuanced critical thinking and real-world application.

Our findings echo our conceptual framework of competency-based pedagogy in how the emphasis is on acquisition of legal knowledge, cultivates critical thinking, and offers opportunity for application to real-world situations. Important to note within the findings was how expectations varied by instructor of their requirements. For instance,

some participants required students have basic knowledge of civics and are consumers of legal information in comparison to those instructors whose learning outcomes included the ability to read case law and interpret legal cases. In short, there is an inconsistency of expectations in terms of learning outcomes and foundational knowledge and skills across instructors. What was relatively consistent across participants was the importance of using social justice frameworks to disrupt ideas about historical realities that perpetuate the neutrality of laws and policies that shape the development and existence of higher education institutions and practices. Increasing Legal Knowledge was described by participants as more complex than fact finding, as it must also include nuanced thinking about principles, ethics, compliance, and advocacy. Further, instructors conceptualized the role of higher education law courses as those that address multiple competencies (ACPA/NASPA, 2015); there were aspects of LPG, Personal and Ethical Foundations (PPF), Values, Philosophy, and History (VPH), Leadership (LEAD), Organizational and Human Resources (OHR), and Social Justice and Inclusion (SJI). At the same time, participants also named a significant focus on risk management, which might indicate an over-reliance on application or practice. However, we argue that risk management in the context of critical thinking, reflective practice, social justice education, and contextualized historical knowledge are powerful tools for theory to practice (Reason & Kimball, 2012). We believe our findings demonstrate how contemporary instructors use complex and expansive approaches to student learning with attention to how the content and concepts connect across HESA curricula.

Implications

We believe the most significant implication to our research is to inspire a renewed attention to the relationships between HESA graduate preparation programs and professional practice. Our first

implication is in response to how, as instructors noted, one course on higher education law is insufficient for content acquisition and professional practice preparation. At the same time, they noted there is no room in a HESA curriculum to add an additional law course, nor are most professional development opportunities sufficient to cover this content should a single course not appear in a curriculum or student opt out of it because it is an elective. We urge HESA programs and professional organizations to increase their attention to the intersections of competencies (which we suspect will be a priority with the development of the new iterations of the ACPA/NASPA competencies). We encourage—instead of trying to add more courses to a HESA curriculum or more sessions into a conference—collaborations between practitioners and scholars that examine what it means to work at the intersections of competencies. Aspects of history and law were clear overlaps in these findings, *and* they would also be relevant in advising and supporting or technology given the opportunity to collaborate across courses.

Next, we encourage a new emphasis on the examinations of HESA curricula. Our findings support a desire from instructors to learn more about teaching and learning; this would include expanding and clarifying how to use a competency-based pedagogical approach to honestly engage in conversations about alignments in course content and professional practices. Relatedly, we strongly encourage an intensive focus on HESA faculty and how they learned how to teach (e.g., Harris, 2020). Our findings made apparent that there are instructors who are giving a lot of attention and consideration to pedagogy (teaching and learning). At the same time, participants noted, similar to those in Harris' (2020) research, that they learned about teaching and facilitation from their professors (for good or bad). Relatedly, there was no unified stance from those with a law degree about whether that was a necessary qualification to teach this course. However, our findings do invite questions about subject area qualification for

instructors (e.g., history, diversity, policy) and believe this is an important area of future research.

Lastly, we encourage research that returns to threads about graduate student learning (e.g., Renn & Jessup-Anger, 2008) and invites entry-level professionals to share whether they expound on how they connect their learning about higher education law (and other courses) to their practitioner roles. Insights from new and emerging professionals might help identify the necessity of the course beyond instructors' perceptions. We also advocate for discussions with mid-level managers—given their supervision of and proximity to early-career professionals—about the skills and knowledge needed in HESA preparation programs. An innovative research project might focus on alumni from the same programs who are at various stages of their career to provide insight on potential generational learning differences. In general, a focus on this research agenda that functioned as a collaboration between faculty and mid-level professionals could bring faculty closer to applied-realities of HESA work and give practitioners a clearer view of pedagogical practices. We envision how these endeavors might develop case studies that increase professional practice capacities and inspire new thinking that goes beyond compliance and normative practices (e.g., Benjamin & Jessup-Anger, 2020). These joint approaches to research and practice might also include how HESA program curricula help students grapple with situations where they must navigate complicated circumstances (e.g., advocate for justice and hear cases within punitive student conduct systems).

Conclusion

We began this research project to examine the role and purpose of the higher education law/legal issues course knowing that as a low-consensus field (Renn, 2020) there would not be a singular way instructors balanced content acquisition and professional practice preparation within the

course. What we did find was that instructors of higher education law did consider what it means to engage in a competency-based pedagogy that uses aspects of content acquisition, practical considerations, and critical thinking. We find instructor curiosities and concerns to be an inspiration for both future research and necessary conversations about the realities of professional experiences. As an applied field, HESA must be intentional about how we construct our curricular ideas to prepare future leaders for real-world dynamics.

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Table 1*Participants*

Pseudonym	Pronouns	Role	Highest Degree Earned
Ann	she/they	Faculty	Ph.D.
Arlo	He/Him/His	Administrator	Juris Master's Degree
Beatrice	she / her / hers	Faculty	Ph.D.
Boone	His	Administrator	Ed.D.
Boris	he/him/his	Administrator	J.D. & earning Ph.D.
Carol	she, her	Faculty	Ph.D.
Diana P.	She, Her, Hers	Administrator	Master's
Elizabeth	She/Hers/Her	Faculty	Ph.D.
Ese	he/his/him	Faculty	Ph.D.
Hugo	he/him/his	Faculty	Ph.D.
Imani	she/her	Faculty	J.D. & Ph.D.
Jack	he/him	Faculty	Ph.D.
Jane Taylor	She/Her	Faculty	Ph.D.
Juliet	she/her	Administrator	J.D. & Ph.D.
Kate	She/Her	Faculty	Ph.D.
Katerina	She/her/hers	Faculty	Ph.D.
Libby	she/her	Faculty	Ph.D.
Marie	she/her	Administrator	J.D.
Marina	she/her	Faculty	Ph.D.
Penny	she/her	Consultant	J.D.
Rambler	she, her, hers	Faculty	J.D.
Ramsey	She/Her	Faculty	J.D. & Ph.D.
Sawyer	he/him	Faculty	Ed.D.
Shannon	She/her	Faculty	Ph.D.
Stephanie	she/her/hers	Faculty	Ph.D.
Urban Guy	He/him	Faculty	J.D.
Wesley Cooley	He/him	Faculty	Ph.D.