

# LIFE WITHOUT LAWYERS

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LIBERATING AMERICANS FROM  
TOO MUCH LAW

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## CHAPTER 5

# BUREAUCRACY CAN'T TEACH

**T**EAM Academy, a public charter school in Newark, New Jersey, started in 2002, has a record that most educators only dream about. Recruiting students from the worst projects in Newark, without any academic requirements, it has become one of the most successful schools in the state. The opening class of fifth graders initially tested at the 21st percentile in reading comprehension. One year later they were at the 55th percentile. In math the improvement was from the 31st to the 91st percentile.

“We don’t actually worry much about improving scores,” the founding principal Ryan Hill noted. “We spend our time building the culture. We work hard teaching the students the importance of respect for others and self-respect. If the school culture is good, the scores take care of themselves.”

Culture is by far the most important indicator of success of a school. Within minutes of walking into a school, educators say, they can tell whether it is successful. They can feel the culture. The culture is reflected in the interactions among students, teachers, principals, and parents—in the manners, in the energy, in the

humor, in the respect afforded others, in the self-restraint, in their aspirations, in school pride.

Good school cultures are also reflected in what is absent. It would be hard to find a successful school where law and bureaucracy were even noticeable. Teachers and principals in good school cultures are focused not on bureaucratic compliance but on doing what makes sense to them. As they go through the day, they feel free to act on their instincts of how best to deal with a student or situation. This freedom requires a legal structure—a structure that affirmatively protects the authority of teachers and principals to make choices that reflect their values of what a good school should be.

That's what a culture is—a framework of shared values. TEAM Academy is part of a network of charter schools called KIPP (Knowledge Is Power Program). KIPP has very definite values. Its motto is prominently posted: "Work Hard. Be Nice." Working hard is what everyone does. TEAM has classes until 5 p.m. every weekday, two hours longer than most public schools. TEAM also has a half day of classes on Saturdays, unheard of in public schools. The "Be Nice" part of the slogan is not wishful thinking but an active program to put each student on a personal journey toward self-respect. KIPP teaches a six-stage moral development program, in which the lowest scale of motivation is the desire to avoid punishment, and the highest is making choices simply because it's the right thing to do.

The positive energy at TEAM Academy is palpable. Not having to worry about baseline concerns—safety, politeness—liberates everyone to be more open and productive. When I was visiting, students came up to the principal easily, saying hi, or making a joke, or asking about some upcoming program. Students also came up to me, extended their hands, and asked how I was enjoying the visit. In the classroom all eyes were on the teacher. There was often humor even in the mistakes. The student sent out of classroom for talking during class was introduced as "the-boy-who-can't-help-himself." He smiled, and sat down in the office and read a book.

Culture is deceptively powerful because it operates mainly in

undercurrents of social interaction that are felt rather than explicitly asserted. You can tell a lot just in the way people talk with each other. Culture is its own authority. Like a strong tide, the culture pushes people toward behaving in a certain way. Good school cultures bring out the best in both teachers and students.

No healthy culture can be built or maintained unless its values are enforced. That's why accountability is one of the core values at TEAM Academy—with definite consequences for destructive conduct. "We have some wonderful, nice kids who don't get their homework done consistently," observed Heidi Moore, a teacher at TEAM. "We have to hold them hostage to have them get it done. . . . Our kids have spent K to 4 [kindergarten to fourth grade] in schools with no homework and no accountability. If you asked them, 'How many of you used to get in fights at your old school?' ninety-five percent of them would raise their hands. . . . These are twelve-year-old kids who have faced no consequences throughout their lives."

The mechanisms of accountability at TEAM are clear and taught in the first few weeks of school. The school has what it calls "pay-checks," which act as a kind of interim report card on citizenship and diligence, with certain benefits for high marks, such as takeout pizza on Fridays or an occasional field trip. Students who fail to meet certain broad standards—"not yet at the level of respect and character and work ethic they need to be successful in life"—are not allowed to go on the end-of-year trip to places like Washington and Utah. "We talk about the choices they're making all the time," Ms. Moore observed. "No one is surprised when they earn or don't earn. I had one student come up to me and say, 'Ms. Moore, why didn't I get a ticket to Utah?' I said, 'Because every time you make a bad choice—' And she cut me off: 'I get really disrespectful.' So they know!"

A good school culture itself teaches students the most important life lesson: how to participate in society. We tend to shrink away from the idea of "imposing" values, but the father of sociol-

ogy, Emile Durkheim, considered socialization of youth at least as important a goal for schools as reading and arithmetic. Schools are settings, sociologist Richard Arum observes, “where children learn socially appropriate behavior, values and interpersonal skill from teachers, principals and fellow students.” “All through life, you need codes of behavior in order to get along in whatever you do,” observes Professor William Damon, a leading expert on adolescence. “You need to be respectful and honest, you need to have integrity and character, whether you end up driving a truck or being a doctor.”

Reformers don't focus on school culture. Cultures are too complex, without objective metrics. To our modern sensibility, the idea of building a culture seems both presumptuous (whose values are being asserted?) and futile. A culture, many seem to believe, grows by forces beyond human control. In an enterprise of manageable size, however, cultures are man-made. Like a garden, the culture of a school or office is planted and maintained by deliberate assertion of values by the people in charge.

In a study of good high schools in the 1980s, Sara Lightfoot found that the cultures of private and parochial schools evolved over generations. Successful “turnaround” public schools, by contrast, were built through the force of personality of the individual principal. All these cultures share a trait, however, that transcends differences in school history, values, and goals. In every successful school, teachers and principals feel free to act on their best judgment. All day long in the classroom they own their choices. This freedom allows full expression of the teacher's personality and enthusiasm. It allows nuanced judgments of the conflicts and failures through the day.

Values don't come to life without the freedom to assert them. Enthusiasm energizes the entire culture—“There's nothing so contagious,” the saying goes, “as enthusiasm.” There's no enthusiasm, however, without spontaneity and originality. That's how people develop a sense of ownership of the culture. At TEAM Academy the

teachers and principal all get together to decide what they want the students to learn, and then the teachers figure out for themselves how to do it. In almost every classroom the teacher arranged the desks differently—some in rows, some in communal tables, some in a U within a U, some pulling up chairs in a corner for readings together. “Letting the teachers decide for themselves how to teach, even what books to use, means they can innovate,” Hill noted. “When they invent the program, they’re invested in it. It’s also more interesting for students.” The need for teachers and principals to feel ownership of their daily choices is usually overlooked because, I suppose, we take it for granted. Yet no school succeeds without it. If values breathe life into a culture, the constant choices by teachers and principals are how this oxygen gets made.

Building a good culture is a challenge. But it must be the goal. When there’s a good culture, all challenges are like coasting downhill. Without a good school culture, no matter how much money is spent, every day is a struggle. TEAM Academy had the advantage of starting fresh, with an uncompromising assertion of core values at the outset. But the building block of good school cultures is the same everywhere: it is the freedom of teachers and principals, all day long, to make sense of the situations before them. In most American public schools, that freedom has been smothered by ever-thickening layers of bureaucracy and legal rights.

#### THE BUREAUCRATIC SCHOOL

“Most people in the real world probably can’t imagine how bureaucratic schools have become,” one former teacher from the Bronx explained. The advent of “high-stakes testing has created its own special level of weirdness” as if the school were in “some sort of lockdown.” “To prevent cheating, all words and letters posted around the classroom—even student names—had to be covered up. So the walls were taped up with newspapers. . . . Teachers are not allowed to grade papers or do anything productive during the

test—instead we were forced to circle the classroom to prevent cheating. But we couldn't look at the students because that might scare them. . . . Meanwhile the rest of the school is frozen in place. Other classes not taking the test had to sit in one room, without instruction or other activity that might make disturbing noises. . . . Proctors walk around like police to make sure no one is violating any of these rules.”

School reformers for decades have tried different ideas and techniques to try to make schools work better. The last major effort is the No Child Left Behind Law, passed by Congress in 2001 to mandate nationwide testing and impose penalties if schools don't meet certain goals. Most reforms have salutary goals. But none of it seems to have done much good. Five years after No Child Left Behind went into effect, reading scores for fourth graders had increased modestly, while scores for eighth grade declined slightly. Overall, reading scores in elementary and high schools have stayed flat for almost forty years. In that period the ranking of American students has consistently fallen relative to their peers in other developed countries.

All these reforms have been based on an unspoken assumption: that better organization is the key to fixing whatever ails schools. The theory is that by imposing more organizational requirements—better teacher credentials, more legal rights, detailed curricula, the pressure of tests—schools will get better. That's the theory. The effect, however, is to remove the freedom needed to succeed at any aspect of teachers' responsibilities—how they teach, how they relate to students, and how they coordinate their goals with administrators. The extent and effects of bureaucracy may indeed surprise people from the real world. Here are some snapshots.

#### BUREAUCRACY LEVEL ONE: SMOTHERING THE TEACHER

In 2006 a group of teachers in New York kept diaries that chronicled how they made it through the day. The smallest details of

classroom life were governed by rules. There were rules on how teachers organized themselves and rules on how to present materials: “Sometimes I feel like I’m a robot regurgitating the scripted dialogue.” The rules even dictated how teachers responded to students—for example, forbidding a teacher from calling on students who raised their hands during the first part of class. One teacher’s diary contained this entry: “Teach mini-lesson. Read aloud book by author we have selected. Student raises hand with question. Tell him to put hand down. Students not allowed to ask questions during mini-lesson. Feel guilty.”

Almost no act, no matter how innocent, was free of bureaucratic constraint. A mother of a third grader arrived with a supply of birthday cupcakes but was sent away. There was a rule against parents in the classroom.

How many rules are there in American schools? The people in charge don’t know. As far as I can tell, no one with responsibility—not Congress, not any board of education—has ever even tried to catalog all the rules and rights that govern our schools. They just assume that rules are the way to do things properly; the more rules the better. In 2004 Common Good did an inventory of all the legal rules imposed on a high school in New York City. It found thousands of discrete legal requirements, imposed by every level of government. There was no act or decision—how to be fair, how to provide feedback, how to arrange the classroom, how to clean a window, how to keep files, how to order copier paper—that wasn’t covered by a rule.

Teachers, like most people, hate bureaucracy. A 2007 California study on teacher retention, trying to understand why 18,000 teachers quit each year, found that bureaucracy was the leading factor. “There is no rhyme or reason for many things we are asked to do,” said a teacher in California who quit after eight years because of the “wasted time and energy” caused by “many silly procedures,” such as a “lengthy request process for routine maintenance such as repairing an overhead light in a classroom.”

Forms are everywhere. Most schools require teachers to write up detailed course plans for each week, knowing full well that no one ever reads them. “The paperwork overload is out of control,” observed one special education teacher. She went on to describe some of the requirements: “I spend at least 4 hours testing every child, 2 hours writing every IEP [individualized education plan, required by federal law], at least 5 hours testing for triennial reviews, and another 2–3 hours writing the report for EVERY child. Most of this takes place on weekends or after school gets out. . . . Teachers are burning out.” In Alabama, two thousand teachers went on strike in 2004 because of the wasted time spent on forms. “Teachers will spend six hours a day in the classroom,” an Alabama teachers’ union official said, “and then go home and spend three, four, or five hours a night filling out paperwork.”

There are only so many hours in the day, and bureaucracy would be evil enough if all it did was divert teacher energy. But rules also dictate choices that make no sense. “I have kids who are supposed to learn 7th grade history, but they read at a second-grade level,” a teacher in California observed. “We should be allowed to figure out how to deal with those kinds of problems, . . . [not] required to use curriculum materials that don’t address those students’ needs.” Debbie Sherlock, an elementary school teacher in Queens, New York, echoed this frustration: “Your hands are tied; you know kids cannot learn this way, but this is what you have to do.”

It is impossible to get away from bureaucracy. Loudspeakers blare out announcements such as “Teachers, the faculty meeting will begin at 3:30”; “Ms. Jackson, please report to room 214”; “tickets to the football game will be sold at the gym after three o’clock.” In one day, an observer in a class in New York City counted sixteen interruptions by the school loudspeaker. At one point the teacher was ordered to immediately collect the students’ reading books and turn them in, causing a twenty-five-minute gap in teaching. Like a sort of shock torture, the announcements seem designed to destroy the concentration of teacher and students on the subject

at hand. "I feel as if I teach between the interruptions," one thirty-year veteran in California observed.

No one would ever design a system that is so intrusive. Once the idea of management by rule takes root, however, it grows like kudzu. The rule against parents in the classroom was probably prompted by some angry father who made a nuisance of himself. Most principals can distinguish between an angry father and one bringing birthday cupcakes, but rules can't—except, of course, with more rules. "I can't even go back and observe at my old public school." Ryan Hill observed. "It's too exhausting, watching the teacher try to follow all the rules. Even the smallest choice is a struggle. It's as if the teacher is tied in knots, struggling to get out."

To many teachers, No Child Left Behind is the last straw. Teachers generally support standardized testing, but the obsessive pursuit of scores to the exclusion of all else, teachers believe, has become another bureaucratic rigidity. Claire Pulignano, a teacher in Florida, tells what happened to an English class where the students were reading *To Kill a Mockingbird*. "The principal then came into a meeting and made real clear that the emphasis was to be on [the standardized test], and we could pretty much forget what had been in the curriculum. More and more we're told, 'You will teach this and this on this day.' I love teaching, I love kids, but it's become harder and harder when you're teaching to the test. *Can you hear the discouragement in my voice?*"

Demoralization has never been considered a way to run a successful organization, but demoralization is the status quo at many, perhaps most, schools in America.

#### BUREAUCRACY LEVEL TWO: DISRUPTIVE STUDENTS FILL THE VACUUM

Legalistic organization has undermined the moral authority needed to maintain order and an environment conducive to learning. Every day, in schools across the country, students wander around the class-

room, disrupting the class and confronting teachers with an in-your-face attitude. In many schools, disruption is the norm. Nick Bagley, who was an eighth-grade teacher in the Bronx, described a “pervasive atmosphere of not respecting authority. There was very little that was outside the pale. Pretty much anything went. Cursing, screaming, yelling, leaving the room, pounding on the door.” A report on Philadelphia schools in 2007 by Ellen Green-Geisler describes classrooms where “little or no learning was actually occurring” and “many of the students in attendance were listening to headphones, sleeping, doodling or wandering around the room talking or shouting.” In a 2001 Public Agenda survey, 43 percent of high school teachers said they spent more time maintaining order than teaching.

No enterprise, no society, can succeed where disorder is the norm. This point, generally identified with Thomas Hobbes, is as apt for schools as for a seventeenth-century society wracked by civil war. Disruptive behavior by one student effectively destroys the ability of the other twenty-nine students to focus on the lesson at hand. Learning is impossible—even the best teacher can’t compete with the disruptive student.

Violence is not unusual. One in seven teachers in urban schools, one study found, had been physically assaulted by his students. In 2007 in Philadelphia a sixty-year-old teacher had his neck broken when he attempted to confiscate an iPod—while thirty students watched. In the same month another Philadelphia teacher suffered a concussion and a broken jaw when he was hit by a student as he tried to calm a disruptive class. The same teacher had been sprayed with a fire extinguisher twice in the weeks before. Joe Smith, an eighth-grade math teacher, after trying to stop a student from making phone calls during class, was hit repeatedly with the phone and a dictionary and choked with his necktie. “I could have died,” the teacher said. The teacher was especially bitter about the double standard: “If I hit that student, the police would have been there in three seconds. She hit me, it took them an hour and a half. We have no protection.”

Physical assault has to be major before principals will bother to try to discipline a student. A teacher in the Bronx tells of two girls who got in a violent fight during class—the punishment was that each had to fill out a form giving her version of the story, after which they returned to class. Another teacher in New York tells this story: “There was a teacher here, the best teacher here, she was punched in the face. The kid was sent to the dean, and he said, ‘I don’t want to deal with this,’ and the kid was sent back to her class—to her class!”

The decline in order is worse in inner city schools, but hardly confined to them. One teacher from the suburbs told about a student from a well-to-do family who was misbehaving. As the teacher tried to get him to be quiet, the student walked up to the teacher in front of the entire class, put his hand over her mouth to stop her from talking, and then left the classroom for a few minutes before coming back. The teacher went straight to the principal, who just shrugged his shoulders and said there was nothing he could do. Only with persistence of the teacher, and the help of the union, did the student finally get suspended for two days.

There was probably no golden age of education, but fifty years ago most of these incidents would have been unthinkable. A survey of teachers in 1956 found that 95 percent reported that their students were either extremely well behaved or moderately well behaved. Today, by any definition, disorder is at epidemic levels. In most other developed countries, by contrast, student disorder is dealt with immediately or is barely a topic of discussion. We wonder why American students do so badly compared with foreign students.

Like all cultural phenomena, disorder in schools has many sources. But parochial schools and charter schools in inner-city neighborhoods do not have endemic disorder. There is one clear difference: Teachers in those schools have the authority to enforce values of common civility. In public schools, by contrast, discipline has been bureaucratized.

In New York City more than sixty steps and legal considerations are required to suspend a student for over five days. Denver is similar, with two levels of appeals. New York City's Legal Support Unit has a 210-page booklet, *Representing Students in Disciplinary Proceedings*. Just sending a disruptive student out of the classroom requires layers of bureaucratic compliance. A teacher must stop the class, call the security guard, fill out required forms, and allow the student "to present his/her version of the events." To suspend the student, the teacher must show up for multiple meetings with the parents and hearing officers—time now lost to her real job, which is to teach.

A legalistic regime on discipline, instead of supporting teacher authority, undermines it. Rules lay out teacher obligations, including, in New York City, an admonition against using any "language that tends to belittle" students. Instead of students feeling they must answer to the teacher, what they see, over and over, is that the teacher must answer to the form, or the rule, or the argument. Students understand the power of just making allegations. "Kids were very conscious of this," Eric Goldstein, the teacher in Rockland County, New York, observed. "It's difficult to do your job if you constantly have to worry about things you didn't do."

Most principals, overwhelmed by the process and the legal risks, have given up on trying to discipline students for obscenities, rudeness, interruptions, and even continued disruption. According to Eric Goldstein, "if you write something up and send it to the assistant principal, he'll send it right back and say, 'You deal with it.'" That seems to be standard operating procedure at most schools. A teacher in the Bronx described the kind of support most teachers get: "I carefully documented all the rude and disruptive behavior by one student, just like we were told to, and sent it to the administrators in a nice envelope. Then I waited two weeks—this student was interfering with the ability of everyone else to focus—and finally I got back a note saying, 'All of these behaviors are the sort that a teacher should be able to handle on her own.'"

Because students see teachers as largely powerless, they act accordingly. In the daily diaries kept by a small group of teachers in New York City in 2007 was an entry by a high school teacher about a student who called her “a fat ugly asshole” throughout the class period. A second-grade teacher described a student who was removed from the classroom for breaking crayons in half and throwing them at other students. When he returned to the classroom forty-five minutes later, “he had a plastic cup full of pretzels. Though I asked him to put them away he refused. He began smashing the pretzels on the table. . . . He then decided to throw the cup of pretzels around the room and began kicking the furniture.”

Disorder is contagious, a kind of virus that takes over a school with only a few unchecked incidents. Young people aren’t known for their maturity, and pushing the envelope becomes a sport. What’s happened is a version of the broken windows thesis by sociologists James Q. Wilson and George L. Kelling. If broken windows in a building are not fixed, they suggest, “the tendency is for vandals to break a few more windows. Eventually, they . . . break into the building.”

The windows of authority in American schools have been broken now for decades. It’s hard to pinpoint exactly when authority flipped. Probably the best case study is Gerald Grant’s study of one high school in northern New York over two decades, *The World We Created at Hamilton High*. That high school had fallen into an abyss by the mid-1980s. But it’s not hard to identify why the authority collapsed. The decline of order, as Professor Richard Arum details in *Judging School Discipline*, is directly tied to the rise of “due process.”

Due process originally applied to schools in a case involving Vietnam protests. Students do not “shed their constitutional rights,” Justice Abe Fortas intoned, “at the schoolhouse gate.” Due process, our constitutional protection against being sent to jail arbitrarily, now applied before a student could be sent home. Once the idea of due process was imported into schools, it was hard to draw the

line. Courts overturned suspensions of school drug dealers on the basis that the accusations, though true, had not been grounded in adequate “probable cause.”

Like a passing fad, the hyperdistrust by courts had largely dissipated by the end of the 1970s. Courts began cutting back on earlier opinions and suggested that the due process required was minimal in most cases. But the legal train had left the station. Everyone—students, parents, teachers, principals—now had the idea that daily choices had to be legally justified. Teachers came to believe, Gerald Grant found, that the rules existed to discipline them, not the students. Due process had become a governing idea of public schools. One legal aid organization had a thick manual just for due process rules, covering not only discipline but “matters related to grading, diploma denial, and other ‘academic’ decisions.”

With due process came an explosion of bureaucracy. Schools can justify their disciplinary decisions if there’s a clear rule against the conduct. One pernicious example is the idea of zero tolerance rules, invented in the 1980s to try to counteract the decline of school authority. With a clear rule, the theory went, a student who brought a weapon or drugs to school could summarily be sent home. The problem is that zero tolerance rules can’t distinguish trivial from severe infractions. In 2001 a National Merit scholar at a high school in Fort Myers, Florida, was suspended because a small kitchen knife was found in the back seat of her car on school grounds (it had fallen out of a box when she was moving). One principal told of having to suspend a first-grade girl, because when the students were asked to bring in their favorite possessions, she brought the small penknife given to her by her grandfather. That’ll teach her . . . what? That schools don’t care about right and wrong?

Instead of bolstering school authority, zero tolerance rules have become a symbol of lack of authority to do what’s right. “‘Zero tolerance’ discipline policies that are enforced widely in U.S. schools are backfiring,” was the headline that resulted from a 2006 report

by the American Psychological Association (APA) on school discipline. According to Professor Cecil Reynolds, the head of the APA panel, “The ‘one-size-fits-all’ approach isn’t working. Bringing aspirin to school is not the same as bringing cocaine. A plastic knife isn’t the same as a handgun.”

A legalistic approach to organizing schools, the Supreme Court thought, would promote fairness. Instead the legal mind-set has driven school culture onto the shoals of selfishness, not toward values of cooperation, mutual respect, and school pride. Moral authority has capsized. Teachers and principals find themselves doing whatever they can to hold on to the hull, while students amuse themselves scrambling around the slippery and disorganized deck.

#### BUREAUCRACY LEVEL THREE: MUTUAL SELF-DESTRUCTION

Bureaucracy, by substituting dictates and process for free choice, demoralizes teachers and gives resourceful adolescents the opportunity to destroy order. But it also does something else: It turns educators against each other. The worse schools have gotten, the more the different constituents—teachers’ unions, principals’ unions, custodial unions, boards of education—have sought to protect their prerogatives through legal mandates. Bureaucracy leads to mutual antipathy which leads to terminal bureaucracy.

The endless regulations imposed by the board of ed—for example, prohibiting teachers from calling on students during the mini-lesson—are equally matched by the rigid work rules imposed by the teachers’ union. In New York City the teachers’ union contract, 165 pages long, plus decades of accumulated arbitration rulings, dictates the hours worked (six hours twenty minutes), limits teacher duties, and restricts faculty conferences to a time that requires the principal to cancel classes. Until a “breakthrough” in the latest union contract, principals couldn’t even put a critical comment in a teacher’s file without official notice and the opportunity for a legal hearing.

Accountability for poor performance is nonexistent, as discussed shortly, except in a kind of black market. Effective principals can sometimes cajole or bully bad teachers into leaving but certainly don't have the management authority to do so. Some principals organize transfers of bad teachers to other schools in exchange for taking someone else's dregs, a phenomenon known as the "dance of the lemons." Some teachers in New York City end up in "rubber rooms," off-site holding pens for teachers who have no school assignments. They come, read books, or play video games—sometimes for years.

The bureaucratic stranglehold on principals extends to most of the basic tools of management. In New York they don't even have control over custodians, who have their own union contract. Eva Moskowitz, former chair of the New York City Council's education committee, wondered why paint crumbled at the top of walls in old schools. The reason, she discovered, was a union prohibition against painting walls higher than ten feet.

After decades of growing bureaucracy, disorder, and frustration, educators are at each other's throats. Instead of a culture of cooperation, the legalistic mind-set has bred a kind of anticulture in which educators use law as a weapon against each other. In 2004 the New York City Council held hearings on why nobody seemed able to make schools functional. The board of ed lawyer laid out in gory detail the "oppressive set of work rules" mandated by the union contract, and horror stories of terrible teachers impossible to terminate. The head of the teachers' union, Randi Weingarten, struck back in kind, citing hundreds of rules imposed by the board of education that try to make effective teaching into a form of legal compliance:

every minute of the day and every inch of a classroom is dictated, the arrangement of desks, the format of the bulletin boards, the position in which Teachers should stand. . . . Teachers are demeaned, they are stripped of their profession-

alism, they are expected to behave like Robots and incapable of independent thought.

Like tired prizefighters staggering through the late rounds, the teachers, principals, and board of ed pummel each other with legal requirements. The only sure result is a TKO—a bureaucratic knock-out of America's schools.

#### THE LIMITS OF ORGANIZATION

Organizing schools by legal bureaucracy is not, perhaps, America's finest innovation. Standardized protocols and lessons, the theory goes, would make schools as efficient as factories. But rules and rights just kept piling up, decade after decade, with no serious effort at making sense of them. The idea was to eliminate human error by, in effect, eliminating human choice. But even Soviet central planners wouldn't tolerate a system that barred nature hikes, or prevented teachers from calling on students who raised their hands, or let students run wild in the classroom.

Rolling up our sleeves to reorganize this legal tangle would be a mistake, however. There are too many rules, and they are too interconnected. Organization is the problem, not the solution. Choices can't be programmed without destroying the human skills needed to run a school.

The efficacy of organizational systems, industrial psychologists tell us, varies dramatically with the activity. At one end of the spectrum are assembly lines, artificial closed environments designed for standard inputs and standard products. On the other end are uniquely personal endeavors, such as the arts; trying to put those uniquely human tasks into a standard mold generally just causes them to fail. A performer doesn't succeed merely by regurgitating a script. Teaching is far down the spectrum toward the arts, where standardized protocols generally get in the way of effectiveness.

Systematizing schools is part of a broader modern fallacy about

the power of organization, a phenomenon that practically guarantees failure precisely because it severs humans from their instincts. We must “get to the heart of reality through personal experience,” Vaclav Havel observes, not with “systems, institutions, mechanisms and statistical averages.” It’s ironic that a nation founded on the belief in individual freedom should work so hard to program human choices. But that’s what we’ve done, and now we must undo it.

Education is a profoundly personal enterprise. Some people will be good at it. Some will not be. Having good teachers five years in a row, Stanford economist Eric Hanushek found, could eliminate the average achievement gap between poor students and their higher-income peers. It works in reverse as well: Three consecutive years of bad teaching, another study found, will cause students to lag more than fifty percentage points behind peers with good teaching. “Of all the factors we study—class size, ethnicity, location, poverty—” Professor William Sanders found, “they all pale to triviality in the face of teacher effectiveness.”

So why not organize a plan to get good teachers? That’s what Congress tried to do with the No Child Left Behind Law, which requires states to have in every classroom teachers who are “certified,” basically that teachers have pass through various academic hoops, such as having a graduate degree or passed state competency examinations. The idea, in the words of the congressional committee report, was “to ensure all teachers teaching . . . are highly qualified by the end of the 2005–2006 school year.”

What a great idea! But it doesn’t work. The organizational presumption—that teacher credentials are an indicator of effectiveness—turns out to be inaccurate. In an evaluation of New York City teachers in 2005, Harvard Professor Thomas Kane found no correlation between certification and a teacher’s effectiveness. Nor did academic pedigree matter; it made no difference whether the teacher was an Ivy League grad or had gone to a community college. Experience mattered, but far less than you might think. But some teachers, the study found, were dramatically more effective

than others. A similar study in Los Angeles found that “whether a teacher is certified or not is largely irrelevant to predicting his or her effectiveness.”

What makes a good teacher? Some people just seem to have a knack for it. It’s a matter of personality. Management expert Peter Drucker observed that “in teaching we rely on the ‘naturals,’ the ones who somehow know how to teach.” “Anyone who has set foot in a classroom as anything other than a pupil,” an editorial in *Teacher Magazine* noted, will know that “it is mostly the teacher’s personality that creates and maintains a space in which learning can take place.” Drucker also understood that this knack could not be taught: “Teaching is the only major occupation of man for which we have not yet developed tools that make an average person capable of competence and performance.”

In *The Moral Life of Schools*, Philip Jackson and colleagues at the University of Chicago studied how teachers succeeded. The diversity of approach was astonishing. One effective teacher, Mrs. Walsh, was charismatic—a “stately, well-dressed, flamboyantly dramatic and enthusiastic teacher,” described by the observer as a “high priestess of ninth-grade English.” Mr. Turner, also a high school English teacher, came into the classroom disheveled and disorganized and quietly shuffled through a mess of papers before finally asking the class where they had left off. Then there ensued an extraordinary discussion about biblical metaphors in *Moby-Dick*.

Each of us can probably tell similar stories. The good teachers I remember connected with their students by looking them in the eye. That look spoke volumes. Professor Jackson found the same thing. The students “spend a lot of time looking at the teacher. They look to find out how a teacher ‘takes’ things, to see whether it’s safe to laugh at another student’s smart-alecky remark or whether their own cleverness has evoked an appreciative response.” Professor Jackson observed that “the look on the teacher’s face is frequently the key to understanding what’s going on. . . . Looks of kindness,

impatience, good humor, sternness, incredulity, indignation, pity, discouragement, disapproval, delight, admiration, surprise, disbelief—the list could easily go on—are all part of the teacher’s normal repertoire.”

A successful personality for teaching requires, as a first condition, that teachers are free to be themselves. “The way a teacher enters the room or the way he or she stands about while waiting for the class to come to order,” Professor Jackson noted, conveys a sense of who she is and her authority over the classroom. When Mrs. Walsh, the high priestess of ninth-grade English, was interrupted by a booming voice of the principal over the loudspeaker, she immediately reeled away from the loudspeaker, clasping her heart as if about to faint from shock. The class erupted in laughter.

Just as good teachers can’t be produced like widgets on an assembly line, the way they teach can’t be programmed. There is merit to pedagogical ideas and other educational techniques, but teaching is mainly about the *delivery* of those ideas. With good teachers, students do not see a teaching machine, extruded from graduate school spouting the same words and techniques, but a live individual, with values, idiosyncrasies, and the spontaneity that comes from freedom. Scripted responses are the antithesis of what’s needed to build a culture.

Schools in America are organized on a profound misunderstanding of the human factor in teaching and learning. We’re teaching children to help them through life. Life is not mainly about protocols. Nor is life a multiple-choice exam. Life is about values, and social interaction, and discipline, and individuality, and a million other things that bureaucracy can’t control. Schools exist to help teach our children these things, not to satisfy a bureaucratic god that everything is done the same way. “How can you convince kids that you are interested in their well-being,” Manhattan Institute’s Kay Hymowitz observes, “when from day one of the school year you feel bureaucratic pressure to speak with them in a legalistic or quasi-therapeutic gobbledygook rather than a simple moral language they can understand?”

The depersonalized organization of schools rests not on the laurels of its success (obviously), but on an unspoken and powerful premise: that law requires school choices to be standardized. Public schools, after all, are an arm of government. Only with detailed codes can we be sure everyone is treated the same. But schools are not a regulatory agency, requiring legal standards to protect against state authority. Schools are a service, not unlike public transit, that happens to be provided by government. Yes, schooling should be available to everyone. But that doesn't require standardizing every decision in a classroom.

But what about fairness? Our culture is so guilt-ridden and distrustful that we can barely stomach the idea that a principal or teacher might actually have the authority to decide what's fair. But if law were really needed for fundamental fairness—for example, as environmental standards are needed to establish thresholds for industrial processes—then presumably this law should apply to private and parochial schools as well. Disciplining a student is not akin to criminal conviction—the principal is sending the student home, not to jail. Fairness in schools—an essential element of a healthy school culture—requires assertion of values by the people in charge, not application of rules *against* the people in charge.

The Supreme Court has stated numerous times, when requiring due process in schools, that it didn't mean to turn schools into regulatory agencies. But injecting legal analysis into ordinary daily decisions is debilitating. Here is some migraine-inducing language from the Court that is supposed to guide educators on what's required:

All that [due process] required was an “informal give-and-take” between the student and the administrative body dismissing him that would, at least, give the student “the opportunity to characterize his conduct and put it in what he deems the proper context.” . . . The need for flexibility is well illustrated by the significant difference between the failure of

a student to meet academic standards and the violation by a student of valid rules of conduct. This difference calls for far less stringent procedural requirements in the case of an academic dismissal.

Now you begin to see the problem—due process is different for grading than for discipline. Where does a principal go to figure out how much process is due?

Once law enters daily choices, it keeps pouring in, like water through a leak. All day long teachers make choices—about grades, comportment, participation in sports and clubs—that affect students. If teachers and principals don't have the authority to do what they think is right, at least not without a legal proceeding, then they might as well have no authority at all. Supreme Court Justice Lewis Powell, dissenting in one of the early due process cases, warned that this would be the effect: "Few rulings would interfere more extensively in the daily functioning of schools than subjecting routine discipline to the formalities and judicial oversight of due process." Justice Powell's law clerk at the time, Joel Klein, is now suffering through the reality of that prediction as chancellor of New York City schools.

School organization is essential as a platform on which human activity can occur; it provides the classrooms and other infrastructure, tells everyone to show up on time, imposes a common pedagogy so students can progress from year to year, and mandates uniform testing to measure academic progress. But none of those organizational requirements, done properly, requires conscious thought during the day; they all are readily internalized. Once an organizational structure makes teachers focus on compliance rather than on students, the school starts to fail.

Schools are human institutions. Each teacher is different. Each student is different, with different capabilities, interests, and background. The complexity of creating a nurturing learning experience defies description. Teaching draws on every resource of emotion,

perception, and experience. The chances of success are uniquely dependent on particular humans. Teachers and principals must be free to use all these resources, all the time.

#### RESTORE TEACHER RESPONSIBILITY

Deerlake Middle School in Tallahassee, Florida, regularly has the highest test scores in Florida. Unlike TEAM Academy in Newark, it has the advantage of serving a middle-class community with few cultural land mines. But Deerlake still stands out among the thousands of schools that could boast similar advantages: It was one of only thirteen middle schools in the country to earn the No Child Left Behind blue ribbon award in 2005. Its competitive advantage, by all accounts, is the culture created by its principal for many years, Jackie Pons. His operating philosophy is virtually identical to that at TEAM Academy: Let the teachers do what they think makes sense.

“We’ve got to get away from forcing teachers to conform to this systematic style,” Pons noted. “Florida has so many policies and procedures—we’ve legislated ourselves to the point that teachers have lost room for creativity and freedom.” “We’ve taken so much away from teachers, so much responsibility. . . . Little things like even signing in and signing out. Bigger things like how to run a classroom. . . . Remember, classrooms are most effective when students have strong feelings about their teachers. It’s the engagement! We have traditional teachers who are very successful. And we also have younger, innovative teachers trying and succeeding with a whole range of difficult techniques, different styles.”

Most of us probably think that power is a zero-sum game. Either it’s mine or it’s yours. But in successful schools and, indeed, in every successful joint endeavor, that’s not how it works. People are empowered not by securing rights over others but by commitment to a common cause. A principal who lets teachers try things on their own will see lots of new ideas, some of which will be successful. Other ideas

will be flops. A lesson is learned from those as well. “When you give freedom away,” Pons observed, “it comes back to you ten times over. Teachers start taking responsibility for every single student.”

Any effective “principle of management,” Peter Drucker observed, must “give full scope to individual strength and responsibility.” That’s what Sara Lightfoot found in *The Good High School*, her study of successful high schools in the 1980s. Bob Mastruzzi, the principal at the time at John F. Kennedy High School in the Bronx, “not only encourages faculty creativity and autonomy, but . . . also allows people the room to make mistakes.” He explained: “I want to have as many people as possible join in deciding and acting. They must become responsible for something larger than themselves. . . . I’m willing to tolerate the inefficiency because in the end, people will feel more connected, more committed and pulled into the process.”

Freedom to think for themselves is the first thing teachers at good schools talk about. One nineteen-year veteran in a high-poverty school in California emphasized the importance of “being able to pace my presentation of the curriculum and not having to be on such-and-such a page on day 38. Kids don’t fit into nice little molds like that.” Ryan Hill at TEAM Academy gave an example of how fairness can require different penalties for the same conduct. “We have one boy who will laugh at mistakes by other kids, but he really doesn’t know that he is hurting someone. There are other kids who are deliberately being mean. We have to handle those situations differently.”

Giving people responsibility energizes the entire enterprise. “We change everything all the time,” Heidi Moore at TEAM Academy observed. “Kids’ needs change every day. And we have the power, if something really amazing happens, if kids have a really incredible achievement, or if something serious happens—we can decide as a team at lunch to have an all-school assembly, to gather the kids together as a community to talk about it. We have the power to do that. You have to have the power to abandon your schedule.”

Strong principals are essential in successful schools because they act as buffers against bureaucracy. "I get things from the district that I'm required to do," Jackie Pons from Deerlake Middle School in Tallahassee observed, "and I just refuse to do them." That's also how Bob Mastruzzi from Kennedy High School in the Bronx worked; as one teacher there put it, "We have a great deal of freedom here . . . [because] Mastruzzi protects his faculty from the arbitrary regulations of the central authority. . . . He serves as a buffer." Another principal similarly concluded: "Trust is a big part of any vision. Teachers . . . know it is okay to make mistakes and the roof won't cave in."

Restoring personal responsibility is the key to fixing America's schools. Teachers and principals must be liberated to think and do what they think is best for their students. It would be hard to find a successful school that's worked in any other way. We must abandon the bureaucracy. In its place we should build a simple framework that requires humans to take responsibility, supporting those that are good at it and holding accountable those who are not. The challenge, as with most human endeavor, is in execution. These should be the governing principles:

1. *Free the teachers (and every other adult).* Every school should be able to manage itself independently, as if it were a charter school. People need the freedom to be themselves and to build their own culture. The benefits will be immediate: energy, resourcefulness, pride, and an accurate sense that success is now up to you. "I'm sure it's true for you and it's certainly true for me," Ryan Hill observed. "I've never met anyone who didn't want to be in charge of their destiny."

Public schools should basically have no different legal constraints from other schools in society. Schools can be given goals and be accountable to officials up the chain of responsibility. But educators on the ground must be free to make the day-to-day choices needed to accomplish those goals. Instead of a rulebook,

schools should have a one- or two-page constitution, with broad principles.

But what to do about the huge bureaucracy? Just shove the rulebooks to the side for a while. This can be done with broad waivers passed by the legislatures. As schools begin to function more effectively, the rules become vestigial and can be disposed of in a wholesale way.

2. *Don't tolerate disorder.* Order and respect for authority are essential for a healthy school culture. Nothing gets fixed, almost nothing gets learned, as long as there is disorder. "Five percent of the kids in the classroom, or at most ten percent . . . ruin education for everyone else," noted former Massachusetts Board of Education member Abigail Thernstrom. This can't be allowed to continue. Principals and teachers need the authority to act promptly to remove disruptive students—without stopping to fill out forms or worrying about building the record. "In all the [good] schools I visited," Sara Lightfoot observed, "acts of violence were . . . swiftly punished."

The purpose of prompt action in the face of disorder is essential not because the assertion of authority builds a healthy culture—a show of force is itself a sign of weakness—but because it prevents further deterioration. "It is not punishment that gives discipline its authority," Durkheim wrote, "but it is punishment that prevents discipline from losing this authority." Sara Lightfoot describes how Norris Hogans, the principal at George Washington Carver High School in Atlanta, began to build a healthy culture. "Discipline and authority [were] the key to gaining control of a change process. . . . Schools must provide the discipline, the safety, and the resources that these students are not getting at home. . . . Visible conformity, obedience, and a dignified presence are critical."

Some students, for a variety of reasons beyond their control, will not be able to abide by the essential conditions of order. Urban schools are filled, for example, with eighteen-year-olds

in ninth-grade classes. This is a formula for trouble—academic humiliation mixed with physical superiority. They should be in another classroom or program, where they can be with peers and explore possible vocational or other skills. Dedicating resources to the students who don't fit into mainstream classrooms may be the most important priority in American education—it's a good investment not only for the students in trouble but for all of society.

What about the unfair principal? Distrust of authority is like a hot iron on our consciousness. Guarding against unfairness can be achieved, however, without legal process. Independent fairness committees exist in many schools, with authority to decide or overturn disciplinary decisions. These committees could consist of parents, students, and/or teachers. The goal is not perfect justice but a check and balance to protect against arbitrary injustice. As with lawsuits, the focus of fairness should be not just the individual in trouble but what's needed to protect all the students. The first priority must be an environment that supports those students who want to learn and are willing to abide by the rules.

3. *Judge schools by their culture.* The goal for America's schools should be to restore the conditions for a healthy school culture, and all that implies, not their performance on isolated criteria. Pig-headed obsessions with test scores, teacher "certification," and other objective criteria have transformed educators into idiot savants, desperately trying to satisfy the criteria without regard to deleterious effects on students or the school culture. "Beneath this admirable rhetoric," philosopher Onora O'Neill has observed, "the real focus is on performance indicators chosen for ease of measurement and control rather than because they measure quality of performance accurately."

Judging a school requires subjective perceptions. That's true with most important decisions in social interaction, especially (as I shortly discuss) those involving accountability—including whether

a teacher is effective or an essay is well written. Evaluating schools is not that hard—educators say they can begin to tell whether a school's any good in a matter of minutes—but it requires the authority to make subjective judgments as well as to look at objective metrics.

Good teachers and principals are a gift to all society. They should be honored, not tied in legal knots and then blamed for failure. The core condition, both for attracting good teachers and for allowing them to succeed, is that they are liberated to be themselves. Their sense of self-worth, like their enthusiasm, will be contagious. “The most important thing [she] communicates,” Professor Philip Jackson observed about Mrs. Walsh, the high priestess of ninth-grade English, “is that [she] likes being where she is and doing what she is doing.”

Energetic teachers, not bureaucracy, are the building blocks of a healthy school culture. “Too many places look to packaged programs to build visions for learning,” as one principal put it. “Well, I say they can’t get there that way. . . . Visions have to be homegrown, gradually developed, and based on trust.” The California study on teacher retention reaches the same conclusion: “The very process of asking teachers about their schools and soliciting their help in making these schools better places to work is not just a step toward solving a problem—it is an important part of the solution.”

American schools need to prepare our children for tough competition in a global society. Teachers are supposed to be role models. Instead our schools radically devalue the human element in making things work. It's as if we were trying to teach our children to fail. Accomplishment is not a multiple-choice test; it's about individual resourcefulness and understanding. American schools have been organized “on the totally erroneous assumption,” as management expert Peter Drucker put it, “that there is one right way to learn and it is the same for everyone.”

John Stuart Mill observed that a culture “may be progressive for a certain length of time, and then stop: When does it stop? When it ceases to possess individuality.” That’s what’s happened to America’s schools. Bureaucracy and legal fear have smothered individuality. This happened because of fears of the dark side of individuality—people can be ineffective, or worse. But the answer to that is also the freedom of individuals—the freedom to hold people accountable. This is the subject of the next chapter.