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It All Begins with You: Improving Law School Learning Through Professional Self-Awareness and Critical Reflection

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IT ALL BEGINS WITH YOU: IMPROVING LAW SCHOOL LEARNING
THROUGH PROFESSIONAL SELF-AWARENESS AND CRITICAL
REFLECTION

Filippa Marullo Anzalone¹

Every student knows, and almost every teacher has forgotten, that the personality of
the teacher is a crucial component of every class. Those of us who teach like to think
that we are presenting material rather than ourselves and that our own character is
irrelevant to what happens in class. We sometimes imagine ourselves as transparent,
as the vehicle through which learning takes place in our students. But if we listen,
we can hear our students responding at least as much to who we are as to what we
say.

Edward M. White²

I. INTRODUCTION

How many of us have prepared a course, delivered it (we thought)
successfully, and eagerly sat down at the end of a term with our student
evaluations only to be flabbergasted by the content of our students' comments?
Instead of observations about the content of what we taught or constructive
comments about teaching methods, the evaluations are full of comments on our
demeanor, our tone and style; all the things that we didn't consider in planning
our class. At worst, the remarks are ad hominem attacks, at best, they laud our
warmth, our openness or friendliness—traits so innate to our personality or style
that we would hardly have thought them worth mentioning.

¹ Director of Information and Research Services and Associate Professor of
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² Edward M. White, Foreword to MOST EXCELLENT DIFFERENCES: ESSAYS
ON USING TYPE THEORY IN THE COMPOSITION CLASSROOM, at vii (Thomas C.
Why do students so often focus on delivery, on our personal style, as much as, or more than, the substantive content of our courses? Because, for better or worse, "we are our students' mentors regardless of whether either side is initially comfortable with that relationship." 3 In short, how we teach is as important as what we teach.

As I become a more experienced teacher and read my students' evaluations, as I talk with students and colleagues about teaching, and as I read about learning theory, I am convinced that becoming more self-conscious about the learning process and about how each of us, as an individual, performs the act of teaching, has the potential to make us more successful teachers. But law professors are a driven, busy lot. We focus on our subject areas and cannot find time for the vagaries and sometimes contradictory hypotheses of another discipline, such as applied learning theory. Perhaps that is a mistake.

This paper grows out of my reflections on my own introduction to learning theory. In it, I hope to accomplish two things. First, I present a modest proposal for becoming a better teacher. My thesis is simple: by knowing more about ourselves and our own learning processes, preferences, and inclinations, we will become better teachers. We will discover why we have elected to teach as we do, and we will also uncover when we have been on automatic pilot, blithely accepting the role of law professor, as conceived by our institutions, our students' expectations, and our preconceived assumptions. Second, this paper is a kind of phenomenology of discovery about learning theory. This is not a didactic essay. It is a self-report of my own reading of the literature of applied learning theory. It is a story of self-discovery, a starting place for the harried law professor who needs a map of the learning theory terrain. 4

In recent years, the legal academy's discussions of pedagogy have focused on learning theory. 5 There is a fresh interest in the learning styles of law

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4 For an excellent overview of perceptual learning styles and intelligence theory, focusing on the value of using the web in teaching, see Jayne Elizabeth Zanglein & Katherine Austin Stalcup, Te(a)chnology: Web-Based Instruction in Legal Skills Courses, 49 J. LEGAL EDUC. 480 (1999).

5 The case book method and Socratic dialogue were enthusiastically embraced by law schools at the start of the twentieth century and remain the dominant teaching techniques in American law schools today. See June Cicero, Piercing The Socratic Veil: Adding An Active Learning Alternative in Legal Education, 15 WM. MITCHELL L. REV. 1011, 1011 (1989). Both have been subjected to intense criticism and reform efforts, however. For older criticisms, see generally Karl N. Llewellyn, The Current Crisis in Legal Education, 1 J. LEGAL EDUC. 211 (1948) (criticizing the application of the case method and its "hit-or-miss" results) and Arthur D. Austin, Is the Casebook Method Obsolete? 6 WM. & MARY L. REV. 157(1965) (suggesting decreasing use of case method as the three years of law school progress). For more recent criticism, see also Myron Moskovitz, Beyond the Case Method: It's Time to Teach With Problems, 42 J. LEGAL EDUC. 241, at n. 1 (1992)(suggesting that the problem method be used in lieu of the case method); see Cicero, supra, (calling for a more active approach to teaching than
students and a sense that understanding them only improves the quality of law teaching. Although knowledge of student learning and thinking styles is helpful to both teacher and student, I argue it is only one part of the equation in improving legal pedagogy. We need to think as well about the learning style differences of law professors, and the resultant differences in teaching styles. In this essay, I argue that self-awareness of one’s own learning preferences, thinking style and intelligences, together with rigorous critical reflection about pedagogy, is the best first step toward improving law school teaching. At the risk of oversimplification, I am arguing that learning about one’s own unique styles in relationship to others will make one a better teacher.

In Part I, I review the literature of traditional legal pedagogy and describe some of the efforts at improving it. This discussion includes a framework and critiques of using learning styles in law schools. It details some of the exciting recent changes and positive developments in legal pedagogy, including work done to bring critical practice into the classroom.

In Part II, I examine the idea that it is a critically reflective act to become more aware of our own learning. To guide law professors interested in embarking on a path of serious self-analysis, I explore the intellectual traditions that undergird the literature of critical reflection: critical pedagogy, reflective Socratic dialogue in larger classes); see Ruta K. Stropus, Mend It, Bend It, Extend It: The Fate of Traditional Law School Methodology in the 21st Century, 27 Loy. Chi. L.J. 449, 455-65 (1996) (criticizing the case book method and Socratic dialogue as espoused by Langdell).

See Robin A. Boyle & Rita Dunn, Teaching Law Students Through Individual Learning Styles, 62 Alb. L. Rev. 213 (1998) (examines student learning styles and complementary teaching methods); see also Vernellia R. Randall, The Myers-Briggs Type Indicator, First Year Law Students and Performance, 26 Cumb. L. Rev. 63 (1995-96) (advocating the use of the Myers-Briggs Type Indicator test to ascertain students’ learning style preferences in law schools.); see M. H. Sam Jacobson, Using The Myers-Briggs Type Indicator To Assess Learning Style: Type Or Stereotype?, 33 Willamette L. Rev. 261 (1997) (stating a preference for the Honey & Mumford Learning Styles Questionnaire to the MBTI); see also Zanglein & Stalcup, supra note 4 (providing background information on the Dunn & Dunn Learning Styles Inventory, Right Brain/Left Brain Theories, the Myers-Briggs Type Indicator, the theory of auditory, visual, and tactile learners, Gardner’s theory of multiple intelligences, and adult learning theory, in an article detailing the benefits of web-based teaching.)

STEPHEN D. BROOKFIELD, BECOMING A CRITICALLY REFLECTIVE TEACHER 207-208 (1995). Brookfield states that the critical reflection literature has “an impressive intellectual pedigree”, and that the theoretical framework of critical reflection includes “elements of critical theory, psychoanalysis, phenomenology, and pragmatism” which may be “impenetrable to all but those already initiated into this way of thinking and working.” Id. He suggests that an examination of critical pedagogy, reflective practice, and adult learning and education is an “accessible way” to explore the “intellectual traditions that inform the idea” of critical reflection. Id.
practice,\textsuperscript{9} and adult learning and education.\textsuperscript{10}

In Part III, I suggest ways that law school faculty might begin the task of self-discovery, and I provide some information about various applied learning theories and the diagnostic tools available to begin such a self-assessment.

I conclude the article by myself reflecting -- on my advocacy of reflective practice; and I acknowledge the inherent limitations of self-reflection as a means of improving legal pedagogy. I end with thoughts on the importance of teaching in the legal academy, and I call for further research and dialogue about teaching in law schools. Since teaching is an essential component of legal education's mission, we need to know more about what the teacher brings to the table. The discussion about improving pedagogy through applied learning theory has so far been one-sided. It should be expanded to explore the diversity of faculty learning and teaching styles as well.

II. LAW SCHOOL PEDAGOGY AND ITS GOALS

In 1870, Christopher Columbus Langdell had a revolutionary idea. He traded the one-sided, teacher-centered lecture\textsuperscript{11} of the law school classroom for the more dynamic pedagogy of the case method\textsuperscript{12} and Socratic dialogue. Instead of passively listening to an instructor, a veritable sage on the stage,\textsuperscript{13} the law students Langdell envisioned would be active partners in their education, attempting to uncover the universal principles and legal rules underlying

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\textsuperscript{8} Critical pedagogy envisions the ideal education as a dialogue among equals. At its worst, education is a process that reinforces the dominant status quo and the teacher is the instrument of such dominance. Paolo Freire's work is in the tradition of critical pedagogy. See id. at 208.

\textsuperscript{9} See BROOKFIELD, supra note 7, at 215, 217. Reflective practice has, according to Brookfield, become a catch-all term for incompatible ideologies. See id. Brookfield asserts that reflection without action is not enough. Reflective practice is, essentially, a transformative questioning of one's own learning and practice. See id. "We reflect on our teaching so that we can create the conditions under which both teachers and students become aware of their own power of agency." Id.

\textsuperscript{10} See BROOKFIELD, supra note 7, at 220-21. One of the core concepts of adult learning and education is that adults transcend Piaget's levels of learning by developing their own "situational reasoning that they use to interpret their experiences and guide their actions. This reasoning does not follow the rules of formal logic. Instead, it is attentive to context, responsive to idiosyncrasy." Id.

\textsuperscript{11} See Moskovitz, supra note 5, at 241, 242.

\textsuperscript{12} See id. at 243.

\textsuperscript{13} The concept of the "sage on the stage" is personified by the professor who begins a class with the words, "My job is to talk and your job is to listen, and let us hope we both conclude our jobs at the same time." See Jonathan D. Fife, Foreword, in Frances K. Stage et al., Creating Learning Centered Classrooms: What Does Learning Theory Have to Say? 26 ASHE-ERIC HIGHER EDUCATION REPORT, no. 4 (1998) at ix."
}
appellate decisions through the progressive techniques of question and answer. In Langdell's view, the case method would create true lawyers, who would master legal principles and then apply them to the "ever-tangled skein of human affairs." In his zeal to transform the study of law into a respectable university degree program, Langdell launched a trend that was to last for over a century. The case book method and Socratic dialogue were enthusiastically embraced by legal pedagogues at the start of the twentieth century; they have been the dominant teaching techniques in American law schools since then.

In the 21st century, the legal pedagogy of 1870 has lost much of its luster and appeal. The world at large, and the teachers and learners who

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15 John Dewey defines the traditional scheme of education as "...in essence, one of imposition from above and from outside." Dewey sees the subject matter of traditional education as "essentially static." On the other hand, progressive education is concerned primarily with the individual, linking experience with each person's learning. In a progressive learning environment, the student is an active participant, not a passive observer. See JOHN DEWEY, EXPERIENCE AND EDUCATION: THE 60TH ANNIVERSARY EDITION 1-11 (Kappa Delta Pi 1998) (1938).

16 See STEVENS, supra note 14, at 52.

17 Langdell believed that the law should be treated as a science. Langdell may have attempted to impress Harvard's President Thomas Eliot, a chemist by profession, with this theory. It worked, because Langdell became Dean of Harvard Law School and Eliot's son-in-law! See GRANT GILMORE, THE DEATH OF CONTRACT 12-13 (1974); see conversation with Professor Mary O'Connell, Northeastern University School of Law, in Boston, Mass. (August 29, 2000).

18 See supra note 5. There is also abundant literature on reforming the law school curriculum and legal pedagogy in general. Among the most enduring contributions is KARL LLEWELLYN, THE BRAMBLE BUSH: ON OUR LAW AND ITS STUDY (1930). Two major reports calling for reform in legal education have been issued by the American Bar Association. The first is generally referred to as the Cramton Report, ABA LEGAL EDUCATION AND ADMISSIONS REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS (1979). The second is the ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT - AN EDUCATIONAL CONTINUUM (1992), known as the MacCrate Report. For a look at the process of academic change in law schools, see John O. Mudd, ACADEMIC CHANGE IN LAW SCHOOLS, 29 GONZ. L. REV. 29 (1993-94).

20 In addition to the Cramton and MacCrate Reports; Moskovitz; and Cicero, there are articles criticizing the case method and Socratic dialogue on more particularized grounds. See e.g., Alice K. Dueker, DIVERSITY AND LEARNING: IMAGINING A PEDAGOGY OF DIFFERENCE, 19 N.Y. REV. L. & SOC. CHANGE 101 (1991-92) (criticizing use of Socratic dialogue at a time when class sizes are larger and student populations are more diverse); see Jerome Frank, WHY NOT A CLINICAL LAWYER-SCHOOL? 81 U. PENN. L. REV. 907 (1933); see Jerome Frank, A PLEA FOR
It All Begins With You

populate law schools, have changed markedly since Langdell’s day. A century ago, higher education was a man’s world. Socratic dialogue was a logical pedagogical choice for a small class of men from similar social and economic backgrounds. Teachers and students looked alike, talked alike, and communicated easily with one another. But today, women make up over fifty percent of the nation’s law students. Educational research has noted that women participate less in so-called Socratic classes where the instructor uses rapid questioning and answer techniques, but they participate more in classes with a discussion format. In addition to gender diversity, racial, ethnic, and cultural diversity characterizes today’s legal academy and law school

Lawyer Schools, 56 Yale L.J. 1302 (1947) (criticizing legal education based on the case method for its lack of practical application); see Roger Cramton, The Current State of the Law Curriculum, 32 J. LEGAL EDUC. 321 (1982) (criticizing the author’s school’s law curriculum’s structure, lack of diversity, and failure to be either theoretical or practical).

For an excellent discussion of the increased diversity in law school student bodies and faculties, see Phyllis Craig-Taylor, To Stand For The Whole: Pluralism And The Law School’s Professional Responsibility, 15 NAT’L BLACK L. J. 1 (1997).

Myra & David Sadker, Failing At Fairness: How America’s Schools Cheat Girls (1994) at 163.

See Dueker, supra note 20, at 133-34.

Educational research shows that men are twice as likely to monopolize class discussion than women. In fact, it has been said that in class, women watch and men perform. See SADKER, supra note 22, at 170, (quoting Catherine Krupnik, Women and Men in the Classroom, 1 ON TEACHING AND LEARNING: J. HARV. DANFORTH CTR. 18, 18 (1985)).

Last fall, 48.7% of law students were women. Since the numbers of women enrolling in law school has climbed by a couple of percentage points each year, demographers have projected that women will outnumber men in law school in the class of 2003. See Jane Easter Bahls, The New Majority, Student Law, September 2000, at 21.


classroom. But while the composition of the classroom has evolved, what goes on in it, to a significant degree, has not. Law is no longer viewed as an empirical science and the intellectual hegemony of legal education is increasingly questioned. Thoughtful legal educators have looked at law school pedagogy and found that traditional approaches emphasize doctrinal analysis at the cost of the development of interpersonal and problem solving skills. Some scholars have called for envisioning new paradigms of learning in the legal academy.

A. Setting the Stage: The Law School as a Learning Environment and Some Recent Experiments with Change

Along with changes in their learner populations, law schools have experienced changes in the learning environment. Although critics argue that law schools continue to prepare nineteenth century gentlemen for membership in

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28 Diversity is encouraged by the professional association of the legal academy. The American Association of Law Schools (AALS) Bylaws, art. VI, §6-4(c) states that member schools should “seek to have a faculty, staff, and student body which are diverse with respect to race, color, and sex.” See American Association of Law Schools Handbook, 22 (1990).


30 For a short and comprehensive treatment of the evolution of legal philosophy, see Chapter 14, Lawyers, Legal Theory, and Faith, in STEVENS, supra note 14, at 264-288.


32 Zanglein and Stalcup comment that “It is as if the law school learning environment were developed by an analytic for other analytic learners.” See Zanglein & Stalcup, supra note 4, at 483.


34 See e.g., Brook K. Baker, Beyond MacCrate: The Role of Context, Experience, Theory, and Reflection in Ecological Learning, 36 ARIZ. L. REV. 287 (1994) (suggesting a paradigm shift in what is viewed as educative in the law school curriculum).

35 According to some observers, the “cutthroat environment” is a thing of the past. Students are far more cooperative, and faculty members are no longer so ruthless. See James Bandler, At Harvard Law, Next Case Study Is Student Morale, THE BOSTON SUNDAY GLOBE, July 11, 1999 at A1, A14.
a number of pedagogical innovations have been suggested, and there are “frequent calls for legal educational reform.” 37 Writing from a clinical perspective more than fifteen years ago, Anthony Amsterdam stated that legal education was too narrow because it failed to develop in students ways of thinking within and about the role of lawyers - methods of critical analysis, planning, and decision-making which are not themselves practical skills but rather the conceptual foundations for practical skills and for much else, just as case reading and doctrinal analysis. 38

In response to criticisms and changes in the learner population, law schools have made strides in changing classroom techniques. The American Bar Association Commission on Women in the Profession’s stated that “the first year curriculum could be improved by the use of a greater variety of teaching methods in light of the diversity of learning styles in [the] student body.” 39 In fact, substantial work is underway in this area. 40 In addition, there have been efforts to tailor a number of upper level and clinical courses to diverse learning styles. 41 Another intriguing development is the institution of academic support programs to address the diversity of learning styles and to overcome some of the barriers the modern law school poses for a diverse student body. 42


39 See Boyle & Dunn, supra note 6, at 217 (quoting from DON’T JUST HEAR IT THROUGH THE GRAPEVINE; STUDYING GENDER QUESTIONS AT YOUR LAW SCHOOL, AMERICAN BARR ASS’N COOM’N ON WOMEN IN THE PROFESSION 19 (1998).

40 See e.g., supra note 6, describing the use of the Productivity Environmental Preference Survey (PEPS), the adult version of the Dunn & Dunn LSI, at St. John’s University School of Law, and articles by Randall and Jacobson on the use of the MBTI at the University of Dayton School of Law and the use of the Honey & Mumford Learning Styles Questionnaire at Willamette University College of Law, respectively.

41 See e.g., Don Peters, Forever Jung: Psychological Type Theory, the Myers-Briggs Type Indicator and Learning Negotiation, 42 DRAKE L. REV. 1, 3 (1993) (describing use of MBTI with students in Negotiation and Dispute Settlement courses); see also Ann Shalleck, Clinical Contexts: Theory and Practice in Law and Supervision, 21 N.Y.U. REV. L. & SOC. CHANGE 109, 110 (1993-94) (suggesting that teachers identify and work with learning style differences of a diverse student body).

42 See e.g., Paula Lustbader, From Dreams to Reality: The Emerging Role of Law School Academic Support Programs, 31 U.S.F. L. REV. 839, 839 (1997) (looking at diversity in context of law school and its curriculum); see also Paul T.
Other articles have identified the particular skills required to be an effective practitioner and then examined ways to help students develop those skills. In fact, a variety of teaching methods are used in the law school classroom of today. One of the methods, borrowed from medical education, is problem solving. Problem-based learning enables a student to apply what he or

Wangerin, Law School Academic Support Programs, 40 Hastings L. J. 771 (1989). The author first looks at academic support programs in legal education. See id. Next the author examines what causes academic problems for law students. See id. at 779-81. Finally, she outlines the learning skills students need to succeed. See id. at 781-86.

See e.g., Alan M. Lerner, Law and Lawyering in the Work Place: Building Better Lawyers by Teaching Students to Exercise Critical Judgment as Creative Problem Solver, 32 Akron L. Rev. 107, 119-25 (1999) (looking at skills necessary to be a successful lawyer in an employment discrimination course and suggesting that we teach students to exercise creative, critical judgment in their problem solving); see also Michael Oberst, Teaching Tax Law: Developing Analytical Skills, 46 J. Legal Educ. 79, 79 (1996) (looking at passive and active teaching methodologies and their use in developing the analytical skills needed for tax law).

See Steven I. Friedland, How We Teach: A Survey Of Teaching Techniques In American Law Schools, 20 Seattle L. Rev. 1 (1996). For example, Steven Friedland’s article about his survey of law professors’ teaching methods noted that self-reported teaching methods included the Socratic method, the lecture method, small groups or dyads, and role-playing. See id. at 28-30. Between twenty-one and forty-eight percent of faculty surveyed stated that they used “other methods”, which included a wide array of teaching techniques and methodologies, including “drafting and writing projects, student presentations, watching videos, guest lectures, simulations, and demonstrations. The two most popular alternative techniques were “class discussion” and problem solving.” See id.

See Moskovitz, supra note 5, at 248. Moskovitz recognized the medical-legal relationship in his article advocating the adoption of medical school techniques (the problem method) in law schools. See id. at 248-49. Some commentators do not accept the comparison. See e.g., Alfred C. Aman, Jr., Studying Music, Learning Law: A Musical Perspective on Clinical Legal Education, 13 Cornell Law Forum (1987) at 8 (suggesting that learning law—a humanistic discipline—has more in common with learning music, also from the humanities, with its analytical and intellectual rigor, than medicine, a science).

See Gerald F. Hess, Listening to Our Students: Obstructing and Enhancing Learning in Law School, 31 U.S.F. L. Rev. 941, 960 (1997). In his article on enhancing student learning by having teachers listen, Gerald Hess included this student statement:

I like the problems-oriented classes better because...when you have a professor give you a problem that you’re going to work on and use a hands-on approach, it gives you the opportunity to use what works for you. Some people, they can just go through the steps and everything just kind of falls in line. Other people, they have to mull it over; they have to think about it, and then they put...
she has learned and to take responsibility for his or her own learning. Legal educators are experimenting with a number of teaching techniques and are manifesting heightened concern about striking the right balance between the traditional academic approach and learning by doing. Some articles have suggested the use of games, both in and out of the classroom, to "increase student cooperation, motivation, and … improve doctrinal learning." A handful of articles examines the use of technology in teaching and another group looks it together. At the same time, using that information right now, you're using it during the semester...and you're applying it.”

Id. 47 See Cramton, supra note 20, at 322. Roger Cramton states that, "The central aspect of learning is that the initiative and energy must come from the learner; our task as teachers is to organize, inspire, and facilitate the learner in acquiring new knowledge, skills, and potentialities." Id. 48 See e.g., Robert Condlin, Learning From Colleagues: A Case Study In The Relationship Between "Academic" and "Ecological" Clinical Education, 3 CLINICAL L. REV. 337, 345-46 (1997) (exploring the complementary value of academic and ecological perspectives in practice skills training). See also Mudd, supra note 19, at 31 (citations omitted). In fact, many critics of legal education have observed that it should "become at the same time both more theoretical and more practical." Id. at 31-32.

The author states that although "games may be an innovation in the law school classroom, the technique is not new to other forms of adult education. By using games in the classroom, students 'learn by experiencing the consequences of their actions and should get meaningful practice in that which has been learned.'” See Paul Bateman, Toward Diversity in Teaching Methods In Law Schools: Five Suggestions From The Back Row, 17 QUINNIPIAC L. REV. 397, 419 (1997) (quoting J. Thomas Butler, Games and Simulations: Creative Educational Alternatives, TEACHING TRENDS, Sept. 1988, at 20.) For articles that describe how games and game theory have been used in law school classrooms, see e.g., Jennifer L. Rosato, All I Ever Needed To Know About Teaching Law School I Learned Teaching Kindergarten: Introducing Gaming Techniques Into The Law School Classroom, 45 J. LEGAL EDUC. 568, 569 (1995) (describing uses a game based on television show "Family Feud" to teach discovery in her civil procedure class); see James Brown, Simulation Teaching: A Twenty Second Semester Report, 34 J. LEGAL EDUC. 638, 638 (1984) (advocating a gaming and interactive approach to teaching to foster students' comprehension of problems contextually); see Donald B. King, Simulated Game Playing in Law School: An Experiment, 26 J. LEGAL EDUC. 580, 580 (1974) (representing an early article about game playing as an educational technique which focuses on using games in a commercial law course).

50 See e.g., Richard Warner et al., Teaching Law with Computers, 24 RUTGERS COMPUTER & TECH. L. J. 107 (1998) (looking at the use of computers to teach law and whether CAI can help teach analytical skills); see also Kimberlee K. Kovach, Virtual Reality Testing: The Use of Video for Evaluation in Legal Education, 46 J. LEGAL EDUC. 233 (1996) (examining use of video as a teaching tool in terms of evaluations and final examinations). For an excellent history of the evolving use of computers in legal education, see Michael A. Geist, Where Can You
at teaching methodology and accommodations for learner disabilities.\textsuperscript{51} Other scholarship has considered the role and place of legal work and other out of classroom experiences\textsuperscript{52} (known as internships and externships) in the enterprise of legal pedagogy.

In addition to experiments that alter the traditional law school classroom, some commentators urge law faculty to teach students to use critical self-assessment and to practice self-consciously.\textsuperscript{53} To accomplish this, some legal educators have adopted instructional formats that encourage reflective, critical practice.\textsuperscript{54} Although the choice of teaching methodologies and techniques is of utmost importance,\textsuperscript{55} the pedagogical goal of encouraging law students to become reflective practitioners has greater significance. One of the more exciting

\begin{itemize}
\item Go Today? The Computerization Of Legal Education From Workbooks To The Web, 11 HARV. J. L. & TECH 141 (1997); see Jayne Elizabeth Zanglein and Katherine Austin Stalcup, \textit{supra} note 4.
\item See Condlin, \textit{supra} note 48, at 436-437. Robert Condlin comments that “students cannot be permitted to practice in an uncritical, unself-conscious fashion, internalizing questionable habits, beliefs, and values, without knowing they are doing so.” \textit{Id.} Though writing specifically about clinical legal education, Condlin states that legal education’s goal is to help students see their practice experiences “from the standpoint of somebody else.” \textit{Id.} Condlin attributes the phrase to Hannah Arendt. \textit{See id.} at 437 (citations omitted).
\item \textit{See id.} at 437-438.
\item Paul Teich states that while law schools “seek to impart a broad range of professional skill to students”, evidence is “accumulating that suggests that none among the most widely debated law-teaching systems is uniquely effective.” Paul F. Teich, \textit{Research On American Law Teaching: Is There A Case Against The Case System?}, 35 J. LEGAL EDUC. 167, 168-85 (1986). In fact, he admonishes legal educators to “end unsubstantiated criticism of one another’s law teaching methods.” \textit{Id.}
\end{itemize}
and recent developments in legal pedagogy has been the introduction of students to the concept of reflective practice.

B. Experimenting with Reflective Practice in the Law School Classroom

Legal education's goal is to turn uninitiated novices into competent attorneys. However, by concentrating solely on the law school curriculum, the legal academy may be defining its challenge too narrowly. Learning is not restricted to problem solving, and the identification and management of external problems should not be its sole focus. Chris Argyris argues that most people really do not know how to learn, and this is especially true of well-educated professionals. Legal educators should consider modeling critical reflection themselves. Argyris suggests that professionals become more self-conscious about their own behavior by examining how it may contribute to problems in their own organizations. By analogy, we law professors, as professionals, should reflect on our own demeanor in the classroom, to begin to identify the ways in which we may inadvertently contribute to dissonance in the classroom. Of course, the principal goal of faculty self-reflection is to give legal educators the

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56 Because legal training is a graduate pursuit, students attend law school to obtain a specialized degree that will allow them to become lawyers. Legal education's goals are thus more narrowly defined than the goals of undergraduate institutions, for example. See e.g., Edward H. Levi, *The Place of Professional Education in the Life of the University*, 32 Ohio St. L. Rev. 229 (1971) (discussing the position of professional education in the greater university community).

57 See Chris Argyris, *Teaching Smart People How to Learn*, Harvard Business Review, (May-June 1991) at 99. In a recent article on therapeutic jurisprudence and its intersection with clinical legal education, the four areas of “teaching in law school clinics” were identified as “(a) problem solving, (b) client counseling, (c) self-reflection or "learning to learn," and (d) professional responsibility” See, Mary Berkheiser, Frasier Meets Clea Therapeutic Jurisprudence And Law School Clinics, 5 Psychol. Pub. Pol'y. & L. 1147, 1155 (1999).

58 Argyris asserts that “those members of the organization that many assume to be the best at learning are, in fact, not very good at it.” Argyris's work with consultants to major corporations has led him to believe that people who have rarely experienced failure cannot deal with it effectively. They tend to react defensively when confronted with criticism to avoid embarrassment, looking incompetent, or feeling vulnerable. See Argyris, supra, n. 57 at 99.

59 See Argyris, supra, n. 58 at 100.

61 Argyris talks about “single loop” and “double loop” learning in his article. Most professionals are proficient at single loop learning—that is, they have developed expertise in an area and they then apply their knowledge to solve problems using that expertise. Double loop learning involves self-examination and poses “why” questions. See id. If we accept Argyris’ assertion, See supra, n.58, that since most successful professionals do not regularly experience failure, and that they often become defensive when faced with problems, it is an easy stretch to envision how self-reflection would be healthy for law professors.
information they need to change how they act. Through interactions with teachers who model self-reflection, students will discover the importance of their inner selves by identifying with those teachers. If legal educators are charged with teaching critical self-reflection through self-knowledge to nascent professionals, we need to model it as well.

In a recent article, Michael Meltsner suggests a creative approach to stimulating students’ self-reflection that demands judicious mentoring and coaching on the part of the faculty member. In his course “Perspectives on Lawyering,” Meltsner assigns short, weekly papers on topics that touch on the themes of being a lawyer and professionalism. Writing, especially journaling, has been identified as an effective means of self-reflection. Whatever the techniques, however, self-reflection empowers students, teachers, and practicing lawyers to become more aware of what they do and, thus, more able to improve what they are doing. Modeling self-reflection and assigning self-reflective

See Barbara T. Bowman, Self-reflection as an Element of Professionalism, 90 TEACHERS COLLEGE RECORD 444, 449 (1989). Although the author is discussing self-reflection and professionalism among early childhood educators, the ideas are transferable to legal education. For example, Bowman states, “Teachers have a responsibility to help shape [students’] experiences so that they are growth-producing and self-assuring rather than constricting and self-doubting. Learning to use self-reflection to improve teaching deserves greater attention that it is currently receiving.” See id. at 450.


Meltsner describes this course as introducing students “to issues regarding the relationship of lawyers to the adversary system (and its alternatives), to other lawyers, to clients and to their own sense of self.” See id. at 459.

For an excellent article on this subject, see J.P. Ogilvy, The Use of Journals In Legal Education: A Tool For Reflection, 3 CLINICAL L. REV. 55 (1996) (argues that a journal is an effective learning tool because of the demonstrated connection between learning and writing).

One clinical professor eloquently stated, “For in the long run, it matters not so much that a student did well or did not but whether the student is able to accurately determine whether she performed in accordance with her plan and her abilities or not. If the student was successful and knows it, her accurate self-awareness will allow [her] to build on that success in the future. If the student was deficient and knows it, her accurate self-awareness will allow her to craft alternative plans and strategies for the next time. Either way, she is increasingly self-reflective and self-directive and poised for life long learning from her experience.” See, William P. Quigley, 28 AKRON L. REV.463,483 (1995). See also, Margaret Maring Barry, Jon C. Dubin & Peter Joy, Clinical Education for this Millenium: The Third Wave, 7 CLINICAL L. REV. 1 (2000). This recent article discusses the importance of teaching students to develop the skill of “self-reflection” to accomplish the essential goal of experiential learning. See id at 17.

For an insightful article on the effect of teachers’ personal disclosures, see Kathleen A. Sullivan, Self-Disclosure, Separation, and Students: Intimacy in the Clinical Relationship, 27 IND. L. REV. 115 (1994) (discussing the close teacher-
projects to students demands a certain level of comfort with self-disclosure. Such self-disclosure does not come naturally to all teachers and students. Designing projects that stimulate self-reflection and evaluating students' self-reflection is not without its hazards. Some students (and faculty members) are more comfortable with disclosure than their peers or colleagues. They write or tell stories with more flourish. They may be more adept at self-examination or have more insight into their own psyches or behavior than others. There is a real danger when using reflective exercises and assignments that faculty will unwittingly reward the students who write the most sensational narratives or reveal fantastic details of an experience with dramatic fanfare. Knowing the right mix of coaching and guidance to offer students is essential. How much we ourselves reveal or how much we show the way to our students plays a profound role in encouraging learner self-reflection and communicating the tools of life-long learning to our students.

III. SELF-AWARENESS, CRITICAL REFLECTION, AND BECOMING A BETTER TEACHER

Most legal educators have neither the time nor the desire to become applied learning theorists. How, then, does a law professor improve his or her teaching? What piece of the puzzle have we been ignoring by focusing solely on students' diverse learning styles? What should a faculty member know about him or herself to improve his or her teaching? Does critical reflection play a role in this exploration? If so, what are some of the drawbacks of critical reflection, and is it for everyone?

Here I focus on the role of the teacher in the teaching and learning equation. To answer some of the questions posed above, I offer a brief exploration of the three intellectual traditions that underlie critical reflection: critical pedagogy, reflective practice, and adult learning and education. I conclude with some thoughts on the limitations of critical reflection as a means of improving pedagogy.

A. Why Self-Assessment?

Without being aware of it, most of us are probably teaching in the style that we are most comfortable learning. Many of us do not even know how we learn best

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student relationship that develops in the clinical supervision process, especially the effect of the instructor's personal disclosures on the power dynamic).


68 See id. at 224.

69 See id. Lyman goes on to comment that “reflection sometimes exposes things we really don't like about a student, notwithstanding our best efforts to be nonjudgmental. It even may encourage a self-absorption.” See id.
or how we prefer to learn. The rationale for self-assessment\textsuperscript{70} is this: in learning about himself or herself, a law professor learns how he or she learns, and he or she becomes familiar with styles and preferences other than her own. By reviewing the literature on applied learning theory, and by expanding her methodological repertoire, an instructor would be engaging in healthy and transformative critical reflection\textsuperscript{71} about his or her pedagogy in particular and, hopefully, about accepted law school teaching methodology in general.

Learning and teaching are not solely cognitive activities.\textsuperscript{72} Being mindful of the emotional, as well as the cognitive, realm would enhance classroom rapport\textsuperscript{73} and help to establish a successful learning environment.\textsuperscript{74} Self-assessment is an important attribute of emotional intelligence,\textsuperscript{75} a kind of

\textsuperscript{70} Dr. Anthony F. Gregorc, a noted educator and designer of a learning style construct, has stated that “The teacher is the primary decision-maker in the classroom. This is a phenomenological fact! The tool for making decisions is the teacher’s mind. He/she uses the mind to select, accept, reject, enhance, ignore, highlight, obscure, activate, and avoid ideas, philosophies, psychological truths, subject matter content, technical skills, system expectations, and ethical demands. The various aspects of the teacher’s mind become manifest for all to see through the teacher’s style (behaviors, characteristics, and mannerisms). By personally studying style, the individual teacher can come to know many of the conscious and unconscious biases and prejudices that guide his/her thinking and decision-making. He/she can also examine the sources of his/her own style.” Anthony F. Gregorc, \textit{Foreword} to KATHLEEN A. BUTLER, \textit{LEARNING AND TEACHING STYLE IN THEORY AND PRACTICE}, at iii (rev. 2d ed. 1987).

\textsuperscript{71} Brookfield defines critical reflection as a process of “hunting assumptions of power and hegemony by viewing what we do through different lenses.” “Hunting assumptions” is finding and challenging assumptions about the way we do things. \textit{See} BROOKFIELD, \textit{supra} note 7, at 207.

\textsuperscript{72} Brookfield asserts that teaching and learning are “passionate, emotional activities. To devote yourself to keeping classrooms free from the messiness of emotions is to deny much of the power of learning and teaching.” STEPHEN D. BROOKFIELD, \textit{THE SKILLFUL TEACHER: ON TECHNIQUE, TRUST, AND RESPONSIVENESS IN THE CLASSROOM} 48 (1990).

\textsuperscript{73} \textit{See} JOSEPH KATZ \& MILDRED HENRY, \textit{TURNING PROFESSORS INTO TEACHERS: A NEW APPROACH TO FACULTY DEVELOPMENT AND STUDENT LEARNING} 51 (1993).

\textsuperscript{74} Brookfield describes teaching as a “complex” experience, comparing it to the “educational equivalent of white water rafting.” BROOKFIELD, \textit{supra} note 72, at 2-3. Some days, teachers can feel exhilarated and energized by their experiences, and, on other days, they can feel demoralized, bored, or isolated by their experiences. \textit{See} \textit{id}. Brookfield asserts that mindfulness of the unpredictability inherent in teaching and acceptance of the inevitable emotional turbulence of the activity is a sign that a teacher is critically alert. \textit{See} \textit{id}.

\textsuperscript{75} \textit{See} DANIEL GOLEMAN, \textit{EMOTIONAL INTELLIGENCE} (1995) (describing the idea of emotional intelligence). Goleman credits John Mayer of the University of New Hampshire and Yale University’s Peter Salovey as “coformulators of the theory of emotional intelligence.” \textit{id}. Instead of forcefully harnessing the emotions and
master aptitude that can either facilitate or hinder learning. Self-knowledge on the part of the instructor contributes to emotional "synchrony" between teacher and learners. Classrooms with a high level of synchrony are classrooms where students seem generally happier, more interested, and enthused; there is a feeling of mutuality between teacher and learners that sets the stage for learning. Self-awareness allows an individual to experience or change his or her feelings. It can help an individual to develop a sense of self-efficacy, a readiness to learn, that will have a profound effect on his or her ability to learn.

Self-assessment, and the self-knowledge about one’s own learning and thinking preferences that it would produce, would be a form of reflection and action, a praxis, and a conscious move away from the didactic norm of using rationality in their place, Goleman posits that it is best to find an intelligent balance of the two—intellect and emotions, head and heart. See id. at 27-29.

See id. at 80.

See GOLEMAN, supra note 75, at 114-117. Synchrony is a measure of the emotional compatibility teachers and learners would feel. For an introduction to the concept of synchrony between teacher and student and the effects of emotional rapport in the classroom. See id.

See id. at 116.

This synchronized learning environment is, according to Goleman, accomplished by a “coordination of moods” and it is “the essence of rapport.” He uses the example of a mother being attuned to her infant. A good leader or an effective teacher has the power, through emotional self-understanding, to influence others. Goleman writes that this emotional synchrony is what gives some speakers or performers the ability to “entrain” an audience. According to Goleman, “Emotional entrainment is the heart of influence.” The entrainment theory is proposed by Bernieri and Rosenthal (citation omitted). See id. at 117.

See GOLEMAN, supra note 75, at 47.

See MARY FIELD BELENKY ET AL., WOMEN’S WAYS OF KNOWING: THE DEVELOPMENT OF SELF, VOICE, AND MIND (10th ann. ed., 1997) (1986) at 228 discussing the impact of a learner’s sense of his or her own abilities on learning) (considering the cognitive conflict method of promoting intellectual growth). The Belenky suggests that “[b]ecause so many women are already consumed with self-doubt, doubts imposed from outside seem at best redundant and at worst destructive, confirming the women’s own sense of themselves as inadequate knowers. The doubting model, then, may be peculiarly inappropriate for women, although we are not convinced that it is appropriate for men, either.” Id.

See PAOLO FREIRE, PEDAGOGY OF THE OPPRESSED, 68-69 (rev. ed. 1993). Freire defines “praxis” as action and reflection. The author describes the concept as follows:

When a word is deprived of its dimension of action, reflection automatically suffers as well; and the word is changed into idle chatter, into verbalism, into an alienated and alienating ‘blah’. It becomes an empty word, one which cannot denounce the world, for denunciation is impossible without a commitment to transform, and there is no transformation without action. On the other hand, if
B. The Reflective Professional - What Role Does a Teacher Play?

James Boyd White has asserted that the core of legal education's problem "lies in the definition of roles and relations: the definition of the teacher as the powerful and knowledgeable manipulator; of the student as a kind of child or infant without any responsibility beyond preparing for a routine examination..." We have special concerns as legal educators. Law professors teach only at the graduate school level. Law students are, chronologically

action is emphasized exclusively, to the detriment of reflection, the work is converted into activism. The latter - action for action's sake - negates the true praxis and makes dialogue impossible. Either dichotomy, by creating unauthentic forms of existence, creates also unauthentic forms of thought, which reinforce the original dichotomy."

Brookfield writes that action and reflection are in state of constant and productive tension, known as praxis. See BROOKFIELD, supra note 7, at 209.

The didactic teaching construct has been discussed and criticized by Paulo Freire, who calls it the "banking concept of education." Freire argues that banking education mirrors an oppressive society through the following attitudes and practices: a) the teacher teaches and the students are taught; b) the teacher knows everything and the students know nothing; c) the teacher thinks and the students are thought about; d) the teacher talks and the students listen - meekly; e) the teacher disciplines and the students are disciplined; f) the teacher chooses and enforces his choice, and the students comply; g) the teacher acts and the students have the illusion of acting through the action of the teacher; h) the teacher chooses the program content, and the students (who were not consulted) adapt to it; i) the teacher confuses the authority of knowledge with his or her own professional authority, which he/she sets in opposition to the freedom of the students; j) the teacher is the subject of the learning process, while the pupils are mere objects. See FREIRE, supra note 82, at 54.

James Boyd White, Doctrine In A Vacuum: Reflections On What A Law School Ought (And Ought Not) To Be, 36 J. LEGAL EDUC. 155, 159 (1986).

See e.g., Paul T. Wangerin, The Problem of Parochialism in Legal Education, 5 S. CAL. INTERDISCIPLINARY L.J. 441 (1997). According to some commentators, this sense of our uniqueness is reflected in a lack of concern about the process and methodology of teaching. See id. (examining legal education's aversion to interdisciplinary inquiry to improve teaching and thinking); see also Jay Feinman and Marc Feldman, Pedagogy and Politics, 73 GEO. L.J. 875, 875 (1985)(arguing that the legal academy has been anti-intellectual in its resistance to teaching about methodology).
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speaking, adults with whom true dialogue in the classroom would be appropriate. To effectively reach our students, we need to turn inward first. This would be both more manageable and more immediately enlightening for most faculty members than focusing on the learning styles of students as a means of improving pedagogy. Spending time analyzing our own learning styles and preferences and making sense of who we are first would make the diversity of our students more comprehensible to us. Investigating ways to improve our teaching is a learning process. One way of becoming a better teacher, then, is to become a learner again, to face something novel and unfamiliar from the other

However, David Champagne, in writing about teaching undergraduates, notes that, “Although mature adults learn because they desire to know, it is still true that many of our students are not at that level of maturity. Too many of them are learning in an effort to please us or some other adult and thus win our approval.”


The relationship of Ich und Du, as described by the philosopher Martin Buber, is arguably the suitable tone for the legal academy. See generally, MARTIN BUBER, I AND THOU (Walter Kaufmann, trans., First Touchstone ed., 1996) (1970) (positing that the dialogic relationship with one’s fellow being is that of the unified I and the boundless You).

Self-examination is a path to authenticity. Periodic examination of goals and motivations and making sure that our behavior is congruent with them -- basically checking in to investigate what makes us tick -- is healthy and productive. Brookfield writes that “Authentic teachers are, essentially, those that students feel they can trust. They are also those whom students see as real flesh-and-blood human beings with passions, frailties, and emotions. They are remembered as whole persons, not as people who hide behind a collection of learned role behaviors appropriate to college teaching.” See BROOKFIELD, supra note 72, at 164 (citation omitted).

Parker Palmer writes eloquently about what he calls the “teacher within.” He states that some academics consider the idea a “romantic fantasy.” In Palmer words, “The kind of teaching that transforms people does not happen if the student’s inward teacher is ignored. The second truth is even more daunting: we can speak to the teacher within our students only when we are on speaking terms with the teacher within ourselves.” PARKER J. PALMER, THE COURAGE TO TEACH: EXPLORING THE INNER LANDSCAPE OF A TEACHER’S LIFE 30-31 (1998). Jerome Bruner also writes beautifully about the symbiosis of learning/teaching:

I would be content if we began, all of us, by recognizing that this is our task as learned men and scientists, that discovering how to make something comprehensible to the young is only a continuation of making something comprehensible to ourselves in the first place - that understanding and aiding others to understand are both of a piece.

side of the podium. Law professors interested in learning how to refine and
develop their own teaching would benefit from using self-reflection to help bring
their unique learning modes into conscious awareness. By investigating applied
learning theory while focusing on themselves, law professors would, at the very
least, become more reflective about their teaching methods, and they would be modeling positive self-assessment for their students. This deliberative process
on the part of legal educators would be compatible with Donald Schon’s notion
that professionals must develop a “reflective practicum” to prepare students for
their lives as professionals. By modeling self-consciousness about teaching
methods and pedagogy, legal educators would be patterning skills essential to the

90 The theme of consciously putting oneself in the position of a learner in
order to improve teaching has been explored in educational literature on teaching. See, BROOKFIELD, supra note 7, at 58-66; see PARKER J. PALMER, TO KNOW AS WE ARE KNOWN: EDUCATION AS A SPIRITUAL JOURNEY 115 (1993).

91 See LAURENT A. DALOZ, EFFECTIVE TEACHING AND MENTORING 213 (1986) (quoting Nevitt Sanford who contends that “[n]o amount of situation or behavior changing will lead to personality development in adults unless accompanied by self-reflection”).

92 See Thomas Anthony Angelo, A “Teacher’s Dozen”: Fourteen General, Research-Based Principles for Improving Higher Learning in Our Classrooms”, AAHE BULLETIN, April 1993, at 3, 13. Thomas Angelo states that effective teachers know their substantive areas, something about the research on teaching, and how to apply that research to their classrooms. See id.

93 Donald Schon’s reflection in action, “which reshapes what we are doing while we are doing it” could be used for such professional development. DONALD A. SCHON, EDUCATING THE REFLECTIVE PRACTITIONER 26 (1987).

94 See MARLENE LE BRUN & RICHARD JOHNSTONE, THE QUIET (R)EVOLUTION: IMPROVING STUDENT LEARNING IN LAW 106 (1994). The authors suggest the following:

If we wish to model for our students the work of the professional in action - which, in our case, is the reflective teacher of law - we need to discuss with our students our educational decisions and explain the reason for our choices. To achieve this goal, we need to become aware of what we do, both in and outside of the classroom. If we make ‘transparent’ what we do by talking about our decisions, our students will see how the processes of review, reflection, and revision are integral aspects of our own work as professional law teachers. Although this may sound second nature, sometimes it is difficult and uncomfortable, if not actually painful.

Id. at 106.

95 See SCHON, supra note 93, at 36-37. A “practicum” is a “setting designed for the task of learning a practice.” Id. An initiate into a profession learns the traditions and practices of a community of practitioners through their “conventions, constraints, languages, and appreciative systems, their repertoire of exemplars, systematic knowledge, and patterns of knowing-in-action.” Id.
successful progression of students from novices to professionals. Law professors who are self-reflective about their teaching would be transferring professional expertise in the classroom. By developing a process of knowledge in action for themselves and for their craft as legal educators, law faculty would be providing students with a blueprint of one way to become an authentic and proficient professional.

Becoming more aware of our own learning as a means of enhancing our pedagogy is a critically reflective act. Legal educators embarking on a path of serious self-analysis would do well to thoroughly explore the three intellectual traditions that undergird the literature of critical reflection: critical pedagogy, reflective practice, and adult learning and education.

1. Exploring Critical Pedagogy

Schon talks about helping students develop a "competence in the indeterminate zones of practice", a "professional artistry" that he defines as "the kinds of competence practitioners sometimes display in unique, uncertain, and conflicted situations of practice." Id. at 22.

Knowing in action is the beginning of Schon's notion of reflective learning. Professionals use knowing in action, presumed or implied knowledge, as their knowledge base. Supplementing it with reflection about action whenever a professional is faced with an unusual occurrence or an element of surprise. To find a solution that answers the question of how to proceed when something unexpected occurs, a professional must experiment and draw conclusions. The information gleaned from an experiment is analyzed by reflection about action. Once a solution is discovered, it adds to the professional's implicit knowledge base. Thus, the process is a circular one. See Nancy L. Bennett & Robert D. Fox, Challenges for Continuing Professional Education, in EDUCATING PROFESSIONALS: RESPONDING TO NEW EXPECTATIONS FOR COMPETENCE AND ACCOUNTABILITY 267-68 (Lynn Curry et al., eds., 1993).

Schon writes about a "crisis of confidence" in the professions that, in his view, is a "rigor-or-relevance dilemma. What aspiring practitioners need most to learn, professional schools seem least able to teach." SCHON, supra note 93, at 8. The findings in the MacCrate Report, supra note 19, and Chief Justice Warren Burger's many criticisms of lawyers and the justice system are examples of crises of confidence in law and lawyers. See, e.g., Warren E. Burger, Agenda for 2000 A.D.-- A Need for Systematic Anticipation (keynote address), in THE POUND CONFERENCE: PERSPECTIVES ON JUSTICE IN THE FUTURE (A. Leo Levin & Russell R. Wheeler, eds.) 23, 31 (1979).

Critical pedagogy envisions the ideal education as a dialogue among equals. At its worst, education is a process that reinforces the status quo, and the teacher is the instrument of dominance. Paulo Freire's work is in the tradition of critical pedagogy. See id. at 208.

See generally BROOKFIELD, supra note 7.
Critical pedagogy helps teachers look at teaching contextually. A full explanation of critical pedagogy is not the aim of this paper. Suffice it to say that the perspective of critical pedagogy may be useful to the law professor in the initial stages of critical reflection because of its institutional, rather than individual focus. One of the first steps in beginning individual self-reflection is to situate the self within the institutions in which we practice. Using the lens of critical pedagogy, law teachers can conceptualize their ability to change and grow within the particular boundaries and limits imposed by the larger institutions of law school and university, the expectations of students, and the judgment of peers. 103

The philosophical roots of critical pedagogy are found in the works of Hegel, Marx, and the Frankfurt School of critical theory. 104 Since critical pedagogy views the educational process as an effort by dominant social groups to impose a particular value system on students, a teacher may either impose those dominant values in the classroom, or act as an agent of change, liberation, and transformation. 105 Through this prism, teaching is a political act and a key concern of critical pedagogy is that educators recognize the innate imbalance of power in our institutions and classrooms. 106 Critical pedagogy has synthesized the thinking of critical theorists, postmodernists, and feminist critical pedagogues to form a general theory of adult learning, 107 informed by perspectives of race, class, gender, and social inequities.

A major theme of critical pedagogical theory, germane to the goal of improving law school teaching, is that while “all institutions are educative, not all are true learning communities.” 108 A basic understanding of critical pedagogy informs the legal educator’s critically reflective practice by giving legal educators a baseline for action. One of the first steps in effecting change and transforming our teaching is an understanding that law schools must be committed to learning. Critical pedagogy views liberation practice 109 as an antidote to the oppression and control that are hallmarks of traditional education.

The tradition of critical pedagogy, with its distinct political perspective on both individual and institution, offers a unique prism for a law professor’s initial foray into critical reflection about his or her teaching and the larger

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103 See BROOKFIELD, supra note 7, at 214. Brookfield describes critical pedagogy as giving “us a healthy sense of the limits of what we can do and what we can expect of ourselves...Without the insights of critical theory and pedagogy, we risk feeling demoralized by our presumed inadequacy and may just decide to quit teaching.” Id.

104 See id. at 208.

105 See id.

106 See BROOKFIELD, supra note 7, at 208.


108 See id. at 352-53 (citing Welton, quoting Habermas).

109 Paolo Freire’s liberating praxis is an example of liberation practice. See id. at 359.
community's influence on it. However, critical pedagogy must be approached with a reflective frame of mind and with discriminating caution. How can law faculty avoid the paralysis that questioning comfortable assumptions can engender as they begin an inquiry into themselves to improve their teaching? Critical pedagogy gives law professors a means of questioning institutional and individual assumptions and belief systems in the legal academy by providing a political framework within which to envision their unique roles. The perspective of critical pedagogy alone is inadequate. Another element of critical reflection is that of reflective practice.

2. The Importance of Reflective Practice for Professionals

Reflective practice is significant for law teachers on a number of


See BROOKFIELD, supra note 7, at 210. Brookfield counsels educators that, "If we rely too heavily on the jargon of critical pedagogy, we may find ourselves operating within a self-enclosed semantic loop." Id.

See MERRIAM & CAFFARELLA, supra note 107, at 366. Merriam and Caffarella encourage educators to keep in mind that "[p]ostmodernism challenges the certainty and rationality that characterize modernity. Uncertainty, diversity, and multiplicity can be fragmenting and disempowering for some, energizing and powerful for others." Id.

See BROOKFIELD, supra note 7, at 214. Reflective practice is rooted in "the Enlightenment idea that we can stand outside of ourselves and come to a clearer understanding of what we do and who we are by freeing ourselves of distorted ways of reasoning and acting." Id.
levels. Law professors can use it to examine their own practices as teachers, thereby modeling\(^{114}\) reflective practice for their students and colleagues as a positive lifelong educational approach to professional life. Law professors can also use reflective practice as a teaching technique, encouraging their students to apply it in their careers as practicing attorneys.

Reflective practice is a method that law faculty can use in their quest to transform classroom dynamics. By first defining and understanding our own unique qualities, strengths, weaknesses, and learning preferences, we will improve our professional practice of teaching. The process of self-discovery may be difficult and even humbling.\(^{115}\) Modeling critical reflection means that we earnestly deliberate about others' views, even those diametrically opposed to our own.\(^{116}\) To do otherwise is to destroy the crucial element of trust that is essential to critical reflection.\(^{117}\)

Donald Schon is largely credited with opening the discourse on reflective practice to education professionals.\(^{118}\) Reflective practice positions transformation at a more personal level than does critical pedagogy.\(^{119}\) Reflective teachers would, as a matter of good professional practice, regularly identify and test assumptions underlying their practice and, from these assessments, thoughtful teachers would make attempts to transform their teaching to better meet the demands of their unique classroom situations.\(^{120}\) Normally, reflective practice does not consider the more far-reaching structural changes that are

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\(^{114}\) See DALOZ, supra note 91, at 231. Mentors and protégés are usually in a relationship because each fills particular needs for the other. Mentors are models for their protégés, providing a vision of what the protégé would like to become. A protégé may also need a mentor to model specific skills, techniques, or subject mastery. See id. Daloz states that the greatest gift a mentor gives to a protégé occurs when, at some point, the protégé realizes that she is not becoming like the mentor; she is becoming more fully herself through a transformative relationship with the mentor. See id.

\(^{115}\) See FREIRE, supra note 82, at 71. According to Paolo Freire, however, "Dialogue cannot exist without humility." Id.

\(^{116}\) See BROOKFIELD, supra note 7, at 256. To effectively model critical reflection through reflective practice, Brookfield says that teachers must be "open to rethinking their own commitments and the accuracy of the assumptions on which those commitments are founded." Id.

\(^{117}\) See id. Brookfield identifies "four grave errors" that can occur when we do not attend to others' views in the critical process. They are: 1) we deny a fundamental level of collegial respect; 2) we assume an unchallenged omniscience; 3) we disregard a most essential element of critical teaching, that is the teacher's willingness to model critical scrutiny of his or her own assumptions; and 4) we declare the outcome of our dialogue, which becomes counterfeit, as determined in advance. See id. at 256-257.

\(^{118}\) See BROOKFIELD, supra note 7, at 215.

\(^{119}\) Brookfield states, "Where critical pedagogy understands transformation as a collective political process, reflective practitioners locate transformation mostly at an individual or small group level." Id.

\(^{120}\) See id.
envisioned by critical pedagogy. Practicing their profession reflectively gives teachers a variety of ways to inquire into teaching, enabling them to discover, examine and test working assumptions. For example, reflective practice can be experienced communally with peers. Faculty colloquia and symposia on teaching and learning, informal brown bag lunches, and setting aside times in the law school schedule to discuss experiences are just some techniques for practicing reflectively in community. By sharing stories of classroom successes, talking about personality style clashes and dissonant experiences in the classroom, we emphasize our own agency as active learners by seriously and collectively reflecting in action. By reaching into the knowledge in action from our own work sites to improve our practices, law faculty would be practicing reflectively, emphasizing their professional obligation to engage in continuous, lifelong learning.

3. The Adult Learning and Education Model as a Tool for Critical Reflection

The word “pedagogy” is derived from the Greek, meaning “to teach a child.” When we employ the pedagogic model, we are using a form of teaching and learning with a venerable history. Pedagogy can be traced to one of the earliest known formal institutions of learning, the monastery schools of the seventh century. The model’s origins lie in a didactic teaching construct that is

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121 See id. at 217. One of the drawbacks of reflective practice from an institutional perspective is that it operates at the individual level and “so often isolates itself within the microsystems of particular classrooms.” See BROOKFIELD, supra note 7, at 217.

122 Brookfield describes a number of techniques for educators to practice reflectively. They include learning to know ourselves through participation in professional development workshops and academic conferences. The participation Brookfield describes is not passive. He suggests the use of conference learning logs and faculty autobiographies for professional development. He also proposes that educators practice seeing themselves through their students’ eyes. His tools of choice to accomplish this include student learning journals, participant learning portfolios, letters to successors, and the critical incident questionnaire, a questionnaire that helps students focus on significant classroom events that affected their learning. See generally, BROOKFIELD, supra note 7.

123 Brookfield states, “Stories of how teachers live the reflective life help us realize that what we thought were idiosyncratic features of our own critically reflective efforts are paralleled in the experiences of many of our colleagues.” id. at 219.

124 See SCHON, supra note 93, at 26.

125 See BROOKFIELD, supra note 7, at 215.

126 See MALCOLM KNOWLES, THE MODERN PRACTICE OF ADULT EDUCATION: FROM PEDAGOGY TO ANDRAGOGY 40 (rev. ed. 1980). Pedagogy is derived from the Greek words, paid meaning child, and agogus, meaning leading. See id. Thus, the literal translation is to lead a child. See id.

127 See id.
concerned primarily with the transmittal of knowledge. 128 Because of the frustrations he encountered in trying to adapt the pedagogic model for use with adults, Malcolm Knowles popularized the word “andragogy”, also derived from the Greek, meaning to teach adults. 129

Andragogy130 moves away from the bottom line,131 banking concept132 of education that “transforms students into receiving objects.”133 Andragogy views learners as unfinished beings who, when confronted with a disorienting experience, can choose to either ignore or grapple with the experience.134 If the

128 See KNOWLES, supra note 126, at 215; see generally FREIRE, supra note 82 (explaining didactic teaching).
129 For an insightful look at how a word comes into being, see Appendix A to THE MODERN PRACTICE OF ADULT EDUCATION, supra note 126, for correspondence between Knowles and the Editorial Department of the G. & C. Merriam Company, the publishers of the Merriam-Webster dictionaries.
130 Some basic distinctions between andragogy and pedagogy are that andragogic learners are generally self-directed, whereas pedagogic learners are dependent on the instructor. Andragogy is based on the assumption that the learner has had prior experiences acquired through normal growth and development and that learning is enhanced experientially. Pedagogy views the learner as a blank slate and discounts the experience that the learner brings to a new learning situation. In the andragogic construct, learners are open to learning when they experience a need to learn to solve a problem or perform a task arising from real life demands. In the pedagogic construct, learners are ready to learn when the larger society deems it appropriate. Andragogy assumes that learning is performance-centered and that education is a means of building the skills and competencies needed to achieve one’s full life potential. Pedagogy assumes that education is a process of acquiring the substantive content of particular subjects to be deployed later in life, as the need arises and as the learner matures and understands the need. See id. at 43-44.
131 Liz Ryan Cole states that use of the bottom line, the “how much is learned” standard, is only advantageous when the remedy available is a failing grade. See Liz Ryan Cole, Training The Mentor: Improving The Ability Of Legal Experts To Teach Students And New Lawyers, 19 N.M. L. REV. 163, 165 (1989).
132 See FREIRE, supra note 82, at 54.
133 See id. at 58.
134 See Fran Quigley, Seizing The Disorienting Moment: Adult Learning Theory And The Teaching Of Social Justice In Law School Clinics, 2 CLINICAL L. REV. 37, 52-53 (1995). A disorienting experience has been associated with transformative learning in adult education. See id. Jack Mezirow and others describe the change that occurs as having three stages: 1) the disorienting experience; 2) a stage of exploration and reflection about the experience; and, 3) reorientation, in which the learner’s perspective is transformed and the disorienting experience explained. See id.
135 See id. at 51. Quigley provides a cogent explanation of adult learning theory, describing a learner’s engagement with a “disorienting moment.” See Quigley, supra note 134, at 51. The experience is “disorienting or even disturbing because the experience cannot be easily explained by reference to the learner’s prior
choice is made to deal with the incongruence, learning occurs.136

Some experts distinguish instrumental from communicative learning. Instrumental learning uses the scientific method of problem solving; it is a form of learning in which the student grasps concepts and tests hypotheses. It is task oriented learning.137 Communicative learning is intuitive. It is concerned with contextual meaning and validation of values, morals, and ideals. Communicative learning uses metaphor and thematic patterns to convey information.138

In adulthood, a learner spends considerable time and energy reassessing prior learning. Through this self-assessment, the adult learner takes the learning of his or her formative years and, ideally, transforms it with an adult understanding.139 The learner uses the scientific method of deductive logic (instrumental learning) and the validation and justification of belief systems (communicative learning) to further refine and differentiate the meaning schemes of earlier understanding.140 This type of transformative learning is reflective learning. It involves looking at earlier assumptions and reworking them; it is what Jack Mezirow calls the "assessment and reassessment of assumptions"141 and earlier formed meaning perspectives.142 A learner's culture can either animate or impede transformative thought and critical reflection.143 In a traditional law school culture, law teachers encounter a number of barriers to learning. Some of these are the assumptions held by our colleagues,144 our

understanding - referred to in learning theory as ‘meaning schemes’ - of how the world works.” Id. She continues, “If the gap is too great between how we understand the world and ourselves in it and the experience, we may choose to ignore it or reject it.” Id. at 51 (citations omitted).

136 See id.


138 See id. at 7-10.


140 According to Mezirow, “Transformative learning involves reflective assessment of premises, a process predicated on still another logic, one of movement through cognitive structures by identifying and judging presuppositions.” See id. at 5.

141 See id. at 6.

142 Meaning perspectives are how we structure meaning. “Meaning perspectives refer to the structure of assumptions within which new experience is assimilated and transformed by one’s past experience during the process of interpretation.” See Mezirow, supra note 137, at 2.

143 See MEZIROW, supra note 139, at 3.

144 One assumption that could be a barrier to learning is that education is a “soft” or minor discipline and that there is nothing of value to be learned about teaching from educational literature or experts. See e.g., Wangerin, supra note 85, at 441; see also Feinman & Feldman, supra note 85, at 875.
students,\textsuperscript{145} and perhaps ourselves\textsuperscript{146} about how learning is best accomplished. Students', peers', and our own assumptions about roles\textsuperscript{147} can often stymie creativity in the classroom, and can lead to dissatisfaction with our teaching and doubts about the effectiveness of our work.

\textbf{C. The Appropriate Role For Law Professors}

"Role" is a sociological concept.\textsuperscript{148} Both popular literature and the entertainment industry have been fertile grounds for fostering conceptions about roles in law school.\textsuperscript{149} At the same time, institutional and cultural forces have

\textsuperscript{145} Students come to us with a history of prior learning. They arrive with assumptions about the law school environment in general and the law teacher-student relationship specifically. One commentator has suggested that, "What the student brings into the classroom by way of background characteristics is more important as a determinant of student achievement than the instructional method employed." Teich, \textit{supra} note 55, at 176 (citations omitted). Another has opined, "Most students appear to enter law school already imbued with the view of nineteenth century German pandectists that law is a comprehensive, logically consistent system of rules, which mechanically produce outcomes when applied to unambiguous facts." Richard L. Abel, \textit{Evaluating Evaluations: How Should Law Schools Judge Teaching?} 40 \textit{J. LEGAL EDUC.} 407, 447 (1990). These legal scholars are talking about the same constraints and preconceived understandings that Gardner refers to when he talks about the "very early and deeply entrenched understandings" of an individual that formal education must deal with "if disciplinary understandings are ever to supplant intuitive ones." \textit{HOWARD GARDNER, TO OPEN MINDS} 49 (1989).

\textsuperscript{146} We all have certain internal views or biases about our practice that are nurtured by a number of external sources, including societal expectations about behavior and gender stereotyping. Brookfield states the "dark irony and cruelty of hegemony is that teachers take pride in acting on the very assumptions that work to enslave them. In working diligently to implement these assumptions, teachers become willing prisoners who lock their own cell doors behind them." \textit{BROOKFIELD, supra} note 7, at 15.

\textsuperscript{147} See White, \textit{supra} note 84, at 159 (offering insightful commentary on roles in law school).

\textsuperscript{148} See Andrew Watson, \textit{Psychological Considerations For Law Faculty, in LEGAL EDUCATION FOR THE 21ST CENTURY} 255 (Donald B. King ed., 1999). Professor Andrew Watson, a specialist in law and psychiatry, writes, "If people go to a doctor, they expect certain things. If they go to a lawyer, they expect certain things." \textit{Id.}

\textsuperscript{149} See Stacy Caplow & Spencer Weber Waller, \textit{Images of Law School and Law Teaching in An Imperfect Spy}, 8 \textit{YALE J.L. & HUMAN.} 263, 270 (1995) (book review) (citations omitted). The print media and the film industry have both contributed to stereotyping law school personnel in the public mind. See \textit{id}. For example, "'The Paper Chase' and Professor Kingsfield, in both the film and television series, set the standard for popular understanding of the Socratic method and the dehumanizing atmosphere of law school." \textit{Id.}
shaped rather rigid roles and suggested the professorial demeanor that many law professors have adopted at various times in their careers. Legal educators can transform their teaching by critically reflecting on their teaching and improve student learning by rearticulating the assumptions underlying the law school as a learning environment.

Dewey wrote that all people "require moral sanction in their conduct: the consent of their kind." This "consent" is usually derived from the customs, habits, and traditions of a particular society or social group. Many law professors have unwittingly and unself-consciously accepted the images proffered by their peers and colleagues because they are a customary ethos in a particular institution, or because the roles match what the students seem to expect.

Douglas McFarland has unearthed startling dichotomies between the ways professors see themselves and how students and practitioners view the ideal law professor. From the results of his empirical research on the self-

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150 See Palmer, supra note 90, at 30. Although a change in teaching methodology is important, Patrick Palmer cautions that, "One does not develop a new pedagogy simply by choosing from a grab bag of teaching tricks. To find new ways of transmitting knowledge, we must first find a new knowledge. To find a better medium we must find a better message." Id.


152 See id. at 126.

153 Celeste Condit defines "ethos" as one's perceived character or persona. It is who the audience thinks you are. Ethos is derived from social roles, personal appearance, voice quality, management of language, selection of reasons, and a complex amalgam of expectations and behavioral expectations. It strongly influences both the nature of the affective relations between speaker and audience and the persuasiveness of the message that the speaker offers.


154 For example, although the image of Professor Kingsfield from John Osborne, The Paper Chase (1971), is somewhat passé. "[H]e is, even in his absence, a dominant figure in student expectations. For many students, his central place in the popular conception of legal education legitimates his classroom style and renders marginal and suspect efforts by others to adopt different instructional techniques." Catherine W. Hantzis, Kingsfield and Kennedy: Reappraising the Male Models of Law School Teaching, 38 J. Legal Educ. 155, 156 (1988).

155 Part of William James' definition of an ideal is "something intellectually conceived, something of which we are not unconscious." William James, What Makes a Life Significant, in Talks to Teachers on Psychology and to Students on Some of Life's Ideals 163 (1983).
images of law professors\textsuperscript{156} and the persona of the “ideal law professor” as identified by students and practicing lawyers,\textsuperscript{157} McFarland draws some fascinating conclusions about the reasons for the discordant views of the bench and the academy on the subject of legal education.\textsuperscript{158}

\textsuperscript{156} See Douglas McFarland, \textit{Self-Images of Law Professors: Rethinking the Schism in Legal Education}, 35 J. LEGAL EDUC. 232, 248-249 (1985). McFarland has identified both some rhetorical visions and three self-images of law professors. See id. The three personae are: 1) the Caring Liberal Arts Teacher, an interdisciplinary generalist who eschews intimidation in teaching; 2) the Teaching Lawyer and Activist, a practicing lawyer who strongly believes that practice experience is a necessary ingredient for good teaching; and, 3) the Tough Humanist Scholar, the classic legal pedagogue, an active writer and scholar, who teaches students to “think like lawyers.” See id. McFarland suggests the following:

Because each rhetorical vision is so complete and so reasonable, each persona believes that it has the correct perception of the reality of legal education. Differing conceptions of legal education seem so much in error because they are inconsistent with the persona’s reality, the rhetorical vision.... This is why the debate over legal education continues in such earnestness.

\textit{Id.} at 260.

\textsuperscript{157} See Douglas McFarland, \textit{Students and Practicing Lawyers Identify The Ideal Law Professor}, 36 J. LEGAL EDUC. 93, 96-98, 100-102 (1986). Three professorial personae were identified by students: 1) the Caring Teacher, does not employ Socratic teaching but exposes students to intellectual context of legal incidents studied and is also a role model of practicing attorney for students; 2) the Socratic Trainer, prepares students for their lifetime careers as attorneys by adhering to intense Socratic classroom dynamics; and 3) the Anti-Socratic Practitioner, shuns Socratic classroom and uses lecture method to develop students’ lawyering skills. \textit{Id.} at 96-98. The three images identified by practitioners were: 1) the Anti-Socratic Practitioner, first and foremost a practitioner who refrains from the intimidation of the Socratic method; 2) the Practitioner Who Trains Thinking and Rejects Writing, a professor who realizes that law school should be teaching more than reading cases and writing memoranda; and, 3) the Tough Thinking Trainer, whose sole concern is to “teach students to think like lawyers.” \textit{Id.} at 93, 100-02.

\textsuperscript{158} See id. at 105-06. McFarland comments,

As the situation now exists, law professors and practicing lawyers live in different rhetorical worlds. The competing self-personae of law professors and the ideal law professor of practicing lawyers are different and even hostile to one another. Each seems to have little or no understanding of the other. Law students find themselves somewhere in the middle, beginning nearer the professors and moving through the years of law school toward the practitioners.
Finding one’s authentic voice through rigorous self-assessment and critical reflection is one way for law teachers to resist the impulse to adopt a preconceived role. The purpose of this rigorous self-analysis is, of course, to be able to engage more authentically and more meaningfully with students to improve their learning. It is important that a teacher establish a relationship of trust with students and focus on what will help them learn. Through rigorous and honest self-assessment, coupled with a critical scrutiny of the larger organization, an instructor will become more reflective and thoughtful about the organization’s mission, and the pedagogical process set up to achieve institutional goals, and, thereby, become a better teacher.

Self-reflection is a necessary ingredient in the transformational process

See McFarland, supra note 157, at 105-106.

Could some of this tension be attributed to the fact that professors and practitioners have different thinking and learning styles? A study of the cognitive styles of law students attracted to the academy as compared with the learning and thinking styles of law students who choose to practice is a fascinating topic that seems perfect for further investigation and research.

See H. GORDON HULLFISH & PHILIP G. SMITH, REFLECTIVE THINKING: THE METHOD OF EDUCATION 196 (1961). The authors suggest that “every teacher, by the very nature of the teaching act, is in a position to introduce a reflective quality in his [or her] relationship with students.... All teachers engage in the act of communication, and this act, if it is to be successful, involves the sharing of meaning.” Id.

See PALMER, supra note 90, at 31-40. Parker Palmer writes about the hidden curriculum that impedes true learning. See id. Palmer says that the conventional classroom objectifies knowledge and glorifies the empirical. See id. All subjective elements, including the students’ and teachers’ inner realities, are factored out of the knowledge equation. See id. In place of this “blank slate” construct, Palmer advocates what he calls a troth relationship between teachers and learners. See PALMER, supra note 90, at 31-40. The word troth is the German root for truth. In a troth relationship, we enter into a covenant, pledging to “engage in a mutually accountable and transforming relationship.” Id. The troth relationship is an abdication of the power dynamic of the typical classroom. See id. It is a conscious turning away from the simple construct of conventional pedagogy. See id. It is giving up the illusion of mastery in exchange for a relationship of mutual vulnerability with our students. Palmer’s classic book espouses a model of authentic teaching and learning. See PALMER, supra note 90, at 31-40. If the spiritual dimension in legal education intrigues the reader, an excellent article is Lucia Ann Silecchia’s, Integrating Spiritual Perspectives with the Law School Experience: an Essay and an Invitation, 37 SAN DIEGO L. REV. 167 (2000).

See DALOZ, supra note 91, at 212 (observing that “[w]ithout a reasonably well-established sense of basic trust, it is difficult to move ahead”).

See Douglas J. Whaley, Teaching Law: Advice for the New Professor, 43 OHIO ST. L.J. 125, 131-132 (1982) (noting that “if you concentrate on the students when teaching, your own personality has a chance to come through.... If you disguise your personality, the students will find you out and think less of you as a phony”).
of adult personality development. However, one has to get into the water to learn how to swim. Thus, in our efforts to improve our teaching to enhance student learning, we must first carefully consider our own natural proclivities and inclinations to understand and improve our teaching. Examination of our own aptitudes, thinking, personality and learning styles and emotional intelligence may help us to discover a genuine self. Our quest to find our legitimate voice, the deliberations we go through on our way to finding a true and comfortable demeanor, become part of the heuristics of personal professional development that we model for our students. In order to learn, an adult must be able to identify and be consciously aware of the desired change. By defining our objectives and modeling self-reflective behavior to effectuate personal development and change, we are, in effect, saying to our students, “This is my problem and this is how I am thinking it through.” We are presenting transparent “scripts” for our students that they can internalize and use as their own in their individual quests for professional development and life-long learning. The communication of authenticity from this struggle may be as important to our students’ autonomous learning as the substantive content of our courses.

D. Visualizing the Law Professor as an Adult Learner in the Law School, a Learning Organization

Law professors need knowledge acquisition paradigms for life-long learning for their own self-improvement and self-discovery. I suggest that the models offered by adult learning, and, because we are part of larger institutions, of the learning organization are appropriate prototypes for legal educators’ continuous learning. Both individuals and organizations behave as they do because of explicit and implicit assumptions about the best ways to accomplish goals. In law schools, we design curricula and choose pedagogical methods based on personal and collective theories about what constitutes a productive legal education. Legal educators and law schools cannot improve without first examining tacit assumptions about effectiveness at both the individual and organizational level. Peter Senge’s construct of the learning organization,

\[\text{See Hullfish & Smith, supra, note 159, at 200.}\]

\[\text{See Mezirow, supra note 139, at 202. Jack Mezirow states that adult learning is a “transformative process of examining assumptions to test their validity.” Id. Thus, a learner can articulate only the needs that can be defined within the learner’s “current meaning perspective” - a perspective that, under the learner’s critical examination, may prove to be “distorting or dysfunctional.” Id.}\]

\[\text{John Barell, Teaching for Thoughtfulness: Classroom Strategies to Enhance Intellectual Development 26 (1991).}\]

\[\text{See id.}\]


\[\text{Sometimes both individuals and organizations develop “blocking mechanisms.” These may be accidental or they may be “erected to protect against}\]
based on the five disciplines\textsuperscript{170} of systems thinking, mental models, personal mastery, building shared vision, and team learning is strikingly apropos for lifelong learning at both the individual and the organizational level.

Paul Wangerin states that practitioners in the so called "prestige professions," such as law and medicine, are "feeling the whip of increased accountability." "[S]urely," he continues, "the people who teach in the schools of these professions will also soon feel the whip."\textsuperscript{171} Even so, working together and collaborating with peers to improve law school pedagogy makes sense on a number of levels. First, since teaching in higher education is a highly complex activity, and since it is now generally agreed that individual teachers and individual learners teach and learn differently,\textsuperscript{172} law teachers would learn more about their teaching through input from fellow faculty members.\textsuperscript{173} The evaluation of effective teaching should not rest on student evaluations alone.\textsuperscript{174}

the discovery of error or to justify decisions." In either case they "prevent careful scrutiny of the relations among assumptions and practices." See RENEE T. CLIFT, ET AL., COLLABORATIVE LEADERSHIP AND SHARED DECISION MAKING: TEACHERS, PRINCIPALS, AND UNIVERSITY PROFESSORS 20 (1995) (citing Argyris' and Schon's work on learning in organizations and action science) (citations omitted).

\textsuperscript{169} See generally, SENGE, supra note 167. Senge's book is considered the seminal work on the concept of the learning organization, an organization that is dedicated to continuous learning.

\textsuperscript{170} See SENGE, supra note 167, at 373-77. Senge sees each of the five disciplines as having three distinct levels: practices, principles, and essences. See id. Practices are literally what one does to practice a discipline. See id. For example, some of the practices of team learning are suspending assumptions, acting as colleagues, and surfacing one's own defensiveness. See id. Principles are underlying guiding ideas and insights of the particular discipline. See SENGE, supra note 167, at 373-77. Again using team learning, the principle of dialogue is one of the most significant. See id. The third level, essences, can be explained as the state of those who have mastered a particular discipline. See id. For those who have mastered team learning, their essence would be one of collective intelligence and alignment. See id.


\textsuperscript{171} See id. at 95.

\textsuperscript{172} See id. at 111-112. Wangerin points out, however, that classroom observation can be unreliable since observers are not usually trained. Their comments may be judgmental and not true measures of the teaching process itself. See id. Although Wangerin does not favor classroom observation as a data source that encourages introspection about teaching itself, see Wangerin, supra note 171, at 111, Parker Palmer has observed that "the growth of any craft depends on shared practice and honest dialogue among the people who do it." PALMER, supra note 89, at 143-144. Palmer strongly advocates that educators engage in a "community of pedagogical discourse" and the methodologies he suggests are "observing each other teach" and "periodic conversations with each other about teaching over an extended period of time." Id.

\textsuperscript{174} See Wangerin, supra note 171, at 97-101. In fact, Wangerin lists seven means of data collection for teaching evaluation. See id. They are as follows:
Second, involvement in a law school wide teaching evaluation project\textsuperscript{175} would underscore legal educators' acknowledgment that they are indeed learners, and are embarking on a process of adult learning\textsuperscript{176} to improve their professional skills. Third, any program of teaching evaluation will inevitably lead educators to the route I am advocating, that is, toward transformative learning and self-reflection. Introspection about one's pedagogical methods "often leads to improvement."\textsuperscript{177} Parker Palmer cautions educators not to ignore the human side of teaching and learning.\textsuperscript{178} Instead, Palmer suggests that evaluation should pose authentic questions that beg genuine answers. Palmer's essential questions\textsuperscript{179} should be included in the lexicon of any law school aspiring to become a learning organization. Palmer's advocacy of institutionalizing communities of pedagogical discourse\textsuperscript{180} is consonant with the principles underlying the creation of a learning organization. The answers about how to teach well and promote student learning are within us. The transformation of our teaching must begin with reflection and action. Freire's concept of \textit{praxis}\textsuperscript{181}, Dewey's reflective thinking;\textsuperscript{182} Schon's reflection in action;\textsuperscript{183} and the principles of the learning anecdotal records; measures of student performance; tests of teachers; teacher interviews or questionnaires; teacher self-evaluations; teacher portfolios; and classroom observations. See \textit{id}. Wangerin is also careful to note the distinction between formative and summative evaluations. See \textit{id}. Formative evaluations serve exclusively to improve teaching, whereas summative evaluations are used in personnel decisions. See Wangerin, \textit{supra} note 171, at 97-101. Experts urge that institutions note the differences between the two types of evaluations and urge that the two types be handled separately. See \textit{id}. \textit{See id.} at 94. Teaching evaluation programs only come into being, and are only effective when the institution is committed to improving teaching. See \textit{id}. \textit{Essential to commencing a process of adult learning, however, is the initial step of the learner's identification of the desired change, discussed above. See \textit{supra} note 164 and accompanying text.} \textit{See Wangerin, \textit{supra} note 171, at 106.} \textit{See PALMER, \textit{supra} note 89, at 145.} \textit{See \textit{id.} at 143-144. Does this person take teaching seriously, as signified by his or her involvement in conversations about it? See \textit{id.} What kind of process does this person go through in designing a course? See \textit{id.} How does this person identify and respond to the problems that arise as a course proceeds? See PALMER, \textit{supra} note 89, at 143-144. Does this person learn from past mistakes in designing and implementing future courses? See \textit{id.} Does this person attempt to help colleagues with issues in their teaching? See \textit{id.}} \textit{See id.} at 144 (positing the notion that "\textit{if surgery and the law were practiced as privately as teaching, we would still treat most patients with leeches and dunk defendants in millponds."} See PALMER, \textit{supra} note 89, at 144. \textit{See \textit{supra} note 82 and accompanying text.} \textit{See generally JOHN DEWEY, HOW WE THINK (Dover Publications 1997) (1910) (addressing Dewey's concept of \textit{reflective thinking}).} \textit{See \textit{supra} note 93 and accompanying text.}
organization are different ways of saying similar things. Conventional education leaves the inner selves of teachers and learners unexamined, and this is antithetical to the formation of community. Educators are often quick to blame the institutions in which they work for their failure to realize the institution’s mission, its collective goals, and their individual aspirations. But institutions are merely projections of the human beings living and working in them. Our tendency to cast blame is part of education’s objectivism, the “unquestioned epistemology of most academic disciplines.”

One stunning example of involving students in the examination of what lies within is described by David Dominguez at Brigham Young University Law School. Dominguez has his students reread and revise their personal statements from their law school admission applications for their second class. In class, the personal statements and revisions are discussed and shared. The diversity of perspectives, the differences in agendas, and whether law school is contributing to the development of the skills the students need to achieve their goals are all part of the dialogue. Dominguez reports that the personal statement exercise “jump-starts a semester long commitment to integrate student ideals into the learning enterprise.” This is one example of a legal educator empowering his class to practice connected knowing in lieu of objective knowing.

It is the role of the law professor, as an adult learner, to challenge students to expand their thought processes and exercise creativity. Legal educators who are dedicated to transformative learning enter into a covenant with their students, a relationship of mutual transformation for teachers and learners. As law teachers, we must self-consciously and deliberately examine ourselves and our environments to find meaningful ways to redesign the mental models of legal education for ourselves, each other, and our students. We must provide the trigger for the change and renewal necessary to reconceptualize the

See Palmer, supra note 90, at 34-37. Palmer identifies four features of conventional education. See id. The first is that the focus of study is outward - “on nature, on history, on someone else’s vision of reality.” Id. The second feature is that “conventional education neglects the inner reality of teacher and students for the sake of a reality ‘out there.’” Id. The third feature is its “tendency to isolate the knowing self” and the fourth is “simply the natural outcome of the three...we become manipulators of each other and the world rather than mutually responsible participants and co-creators.” Palmer, supra note 90, at 34-37.


See id.

See id. at 333.

See Belenky et al., supra note 81, at 123-24. Belenky describes a connected knower as one seeking to understand other people’s ideas in their terms, not in his or her own terms. See id. Connected knowers are subjective. They form connections and relationships: They do not objectify reality. See id.

See Kimberlee Kovach, The Lawyer As Teacher: The Role of Education In Lawyering, 4 Clinical L. Rev. 359, 368 (1998).

See supra note 90 and accompanying text.
law school environment as a "community of inquiry and experimentation" in which learning is seen as constant study and practice.192

IV. WHERE AND HOW DO WE BEGIN?
SOME WAYS FOR LAW FACULTY TO BEGIN THE JOURNEY OF SELF-DISCOVERY

If you are intrigued by a journey of self-assessment and you are ready to delve into the discipline of applied learning theory, please read on. In addition to investigating an area that sheds light on the learning process itself, faculty will deepen their understanding of their own areas of mastery by taking on the role of student again, by having to listen instead of speak.193

A. Some Background on Applied Learning Theory

Contemporary learning theory, which is rooted in the cognitive revolution,194 is the conceptual basis for the science of applied learning.195 Personality and its role in knowledge acquisition, how a learner makes sense of the world via personal constructs,196 and improving learning and teaching197 are all concerns of applied learning theory.

192 See PALMER, supra note 90, at xv. Senge says that Western goal-oriented learners sometimes have difficulties with the long-term commitment needed to practice the disciplines of the learning organization. See id. It is not a quick fix. See id.

193 See PALMER, supra note 90, at 114-115. Parker Palmer eloquently writes, To know a subject too well, and not to venture into others, is to risk becoming closed to fresh insight in favor of familiar facts...Teachers can deepen this discipline of standing outside their specialties by becoming students again. When they do, their minds are again broadened, that inner space for new knowledge is created without which one cannot create a learning space for others...The result is more than new knowledge. It is the enlargement of our capacity for community, of our ability to receive the personhood of students.


195 See BRUNER, supra note 194, at 14.

196 See id. at 105.

197 See Id. at 1.
Studies of the mind and research in human cognition\textsuperscript{198} suggest that there is no single means of acquiring and representing knowledge.\textsuperscript{199} Most learning theorists agree that individual differences in learning must be considered in any serious attempt to improve pedagogy.\textsuperscript{200} Individual differences have been described as learner traits, individualized aptitudes, skills, and preferences.\textsuperscript{201} Learner traits range from mental abilities, to cognitive controls and styles, to learning and personality styles.\textsuperscript{202} General mental abilities or intelligences\textsuperscript{203} are intellectual aptitudes for learning.\textsuperscript{204} Cognitive controls\textsuperscript{205} and styles are characterized as the "information processing dimensions" of learning.\textsuperscript{206} They describe how a person perceives and interacts with his or her environment, takes information in, classifies it, makes it personal, and then applies that

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\textsuperscript{198} IN HER BOOK PHILOSOPHY IN A NEW KEY (1942), the philosopher Susan Langer argued that "the ability to traffic in symbols - like words, pictures, diagrams, and works of music - is the hallmark of human cognition." HOWARD GARDNER, TO OPEN MINDS 42 (1989).
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\textsuperscript{200} See id.
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\textsuperscript{201} See DAVID H. JONASSEN & BARBARA L. GRAWBOWSKI, HANDBOOK OF INDIVIDUAL DIFFERENCES, LEARNING, AND INSTRUCTION 5 (1993).
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\textsuperscript{202} See id.
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\textsuperscript{203} Jonassen & Grawbowski eschew description of "general aptitude for learning" as an "intelligence" because they find it "too complex, yet too vague." \textit{Id}. Gardner, however, has clearly and coherently described seven distinct intelligences that are discussed above. See HOWARD GARDNER, FRAMES OF MIND: THE THEORY OF MULTIPLE INTELLIGENCE, at x (2d ed. 1993). Gardner's definition of an intelligence is "...the ability to solve problems, or to create products, that are valued within one or more cultural settings..." \textit{Id}.
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\textsuperscript{204} See JONASSEN & GRAWBOWSKI, supra note 201, at 5.
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\textsuperscript{205} See id. at 87-171. Some examples of cognitive controls are: field dependence and field independence, which is whether a person learns globally or analytically; cognitive flexibility, which is whether a person can focus on the learning task at hand and ignore distractions (flexible control) or not (constricted control); impulsivity or reflectivity, which has to do with student response time; focal attention, which is whether a learner learns by assimilating large amounts of information before making a response (scanner) or whether a learner makes a response after digesting smaller amounts of material (focuser); category width, whether a learner creates broad or narrow cognitive categories in the learning process; cognitive complexity and simplicity, which describes an individual's discriminating perception of his or her environment or social behavior; and automatization, whether a learner is hesitant (weak automatization) or not (strong automatization) when making a response or forming an action. See id. (discussing cognitive controls).
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knowledge. Learning styles are a learner’s preferences for types of learning and instructional activities. Personality styles describe how a person interacts with his or her environment and other people. One of the assumptions underlying applied learning theory is that it is both positive and desirable to adapt pedagogic strategies to accommodate learner differences in aptitude, skills, and preferences.

The labels given to various learning and personality styles vary. Researchers have worked from a number of areas of psychology, developing these labels in relative isolation. The four areas of perception—cognitive controls and cognitive process, mental imagery, and personality constructs—have spawned the contemporary theories of style. Understanding individual learning differences requires a closer look at the construct of diverse learning styles and intelligences.

B. Learning and Personality Styles, Thinking Styles, and Multiple Intelligences

The descriptions of individual learning styles are products of the cognitive school of learning research. In the 1960's and 1970's, educators became interested in learner preferences, and they developed instruments to measure those preferences or applied cognitive styles. The validity of the instruments' predictive value has been questioned.

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207 See JONASSEN & GRAWBOWSKI, supra note 201, at 5.
208 See id.
209 See id.; cf. GARDNER, supra note 203, at 237-76 (describing the personal intelligences).
210 See JONASSEN & GRAWBOWSKI, supra note 201, at 19.
211 See id. at 13-15.
212 See id. at 15-18.
213 See id. at 181-82. Jonassen & Grawbowski suggest a number of proofs of the validity of the learning style construct: 1) style dimensions are independent of each other and of other variables, such as intelligence and gender; 2) style dimensions are related to observable behaviors such as learning performance, learning preferences, subject of study preferences, social behavior, ability to make decisions, and personal feelings; 3) there is evidence of a physiological basis for style dimensions as assessed by such measures as EEG brain activity; and, 4) cognitive style can be distinguished from ability. See JONASSEN & GRAWBOWSKI, supra note 201, at 181-82
215 See JONASSEN & GRAWBOWSKI, supra note 201, at 233.
216 The validity of the instruments' predictive value has been questioned. See e.g., Lisa Leiden et al., Assessing Learning - Style Inventories and How Well They Predict Academic Performance, 65 ACAD. MED. 395 (1990) (discussing a lack of correlation between a sample of medical students’ learning styles and academic performance measures); but see Mary Louise Mickler & Carol Prejean Zippert, Teaching Strategies Based on Learning Styles of Adult Students, 11 COMMUNITY /
various learning style constructs is a significant concern for both scholars and educators, because the measurement of learning styles is largely accomplished through self-reporting instruments. The underlying assumption is that a learner's cognitive style is accurately reflected in that learner's self-perception.  

The last thirty years have seen a proliferation of learning style models, and the term is now used generically to describe the concept of individual learning differences. Learning style preferences are also described as "habits of expectation" that learners use to divine meaning, make sense of, and interpret an experience. Researchers have attempted to create a taxonomy of learning style models and instruments in an effort to rationalize the construct and to clarify the definition and assessment of learning styles.

Some learning style instruments, like the Dunn & Dunn Learning Style Inventory and the Myers-Briggs Type Indicator (MBTI) have been used by

JUNIOR COLLEGE Q. 33-37 (1987) (reporting that an assessment of adult students' learning styles and corresponding modification of teaching methods resulted in significantly higher standardized achievement scores).

217 See Jonasen & Grawbowski, supra note 201, at 233-34.
218 See Butler, supra note 70, at 9.
219 See Mezirow, supra note 137, at 2.
220 See Hickcox, supra note 206, at 28; see also Richard Riding & Stephen Rayner, Cognitive Styles and Learning Strategies: Understanding Style Differences in Learning and Behavior 52 (1998).
221 See id. at 6.
222 See id. at 52. Richard Riding and Stephen Rayner have classified learning style models based on certain key features. The categories are: 1) learning style models based on the learning process; 2) learning style models grounded in orientation to study; 3) learning style models based on instructional preference; and, 4) learning style models based on cognitive skills development. See id. at 53.
223 See generally Rita & Kenneth Dunn, Teaching Secondary Students Through Their Individual Learning Styles: Practical Approaches for Grades 7-12 (1993). The Dunn and Dunn model, developed in the 1970's, is based on the idea that instructional methodology should acknowledge and honor diversity among individuals. In 1990, the Dunn model included 21 classifiable elements that reveal that learners are affected by their immediate environment, their emotionality, their sociological preferences, physiological characteristics, and their processing inclinations. See id at 3. The Dunns define learning styles as the way in which biological and developmental personal characteristics make different methods of teaching appropriate for some but not for others. See id. at 4. See generally id. (offering additional information on the Dunn & Dunn Learning Style model).
224 See generally David Keirsey & Marilyn Bates, Please Understand Me: Character & Temperament Types (5th ed. 1984); Gordon D. Lawrence, People Types and Tiger Stripes: A Practical Guide to Learning Styles (3d ed. 1993). The Myers-Briggs Type Indicator (MBTI) is a personality style inventory based on the work of the Swiss psychoanalyst Carl Jung. See Keirsey & Bates, supra, at 4. It was published in 1962 by the Educational Testing Service,
law schools to help students identify their learning styles and preferences. This information can help students to become successful, independent learners. In fact, some learning theory advocates argue that such self-knowledge is key to the learner’s maximization of the law school experience. If such self-knowledge helps students to learn about how they learn, and if it impels students to greater success in law school, it only makes sense that teachers would benefit from such self-assessment as well.

Both the Dunn & Dunn Learning Style Inventory and the Myers-Brigg Type Indicator are personality based. Another learning style construct, David Kolb’s Experiential Learning Model (ELM), concentrates on the cognitive side of learning. The ELM is rooted in experiential learning and is congruent and it represented a twenty year collaboration of Isabel Briggs Myers and her mother, Katherine Briggs. See supra, at 5. The Jung/Briggs model describes four personality dimensions with four corresponding and opposing preferences. See Thomas C. Thompson, Understanding Personality Preferences and Type Theory, in Most Excellent Differences: Essays on Using Type Theory in the Composition Classroom (Thomas C. Thompson, ed., 1996). Thus, since there are four combinations of four elements, sixteen possible personality types can be characterized with the MBTI. See supra, at 5.

Vernellia Randall makes the following observation:

If law schools are serious about conforming legal education to known educational theory, law schools must do more than to take a “sink or swim” attitude toward student success. Law schools must understand which factors contribute to student learning and which do not. While understanding learning styles is not a cure-all for the ills of legal education, it is a start toward helping the student become a better self-learner. Legal educators could use the MBTI to help students maximize the learning experience by: (1) helping them to understand how they learn best; (2) by helping them to understand how the learning environment differs from their preferred learning modes; and (3) by helping to determine activities and behaviors to maximize their learning, notwithstanding any learning style differences.

Randall, supra note 6, at 102-103.


Kolb’s topology synthesizes the two dimensions of cognitive growth and learning; namely, the concrete-abstract dimension and the active-reflective dimension. See Leonie Sugarman, Kolb’s Model of Experiential Learning: Touchstone for Trainers, Students, Counselors, and Clients, 64 J. Couns. & Dev. 264, 264 (1985). Kolb’s framework starts with concrete experience, then moves through reflective observation, abstract conceptualization, and active...
It All Begins With You

with adult learning theory. Kolb asserts that adults learn best when they are actively involved, motivation is keen, there is urgency to their learning, the learner can be self-directed, and there is time for reflection. Kolb's Experiential Learning Cycle has also been used in law schools to improve learning and teaching, and it has been discussed quite frequently in the growing body of legal literature on applied learning theory. Taking the time to work with the Kolb Learning Style Inventory would have a significant return for law faculty. The reflective act of guided self-analysis, and determining whether one learns primarily by feeling, watching and listening, thinking, or doing would help an instructor uncover her strengths and weaknesses. This, in turn, would enable a teacher to decide what teaching techniques to emphasize, to decide what would work best in light of one's predilections. For example, a faculty member could experimentation. See id. Moving through each stage of Kolb's learning cycle demands a different level and kind of involvement from the learner. As the learner moves through the process, his or her role shifts from being an actor to being an observer, and from having direct involvement with the material to analytic detachment. See id at 264-265. Since experience is at the core of Kolb's model, comprehensive learning demands that the effective learner have a concrete experience, perceive it through observation, process it through reflection, assimilate concepts from that observation and reflection, and then actively test it. The progression of perceiving and processing an experience through the four learning stages begins again if the testing gives rise to a new experience. See id at 266-267. Kolb's dynamic construct is flexible, and independent research has validated the model. See id at 265. Kolb's four learning styles, the diverger, the assimilator, the converger, and the accommodator, each perceive and process information in different ways. See id. For information on Kolb's learning cycle theory, see generally id.

One of the best articles about experiential learning in law schools is Professor Brook Baker's seminal piece on this topic. See Baker, supra note 34.

This information and my personal experience with the Kolb Learning Style Inventory is from a lecture and diagnostic session conducted by Mary Beth Clack and BethAnn Zambella, of the Harvard College and Harvard University Lamont Libraries, respectively, entitled VIEWING TEACHING THROUGH THE LENS OF LEARNING, sponsored by the Boston Library Consortium and held at Northeastern University's Snell Library on May 12, 1999.

Whether law students are truly adult learners has been debated in the legal academy. See Linda Morton, Janet Weinstein and Jack Weinstein, Not Quite Grown Up: the Difficulty of Applying an Adult Education Model to Legal Externs, 5 CLINICAL L. REV. 469 (1999).

For a recent article discussing the use of the ELM in law schools, see John H. Reese & Tania H. Reese, Administrative Law and Discussion Forum: Teaching Methods and Casebooks, 38 BRANDEIS L.J. 169 (2000).

These are all ways of learning in the Kolb cycle of learning. Learning by feeling is characteristic of the concrete experience stage of learning. Learning by watching and listening is from the stage of reflective observation. Learning by thinking is abstract conceptualization, and learning by doing is from the active experimentation stage of the Kolb cycle.
consciously decide whether to use, and how much time to spend on, lectures, role play, small-group discussions, or personalized counseling, depending on whether she were a diverger, an assimilator, a converger, or an accommodator. Whether a teacher is an extravert or an introvert, a sensor or an intuitive, a thinker or a feeler, a judger or a perceiver will all have an effect on which teaching methodologies are natural for that instructor to with comfort and success. The point is that the students’ learning styles are not the only important part of the equation. The instructor’s style is just as important, and the differences in learning styles of teacher and student can, and does, create dissonance. It is also problematic when a teacher takes on a role or uses a technique that does not fit with his or her personal learning style. We need to play to our strengths.

Some applied learning theorists classify thinking styles to identify a person’s preferred style of information processing. Robert J. Sternberg presents a model of thinking styles based on forms of mental self-government. Sternberg describes legislative, executive, and judicial thinking styles. The measurement instrument for this thinking style model is the Sternberg-Wagner Self-Assessment Inventory. The complexity of Sternberg’s model undercuts the

234 These terms are the names of the four learning style types from the Kolb Learning-Style Inventory.
235 Carl Jung spelled extrovert with an “a” instead of an “o” and the spelling of extravert in personality type has continued! See Thompson, supra, note 226 at 4.
236 These terms represent the four dimensions of the Myers-Brigg Type Inventory. See LAWRENCE, supra, note 226 at 7-12. To begin a more comprehensive study of personality type theory, see generally id. at 4-14; see generally George H. Jensen & Dean A. Hinnen, The Dynamics of Teaching and Learning, in MOST EXCELLENT DIFFERENCES: ESSAYS ON USING TYPE THEORY IN THE COMPOSITION CLASSROOM 22-34 (Thomas C. Thompson, ed., 1996).
237 See ROBERT J. STERNBERG, THINKING STYLES 19 (1997). In Sternberg’s words, the “basic idea of the theory of mental self-government is that the forms of government we have in the world are not coincidental. Rather, they are external reflections of what goes on in people’s minds and they represent alternative ways of organizing our thinking. Thus, the forms of government we see are mirrors of our minds.” Id.
238 The legislative style thinker is primarily a creative thinker who prefers to do things in his or her own way. The executive style thinker likes to follow rules and prefers structure. The judicial thinker enjoys evaluating existing rules and procedures. Sternberg identifies four “forms of government” that further define a person’s thinking style by describing her motivations and noting how the thinker approaches problem solving. The four forms of government are monarchic, hierarchic, oligarchic, and anarchic. In a nutshell, a monarchic person is driven and single-minded. A hierarchic individual operates with a hierarchy of goals and sets priorities. An oligarchic thinker is similar to the hierarchic but is less motivated to set priorities. The anarchic is motivated by a multitude of goals and needs that are sometimes not readily distinguishable to either the thinker or others. See id. at 20-26.
239 See STERNBERG, supra note 237, at chaps. 2-4. Sample questions from the Sternberg-Wagner Inventory are included in Chapters 2-4 of Sternberg’s book,
tendency to use stereotypical labeling, a charge that has been leveled at some learning style constructs. Sternberg outlines fifteen principles or rules that should be observed in applying style models, and makes a strong case for the value of recognizing stylistic preferences in the worlds of education and work. Sternberg’s model may be especially appealing and accessible to law professors, since Sternberg uses familiar forms of government in his model. Moreover, taking and scoring the Sternberg-Wagner Self-Assessment Inventory does not require a heavy time commitment.

In addition to learning and thinking styles, applied learning theory has considered innate ability or aptitude. The theory of multiple intelligences was first articulated in the early 1980s by Howard Gardner, who has identified and named eight intelligences. Of particular relevance to legal educators is enabling the reader to do a preliminary self-assessment of his or her thinking style profile. See id. For example, a legislative thinker with oligarchic tendencies who is global and external with liberal leanings would have a very different thinking style than a legislative thinker with monarchic tendencies who is also local, internal, and conservative.

See, e.g., Jacobson, supra note 6.

See STERNBERG, supra note 237, at 79-98. Sternberg’s principles apply to both learning style constructs and his own theory of thinking styles. They are: 1) styles are preferences in the use of abilities, not abilities themselves; 2) a match between styles and abilities creates a synergy that is more than the sum of its parts; 3) life choices need to fit styles as well as abilities; 4) people have profiles (or patterns) of styles, not just a single style; 5) styles are variable across tasks or situations; 6) people differ in the strength of their preferences; 7) people differ in their stylistic flexibility; 8) styles are socialized; 9) styles can vary across the life span; 10) styles are measurable; 11) styles are teachable; 12) styles valued at one time may not be valued at another; 13) styles valued in one place may not be valued in another; 14) styles are not good or bad - it is a question of fit; and 15) we confuse stylistic fit with ability levels. See id. (emphases added)(discussing the fifteen principles of styles).

See id. at 160.

See GARDNER, supra note 203, at xvi.

See id. at part II. Linguistic intelligence is the capacity to use language; to express ideas, and to understand others. Logical - mathematical intelligence is the ability to understand the underlying principles of causal systems or the ability to manipulate numbers and operations. Spatial intelligence is the competence to represent the external world internally in one’s mind. Bodily kinesthetic intelligence is the ability to use the whole body or parts of the body to solve a problem, create a production, or make something. Musical intelligence is the capacity to hear patterns, to remember them and manipulate them, to “think in music.” The personal intelligences are interpersonal and intrapersonal intelligence. Interpersonal intelligence is the ability to understand and to relate to others; whereas intrapersonal intelligence is the capacity to understand oneself. The naturalist intelligence is the ability to classify the world, to create taxonomies of living things and natural phenomena. For an in-depth explanation of Gardner’s theory of multiple
Gardner’s view that traditional intelligence tests measure only verbal and logical mathematical intelligences. Learning style theory has its roots in psychoanalysis. By contrast, Gardner’s theory is a product of the cognitive sciences. The theory of multiple intelligences is supported by a diverse and rich research background. Studies in the field of child development, studies of cognitive skills under conditions of brain damage such as stroke, psychometrics, anthropology, and psychology have all contributed depth to and enhanced the credibility of the theory of multiple intelligences.

Learning style theory is not as substantially grounded as multiple intelligences theory, and the different orientations and biases of the researchers have produced a confusing nomenclature. It is hard to know where to begin and what to believe. Despite concerns about validity, however, some work has been done to wed the cognitive science of intelligence to personality based learning style preferences in order to apply the theories in the classroom.

Clearly, there are similarities and overlap among the various applied learning theories. It is most important to realize that each variant of applied learning theory recognizes diversity as a core principle. Applied learning theory acknowledges that diversity in the student body will produce differences in the way that learners learn.

intelligences, see Part II of his book FRAMES OF MIND, supra note 203. In his book, Gardner discusses only seven intelligences. The eighth intelligence, the naturalist intelligence, has been identified since the publication of FRAMES OF MIND. See Kathy Checkley, The First Seven ...and the Eighth: A Conversation with Howard Gardner, 55 EDUC. LEAD., Sept. 1997, at 8-13 (interviewing Howard Gardner on the theory of multiple intelligences, what they are, and how to measure and nurture intelligence). Gardner is thinking of naming a ninth intelligence, the “existentialist intelligence.” See Sam Allis, The Master of UNArtificial Intelligence: Howard Gardner’s Definition of ‘Smart’ Still Sparks Controversy, THE BOSTON SUNDAY GLOBE, July 11, 1999, at D1, D5.

See e.g., GARDNER, supra note 203, at 17-18, 24.

Harvey Silver et al., Integrating Learning Styles and Multiple Intelligences, 55 EDUC. LEAD., Sept. 1997, 22, at 22.

See GARDNER, supra note 203, at 9.

See Silver et al., supra note 247, at 24.

Id.

See id. at 24-27. In an effort to apply MI theory in the classroom, Silver et al. suggest a complement to Gardner’s model by identifying four learning styles: mastery, interpersonal, understanding, and self-expressive. Silver et al. fit each of these learning styles into Gardner’s intelligences and describe, for example, how a mastery learner with a linguistic intelligence would learn as compared to an interpersonal learner with linguistic intelligence, etc. In addition to identifying learning styles, Silver et al. propose career aptitudes for each MI/learning style type.

See id.


See id.
will help law professors improve their teaching by appreciating this diversity. See Friedland, supra note 44, at 3. Friedland has written, "[l]earning theory is essential to pedagogy. If teaching is seen as what people learn, then effective delivery is paramount." Id. 

The educator's part in the educational enterprise is to "furnish the environment which stimulates responses and directs the learner's course." To promote meaningful knowledge acquisition and to move from a learner's raw intuitive understanding to disciplined understanding, educators must be self-reflective about what and how they are teaching. Teachers are also learners and, as learners, we must model reflection as a positive professional practice. To move from didactic education to transformative learning, the educator's "efforts must coincide with those of the students to engage in critical thinking" and we must become "partners of the students in...relations with them." Today's law school classroom is made up of learners with varied gender, racial, ethnic, and cultural backgrounds. Much of the legal academy's literature on pedagogy has focused on helping the instructor to identify and accommodate the resultant diversity in cognitive processing, thinking, and learning styles. Although teachers should not teach to groups, but to individuals' learning styles, I suggest that self-knowledge is the teacher's most powerful tool for change. It is essentially impossible for instructors to identify
the specific array that is each student's learning and thinking style. Instead, by using applied learning theory, an instructor can put him or herself in the powerful position of Goleman's emotional entrainment, that is, being receptive to and respectful of difference in the learning process. A legal educator could take either the Kolb Learning Style Inventory or the Myers-Briggs Type Indicator to discover his or her unique learning and personality preferences. Most university education or psychology departments can make these inventories available, as can continuing legal education or community adult education classes. A faculty retreat with an educational consultant to explain, administer, and help interpret results would also be valuable. If faculty-wide testing is not feasible, an interim step might be taking one of the self-tests in the books about learning or thinking styles. Having the faculty read articles or a book about personality styles and multiple intelligences, and discussing the readings at an informal colloquium with colleagues would be an excellent way to learn together and to build community in our law schools. Examining our own learning styles and exploring what makes us tick can only add value and provide meaning for the whole law school learning environment.

C. A Note About Self-reflection

As I stated earlier, this paper grew out of my reading and reflection on the subjects of teaching, critical pedagogy, reflective practice, and applied learning theory. As I suggest in this article, I attended a number of programs and seminars on teaching and learning, and listened to many audio tapes of conference programs. How does this body of knowledge make me a better teacher? I became more deliberately aware of my own behavior by educating myself about my learning preferences. For example, by using the shorthand of the various learning style instruments, I discovered my strengths and

264 See Gerald F. Hess, The Legal Educator's Guide To Periodicals On Teaching And Learning, 67 UMKC L. REV. 367 (1998). The books and articles on applied learning theory cited above would be good places to start. In addition, a recent article by Gerald Hess reviews twenty-one journals and newsletters from the education literature that are relevant to legal educators. See id.

265 See supra note 79 and accompanying text.

266 See Keirsey & Bates, supra note 226 (outlining a self-test based on the Myers-Briggs personality types). Also, if Sternberg's work on thinking styles intrigues the reader, short self-tests taken from the Sternberg-Wagner Self-Assessment are included in his book. See STERNBERG, supra note 237.

267 Using the Myers-Briggs Type Indicator, I learned that I am an ENFP, an extravert, intuitive, feeling perceiver. Using the Kolb Learning Style Inventory, I discovered that my learning style is that of a diverger. With the Sternberg-Wagner Inventory, my thinking style is characterized as legislative, global, and external. All of these "tests" validated each other. In very unscientific terms, I am a learner who thinks globally. I prefer a hands-on approach to learning. I am energized by others, not drained by them. I am more intuitive than analytical. I like to leave things open-ended.
weaknesses. I became more self-conscious about what did and did not for me in the classroom. I realized when I was taking on a role, playing a part, and when I was teaching authentically. I turned off the automatic pilot and began teaching more thoughtfully.

It is true that some of the information gleaned from the personality and learning style instruments has a quasi-horoscope tenor to it. I am not promoting an erudite acceptance of the data gleaned from the learning style instruments. My support of applied learning theory is a methodological one. I advocate that law professors use the discipline as a technique for turning inward and practicing self-reflection in a studied, but not bookish, way. I advocate using applied learning theory discoveries as a way to organize self-reflection about teaching - as a means of experientially analyzing classroom performances and encounters.

V. CONCLUSION: REFLECTIONS ON ADVOCATING CRITICAL REFLECTION

This paper argues that it is important to discover and then honor the diversity of learning styles of the members of the legal academy. I have straightforwardly advocated the discovery of that diversity through critical reflection, through becoming a student again, in this case, a student of applied learning theory. In making this suggestion, am I not guilty, myself, of treating all law professors as though they were the same, of not honoring their diverse learning styles and intelligences? Perhaps critical reflection is not comfortable or even possible for some legal educators. Teaching, however, has been described as "sharing the fruits of contemplation with others." In the last decades of the twentieth century, the paradigm of college teaching and student learning evolved rapidly. The make-up of the student body and the faculty has changed. "Having little or no training in teaching, professors [have] used the pedagogical skills that were the most effective in their own learning." The capacity for lifelong, independent learning is crucial to success in the legal arena - for all of the players: professors, students, and practitioners alike. My suggestion is that self-awareness on the part of the instructor is a solution to some of the dilemmas we encounter when we attempt to expand our capabilities and improve classroom practices so that we are teaching the whole class. Since we tend to favor our own processes of learning in our teaching styles, it is important that we know and understand just what they are. We hold the answers to better teaching, and thus, to better student learning, within us.

268 Bob Case, Making the Transition to Student-Active Learning, 4 Teaching Matters, May 1999, no. 2, at 6.
269 See Fife, supra note 13, at ix.
270 Id.
272 Parker Palmer writes, "Authority is granted to people who are perceived as authoring their own words, their own actions, their own lives, rather than playing a
Law schools must create space for dialogue about ways to improve pedagogy. One author suggests “sharing our common sense about teaching”, arguing that professors would “profit from more time spent on rigorous reflection and sharing about teaching.” Legal educators’ collective concern with self-awareness would be a real transfer of professional artistry and a positive modeling of continuing professional development for our students. The responsibility of the legal academy is to provide the forum and incentives for faculty to become better teachers and to provide an atmosphere conducive to legal educators’ continual learning in the art of teaching.

On his retirement from Harvard in 1907, William James said, “When I look back at my thirty-five years of teaching here, I sometimes shudder at the thought of the bad instruction that I have given.” This is an authentic, humble, and self-reflective statement from an educational philosopher who recognized that teaching is an arduous art. We must start with ourselves. I aspire to be one more voice in the passionate chorus calling for the legal academy’s support of further research in and dialogue about teaching in law schools. For legal educators to experience emancipatory education themselves, law schools must provide the necessary support and encouragement. Teachers of law must decide to undertake the challenging and sometimes exhilarating journey toward self-knowledge. The answers to better teaching and enhanced student learning lie within. It is our job to find them.

scripted role at great remove from their own hearts. When teachers depend on the coercive powers of law or technique, they have no authority at all.” PALMER, supra note 89, at 33.

273 Condit, supra note 153, at 172. Celeste Condit notes, “The ‘who’ of teaching and learning cannot be reduced to the ‘what’ of science (even science described as progressive theory). Instead of theorizing teaching, we need to talk together to build some critical common sense.” Id.

274 Gerald E. Myers, Introduction to WILLIAM JAMES, TALKS TO TEACHERS ON PSYCHOLOGY AND TO STUDENTS ON SOME OF LIFE’S IDEALS, at xi (1983).

275 See id.

276 See MEZIROW, supra note 139, at 361. According to Jack Mezirow, “Emancipatory education, which helps learners become aware and critical of the presuppositions that shape their beliefs, is not the same thing as prescribing a preferred action to be taken.” Id. When a learner “brings psychocultural assumptions into critical consciousness”, they become can begin to “understand how they have come into possession of conceptual categories, rules, tactics, and criteria for judging that are implicit in their habits of perception, thought, and behavior.” Id. This type of learning, which is transformative learning, “enhances our crucial sense of agency over ourselves and our lives.” Id. Through emancipatory education, the learner takes on “transformed meaning perspectives.” MEZIROW, supra note 139, at 361.