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November 20, 2020

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Generations of law students have learned the IRAC method of legal analysis. IRAC: Issue – Rule – Apply – Conclude. IRAC provides a consistent and straightforward way to analyze legal disputes in all areas whether property, torts, contracts, criminal law, or anything else typically studied in law school. The clarity of IRAC informs legal reasoning, the practice of law, and judicial decisions. For all its straightforward simplicity, IRAC is also remarkably reductionist.

Noted Norwegian criminologist Nils Christie writes: “Training in law is training in simplification. It is a trained incapacity to look at all values in a situation, and instead to select only the legally relevant ones, that is, those defined by the high priests within the system to be the relevant ones.”

Perhaps Christie goes too far, denying the power of the law to effect change. Yet, he is correct about the reductionist nature of the law and, by extension, legal education. Human disputes, and the harm at their root, are complex, messy, emotionally laden matters. We have developed a legal system to place a framework around all that messiness and in the process have lost, perhaps, some of our humanity.

Consider criminal law. An individual is harmed. How do we respond? We outsource that harm and the attendant obligations to the government. The harmed party may have a small voice in shaping the outcome, yet the available responses are largely constrained, packaged, and limited to some prefabricated options. And what about the person who caused the harm? The system encourages silence and denial until, if there is an apology, it seems entirely self-serving. And what about real acceptance of responsibility and amends? Our system imposes punishment (pain) to teach people they are not supposed to cause harm to others. The system is so reductionist we don't even concern ourselves with the counterproductivity of state-inflicted pain. Nor do we provide a meaningful way for the party who caused the harm to make things right.

But maybe there is another way or, at least, an additional way. What if IRAC stood not only for Issue-Rule-Apply-Conclude but also for Injured (Harmed) – Responsibility – Amends – Change? We would ask:

1. Who has been Injured or harmed?
2. Who is Responsible for the harm?
3. How can the responsible party make Amends?
4. How can the overall response lead to positive Change?

Let's look at each of these questions:

Question 1: Who has been Injured or harmed? Our response must include giving the immediately harmed party (the victim) a real voice in influencing case outcomes. Often victims are more interested in getting answers to questions, an assurance the harm will not reoccur, and a meaningful apology than they are in seeing punishment. And injury and harm run more deeply and profoundly than the elements of the criminal offense. Harm and injury ripples to family members, friends, and community. A just response addresses a much broader scope of harm than we currently consider. Every time the state intervenes an opportunity arises to consider the immediate harm and broader, systemic issues and injustices that contribute to harmful behavior. We squander this opportunity and obligation for deeper reflection and engagement.

Question 2: Who is Responsible for the harm? This inquiry involves a complexity lost in our current system. A Responsible party caused something but also has duties and obligations attendant to the harm caused. Consider the word “responsible” and its dual meaning. A responsible person caused an outcome. A responsible person is also someone to whom an obligation is imposed. A person can be both responsible for causing the harm and responsible for repairing it. Other than occasionally paying restitution, most people convicted of an offense are relieved of any obligation to make amends. While they are deemed responsible for causing harm, they are denied the duty and responsibility of putting things right.

A deep consideration of responsibility necessarily involves probing into forces that influence conduct. This does not relieve the individual of personal accountability but does introduce historic and contemporary forces that shape behavior. We cannot completely divorce immediate actions from the historic inequities and systemic injustices perpetrated by legal and other institutions in this country.

Question 3: How can the responsible party make Amends? The reductionist nature of our response barely asks what the responsible party can do to make things right. They become passive actors in a system that imposes something on them rather than requiring affirmative restorative actions by them. Bizarrely, taxpayers bear the weight of financial sacrifices to sustain prisons, providing a setting where no affirmative action is imposed on the responsible party. This is not to suggest that incarceration is easy. It is brutal, violent, and dehumanizing – an environment uniquely ill-suited for positive personal growth. The state imposition of consequences divests the responsible party of the important ability to try to reset the balance with the party they harmed.

Question 4: How can the overall response lead to Change? With remarkable shortsightedness, we rarely ask whether the imposition of punishment will create a net societal improvement. We punish without regard for the fact that punishment, especially incarceration, often leads to increased criminality. Incarceration is a criminogenic risk factor for further offending behavior. Instead, why are we not focusing on responses that yield a net improvement in health, safety, personal well-being, and satisfaction for the people most directly harmed?

This new version of IRAC brings the real world into the classroom and by extension to justice systems and beyond by discussing the complexity of harm and its ripple effects, the systemic injustices that permeate law and society, and creates a space and place for a broad array of voices. Law school classes could consider the two forms of IRAC sequentially, probing first into the new version and then drilling down more narrowly into the traditional version. This dual inquiry, while taking more time, makes the study of law a deep contemplation of human interaction as much as a consideration of rules.

A new vision for IRAC needs a new vision of justice. As Professor Lindsey Pointer of the VLS National Center on Restorative Justice asks: “Why is Lady Justice blindfolded, armed with a sword, and on a pedestal?” Maybe she should use all the senses, sit or walk among the people, and carry a first aid kit not a weapon.

I went to law school in the 1980s. My father went to law school in the 1950s. Our first-year courses were almost identical. I suspect the method of conducting classes and analyzing cases was the same then as in the 1980s as it is today. The world has changed dramatically in the past 70 years. Let’s bring IRAC into this century and transform and humanize legal education and the practice of law.

About the Author



Professor Robert Sand (VLS '87) is the former elected Windsor County State's Attorney, a prosecutorial position he held for 15 years. He is the founding director of the VLS Center for Justice Reform which houses the Master of Arts in Restorative Justice degree and the Professional Certificate in Restorative Justice. Sand is the High Bailiff-elect for Windsor County, a constitutional office with a grand title but few identified responsibilities. Click [here](#) for a full bio.

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802-831-1253

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